

23.08.2023.
Item No. 2.
Court No. 13
ap

**F.A. No. 34 of 2011
With
I.A. No. CAN 5 of 2022**

**Sri Anil Kumar Jana
Versus
Hitesh Maity & Anr.
(Sri Ramkrishna Maity since deceased)**

Mr. Sourav Sen,
Ms. Rita Patra,
Ms. Pusmita Das.

...For the appellant.

Mr. Chandradoy Roy,
Mr. Avijit Chakraborty.

...For the respondents.

1. Although initially the learned Counsel for the appellant, Mr. Sourav Sen, requested this Court to reduce the amount of Rs.12.5 lakhs. This Court has declined to do so.

2. Thereafter, Mr. Sourav Sen, after consulting with his client agreed to pay Rs.12.5 lakhs as total consideration for purchase and registration of the suit property. The sum of Rs.1.2 lakhs, already paid by the appellant, shall stand deducted from the amount of Rs.12.5 lakhs and shall become payable in the name of Gita Rani Maity, the first substituted respondent.

3. This Court has fixed a sum of Rs.12.5 lakhs increased from the original agreed consideration of Rs.2,00,000/- for the suit property for the following reasons:

(i) This Court is satisfied that the appellant was entitled to a decree for specific performance of the agreement dated 20th November, 1995.

(ii) This Court was equally satisfied that the Court below had committed error in dismissing the suit;

(iii) The current market value of the suit property about Rs.19,00,000/-. It would be unfair to ask the respondents to receive only the original sum of Rs.2,00,000/- being the consideration amount in the year 1995 after 28 years now.

4. This Court has found the total consideration increased to Rs.12.5 lakhs from Rs.2 lakhs, is a fair compensation to the respondents and a fair assessment of value of the property in the facts and circumstances of this case as on date.

5. The appellant shall pay the balance sum of Rs.11.30 lakhs by 29th August, 2023 mandatorily and positively. Upon payment of the said sum by the time indicated above, the respondents shall register a conveyance of the suit property in favour of the appellant.

6. In so far as paragraph 2 of the order dated 21st August, 2023 is concerned, i.e. the computation of stamp duty payable on the property in question, it is clarified that the Registrar of Assurance, Kolkata shall assess the stamp duty on the current sum of Rs.12.5

lakhs being the assessed value of the property as on date in terms of the directions of this Court. Applicable registration charges shall, however, be paid in accordance with law.

7. It is made absolutely clear that there shall be no penalty or any other levy imposed on the appellant for registration of the aforesaid conveyance, for the following reasons:

(a) The appellant did not deprive the State of stamp duty since he purchased stamp worth of Rs.14,000/- in the year 1996 being 7% of the value of the property, and the stamp paper has been exhibited in the Court below.

(b) The State has had the user of the said sum of Rs.14,000/- since the year 1996.

8. This Court, in the facts of the case, therefore, does not find the need of any penalty to be imposed on the appellant for non-registration of the original agreement of sale dated 20th November, 1995.

9. It is ordered that the respondents shall complete the registration if the aforesaid order of payment is complied with and formalities are completed by the appellant on 5th September, 2023.

10. The demand draft/pay order in favour of Gita Rani Maity shall be delivered to the learned Advocate-on-record of the respondents, Mr. Avijit Chakraborty

at premises being Room No. 61, 6, Old Post Office Street, Kolkata – 700 001.

11. With the aforesaid directions, the impugned judgment and decree dated 26th April 2010 the learned Court below shall be set aside.

12. Let this decree be drawn up as expeditiously as possible.

13. All exhibits filed in Court in aid of the suit are permitted to be withdrawn upon furnishing photostat copies of the same.

14. In view of the above, F.A. No. 34 of 2011 shall stand disposed of. Consequently, the connected application being CAN 5 of 2022 shall also stand disposed of.

15. Let the Lower Court's Records be sent down to the Court below expeditiously.

16. There will be no order as to costs.

17. All parties, Registering Authority and the Collector shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)

