

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.152 of 2017

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Anand Prasad Singh Son of Late Akhileshwar Prasad, Resident of Village-
Bargaon, P.S.- Konch, District- Gaya, at present residing at Mohalla- West
Church Road, Gaiwal Bigha, P.S.- Civil Lines, District and Town- Gaya.
... .. Petitioner/s

Versus

1. Shyam Kishore Singh son of Late Bachu Singh, resident of Village-
Bargaon, P.S.- Konch, District- Gaya.
- 2.1. Sheo Shankar Singh Son of Late Madhusudan Singh resident of Village-
Bargaon, P.S.- Konch and District- Gaya.
- 2.2. Ramakant Singh Son of Late Madhusudan Singh resident of Village-
Bargaon, P.S.- Konch and District- Gaya.
- 2.3. Umda Devi Wife of Satish Kumar, Daughter of Late Madhusudan Singh
resident of Village and P.O. and P.S. Parthu, District- Aurangabad.
- 2.4. Bageshwari Devi Wife of Nagendra Sharma, Daughter of Late Madhusudan
Singh Resident of Village Nath Khersha, P.S. Mahendia, District- Arwal.
- 2.5. Rina Devi Wife of Sunil Kumar, Daughter of Late Madhusudan Singh
Resident of Village Nath Khersha, P.S. Mahendia, District- Arwal.
- 2.6. Renu Kumari Wife of Jitendra Kumar, Daughter of Late Madhusudan Singh
Resident of Village Nima, P.S. Rafiganj, District- Aurangabad.
- 2.7. Shanti Devi Wife of Sanjay Kumar, Daughter of Late Madhusudan Singh
Resident of Village Dhanahi, P.S.- Parthu, District- Arwal.
3. Smt. Madhusudan Devi, wife of Shyam Kishore Singh, resident of Village-
Bargaon, P.S.- Konch, District- Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr. Advocate with Mr. Madan Mohan, Advocate Ms. Pallavi Pandey, Advocate Mr. Ritik Shah, Advocate Ms. Aishwariya Shree, Advocate
For the Opposite Party/s :		Mr. Arbind Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

24 06-05-2024 Heard Mr. Ganpati Trivedi, learned senior advocate

assisted by Mr. Madan Mohan, Ms. Pallavi Pandey, Mr. Ritik

Shah and Ms. Aishwariya Shree, advocates and Mr. Arvind

Kumar Singh, learned counsel for the opposite parties.



2. This Revision application has been filed against the order dated 17.05.2017 passed in Title Suit No. 172 of 2015 / 432 of 2010 by learned Sub Judge- XI, Gaya, whereby the learned trial court has rejected the petition filed on behalf of the defendant/petitioner under Order 7 Rule 11(d) of the Code of Civil Procedure praying for rejection of the plaint.

3. The petitioner herein is the defendant in the Title Suit No. 172 of 2015 / 432 of 2010 filed by the opposite parties for a decree directing the defendant/petitioner to execute and register the sale deeds on the terms and conditions mentioned in sada sale deeds dated 12.04.2005 and 05.06.2006 with respect to suit land detailed in Schedule 1 of the plaint within the time fixed by the court failing which the same be done by the court through the process of the court and also for declaring that plaintiffs have got title and possession over the suit land and defendant be permanently restrained from dispossessing or interfering of the possession of the plaintiffs over the suit land and for alienating the same with any other person holding that plaintiffs have got title and possession over the suit land.

4. After summon, the defendant/petitioner appeared and filed petition on 16.07.2012 under Order 7 Rule 11(d) of the Code of Civil Procedure praying to reject the plaint as the



plaintiffs have based their suit on an unregistered deed on the basis of which they have also claimed to have come in possession. It was also pleaded that the suit was barred under Section 53A of the Transfer of Property Act, 1882 (hereinafter referred as 'T. P. Act') and Section 49 (amended) of The Indian Registration Act, which provides mandatory registration of document.

5. Mr. Ganpati Trivedi, learned senior advocate for the petitioner has vehemently submitted that the document containing the contract to transfer the right, title or interest of an immoveable property for consideration is required to be registered, if the party was to rely on the same for the purpose of Section 53A of the T. P. Act to protect its possession over the suit land. If it is not a registered document, the only consequences provided in this provision is to declare that such document shall have no effect for the purpose of said Section 53A of the T.P. Act. It is admissible only as evidence to the agreement to sale under the provision of Section 49 of the Registration Act and shall not have any effect for the purpose of Section 53A of the T. P. Act. He has relied upon the decision in the case of *Ameer Minhaz vs. Dierdre Elizabeth (Wright) Issar and Ors* reported in (2018) 7 SCC 639.



6. On the other hand, learned counsel for the plaintiffs/opposite parties submitted that the contract for sale in between plaintiffs and defendant was for 7.80 acres of land for which total consideration money was Rs. 2,94,630/- and the same was paid by the plaintiffs and received by the defendant. On receipt of entire consideration money, the defendant executed the sada sale deed dated 12.04.2005 in favour of original plaintiff nos. 1 & 2 and others and sale deed dated 05.06.2006 in favour of plaintiff no. 3 and they were put in possession thereon. The required ingredients for sale of aforesaid suit land was fulfilled by making payment of entire agreed consideration money and by putting the plaintiffs' possession thereon. The plaintiffs acquired title and possession over the suit land. Plaintiffs are in peaceful cultivating possession over the suit land since the date of sada sale deeds. It is also pleaded that the defendant, finding a recital of the sada sale deed, made endorsement of execution of sale acknowledging the receipt of entire consideration money in his own pen, writing and signature. At the instance of defendant, the witnesses identified the said deeds. It is submitted that it is recited in the sada sale deed and as per the convenience of the plaintiffs, the defendant would register the sale deed. Plaintiffs



approved the defendant to get the sale deed registered by the defendant with respect to the suit land but he began to evade the same on one pretext or the other. It is further submitted that from the recital of the sada sale deed and acknowledgment of defendant, it is clear that no consideration money was remained to be paid.

7. Learned counsel for the plaintiffs/opposite parties submitted that the provision of amended Section 17 of the Indian Registration Act and 53A of the T. P. Act does not bar for filing the suit in view of the fact that the sada sale deed is executed by the defendant on receipt of entire consideration money and whereby the plaintiffs were put in position. Reliance has been placed in the case of ***S. Kaladevi v. V. R. Somasundaram and others*** reported in ***AIR 2010 SC 1654***. In this case, the Hon'ble Supreme Court has held that 'a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.'

8. In the case of ***Kalavakurti Venkata Subbaiah v. Bala Gurappagari Guruvi Reddy***, reported in ***(1999) 7 SCC 114***, para 11 at page 119, it has been held as follows:-

"The document has not been presented by the respondent to the Sub-Registrar at all for



registration although the sale deed is stated to have been executed by the appellant as he refuses to cooperate with him in that regard. Therefore, various stages contemplated under Section 77 of the Act have not arisen in the present case at all. We do not think, in such a case when the vendor declines to appear before the Sub-Registrar, the situation contemplated under Section 77 of the Act would arise. It is only on presentation of a document the other circumstances would arise. The first appellate court rightly took the view that under Section 49 of the Act the sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property.”

9. After considering the averments and perusal of the impugned order, it is manifest that the suit has been filed by the plaintiffs for directing the defendant/petitioner to execute the registered sale deeds on the terms and conditions mentioned in sada sale deeds dated 12.04.2005 and 05.06.2006 and the entire consideration money of the suit land was paid by the plaintiffs. The defendant after receiving the consideration money, made endorsement of execution of sale acknowledging the receipt of entire consideration money in his own writing and signature and



by putting the plaintiffs in possession thereon.

10. In view of the aforesaid pleadings, the suit has to be decided whether entire money was paid for. No doubt, agreement to sale is not a document of title or a deed of transfer of property by sale and such may not confer absolute title upon the plaintiffs/opposite parties over the suit property in view of Section 54 of the T. P. Act. Nonetheless, the agreement to sale, the payment of entire sale consideration is mentioned in the sada sale deed itself and corroborated by the receipt of its payment and the fact that the plaintiffs/opposite parties were put in possession of the suit property in accordance with law. The plaintiffs/opposite parties are *de-facto* having possessory rights over the suit property in part performance of the aforesaid sada sale deed. This possessory right of the plaintiffs/opposite parties is not liable to be disturbed by the transferer i.e. defendant/petitioner. It is now well settled that while considering the prayer for rejection of plaint under Section 7 Rule 11 of the Code of Civil Procedure, the averments made in the plaint are to be taken as correct.

11. In the present case, the plaintiffs/opposite parties have asserted to be in possession over the suit property after payment of entire consideration money. The defendant made



endorsement on the said sada sale deeds acknowledging the receipt of the entire consideration money in his own pen, writing and signature in the presence of the witnesses of the said deeds.

12. This aspect of the matter has been dealt with in the case of ***Ghanshyam versus Yogendra Rathi*** reported in **2023 LiveLaw (SC) 479**. It has been held by the Apex Court in paragraph 16 of the aforesaid decision which reads as under:-

“Notwithstanding the above as the plaintiff-respondent admittedly was settled with possessory title in part performance of the agreement to sell dated 10.04.2002 and that the defendant-appellant has lost his possession over it and had acquired the right of possession under a licence simpliciter, exhausted his right to continue in possession after the licence has been determined. Thus, the defendant-appellant parted with the possession of the suit property by putting the plaintiff-respondent in possession of it under an agreement to sell. The plaintiff-respondent in this way came to acquire possessory title over the same. The defendant-appellant, as such, ceased to be in possession of it as an owner rather occupied it as a licensee for a fixed period which stood determined by valid notice, leaving the



defendant-appellant with no subsisting right to remain in possession of the suit premises.

13. After going through the decision of the Apex Court as well as the High Court, the plea under Section 53A of the T. P. Act as well as a suit under Specific Performance of Contract Act has got independent identity and for that proper adjudication is required. The said objection is pre-mature to interfere at the present stage of the suit. The power conferred on the court to terminate a civil action is, however, a drastic one and the condition enumerated in Order 7 Rule 11 of the Code of Civil Procedure are required to be strictly adhered to. This principle has been settled by Hon'ble Supreme Court in large number of cases. It is, therefore, obvious that the plaint could not have been rejected as prayed by the defendant under the provision of Order 7 Rule 11 of the Code of Civil Procedure.

14. In the aforesaid background, this Court, therefore, does not find that the learned court below has committed error of jurisdiction and irregularity in passing the impugned order.

15. The present Civil Revision application is, accordingly, dismissed.

(Khatim Reza, J)

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