IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.48 of 2016
In
Civil Writ Jurisdiction Case No.9805 of 2015

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1. Smt. Reeta Devi Wife of Ranjan Kumar Paswan Resident of Village- Chhapki Parari, P.S.- Sadar, District- Darbhanga.
2. Ranjan Kumar Paswan, Son of Shri Narayan Paswan Resident of Village- Chhapki Parari, P.S.- Sadar, District- Darbhanga.
3. Shri Narayan Paswan, Son of Late Jharokhi Paswan Resident of Village- Chhapki Parari, P.S.- Sadar, District- Darbhanga.

... ... Appellant/s

Versus

Smt. Nibha Devi @ Girijesh Kumari Wife of Ratan Prasad @ Akhilesh Nandan Prasad Resident of Mohalla- Mirjapur, (Mirjapur Chowk), Station Road, P.S.- Town, District- Darbhanga.

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Amit Srivastava, Sr. Advocate Mr. Apurv Harsh, Advocate Mr. Manu Tripurari, Advocate Mr. Raghu Raj Pratap, Advocate Mr. Girish Pandey, Advocate Ms. Almanya, Advocate Mr. Hritik Anand, Advocate Mr. Astitva, Advocate
For the Respondent/s	:	Mr. Raja Ram Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 18-09-2024

1. The present appeal has been filed by the appellants/ plaintiffs for setting aside the judgment and decree dated 02.05.2015 passed in Title Suit No. 113 of 2012 by the Court of learned Sub-Judge 1st, Darbhanga whereby the plaint of the plaintiffs/ appellants was rejected under Order 7 Rule 11 (d) of the Code of Civil Procedure on the ground that the sale agreement executed in favour of the plaintiffs by the defendant was not registered as required under Sub-Section (1A) of Section 17 of the Registration Act (as Amended in 2001).

2. Briefly stating the facts available on record are that the plaintiffs filed the title suit being Title Suit No. 113 of 2012 for the specific performance of contract dated 04.06.2009 with respect to the suit land alternatively, for refund of the part payment of Rs. 18 lakhs with interest. The case of the plaintiffs is that defendant was in need of money and agreed to sell the suit land to the plaintiffs for total consideration amount of Rs. 36,68,500/- @ Rs. 85,000/- per Katha as per the terms of the contract. Plaintiff No. 1 (Appellant No. 1 herein) paid Rs. 12 lakhs through three cheques of dated 29.05.2009 and Rs. 6 lakhs was also paid in cash on the said date, i.e. 29.05.2009 with a promise to pay the balance of consideration amount on/ before the execution and registration of the due sale-deed with respect to the suit property by the defendant in favour of Plaintiff No. 1. The defendant executed *Mahadnama* (agreement to sell) on 04.06.2009 in favour of Plaintiff No. 1. Further case of the plaintiffs is that the defendant permitted her to do all necessary acts for maintaining and safeguarding the suit property. Accordingly, the plaintiffs made considerable development over the said property by fencing the said land with *pucca* brick built boundary wall and also constructed a residential house and godown inside the said compound. A huge cost amounting to Rs. 25 lakhs was spent with the express consent and permission of the defendant due to which the value of the said property has been immensely raised. In spite of the repeated request made by the plaintiffs to the defendant, the defendant continued avoiding to execute the registered sale-deed with respect to the said land in favour of Plaintiff No. 1 on one pretext or the other. The plaintiffs are residing in the said house with the entire inmates. Plaintiff No. 1 had been all along willing and ready to perform her part of the contract and is still ready and will be always ready in future as well to perform her part of the contract whereas the defendant is not willing and ready to perform her part of the contract. Hence, the plaintiffs filed the aforesaid suit.

3. The defendant filed the contesting written statement raising the issue with respect to maintainability of the suit, law of limitation, Estoppel, waiver and acquisition and valuation of the suit property. It is stated that *Mahadnama* (agreement to sell) is collusively prepared which is forged, fabricated, false and does not bear the signature of the defendant. It is further stated that the *Mahadnama*/ agreement to sell in question to transfer the land is not registered under the Registration Act which is mandatory and in view of the mandatory provision, if such document is not registered after commencement of Amendment Act, 2001, it shall have no effect for the purpose of Section 53A of the Transfer of Property Act (hereinafter referred to as “T.P. Act”). It is further stated that one Anand Kumar Jha got power of attorney executed by defendant in his favour stating that he will arrange the money from his friendly persons and by three cheques he paid Rs. 12 lakhs which were deposited in the Bank Account and with his collusion, the plaintiffs brought into existence the paper of *Mahadnama* without any knowledge or information to the defendant. It is further stated that since there is no *Mahadnama* executed by the defendant in favour of Plaintiff No. 1, there is no question of being ready to perform her part of the contract.

4. A petition under Order 7 Rule 11(d) of the Civil Procedure Code has been filed by the defendant on 12.08.2014 for rejection of plaint on the ground that the *Mahadnama* (agreement to sell) is not registered under Section 17 (1-A) of the Registration Act (as amended in 2001), the same is inadmissible in evidence, thus suit is barred by law. The rejoinder was filed by the plaintiffs by stating that it is a trite law that while deciding to accept or reject the plaint what can be seen is only averments made in the plaint and the defence cannot be looked into. The plea taken by the defendant for rejection of the plaint is not tenable.

5. After hearing both the parties, the learned Trial Court held that it appears from the plaint of the plaintiffs that the *Mahadnama* dated 04.06.2009 executed by defendant in favour of plaintiff with respect to the suit land is not a registered document which is against the provision under Section 17 (1-A) of amended Registration Act and the same cannot come under the document for transfer of property under Section 53-A of the T.P. Act. The learned Trial Court rejected the plaint of the plaintiffs under Order 7 Rule 11 (d) of the CPC stating that non-registration of the agreement to sell under Section 17(1-A) of Registration Act (as amended by 2001) is barred by law. For the alternative remedy, the Court observed that the plaintiffs are not barred to file the fresh suit under Order 7 Rule 13 of the C.P.C. for the same cause of action. Aggrieved by the said judgment and order, plaintiffs filed the present appeal.

6. Learned senior counsel for the appellants, Sri Amit Srivastava, has submitted that the learned Trial Court failed to appreciate that Plaintiff No. 1 was not given possession of the suit land in part performance of the said agreement and the said document is not in terms of the provisions of Section 53-A of the T.P. Act. As such, the Amendment Act, 2001 is not attracted in this case. The possession was not delivered by the respondent but it was only authorized to safeguard the suit land. He further submits that the law is well settled by the pronouncement of various judgments of the Hon’ble High Court and Hon’ble Supreme Court that even where the sale agreement is not registered, the document can be received as evidence to consider the relief of specific performance and the inadmissibility will confine only to protection sought for under Section 53-A of the T. P. Act while deciding the application under Order 7 Rule 11 of the C.P.C. The Court at this stage is only concerned as to see the statements in the plaint whether it disclose a cause of action or not. If the statements in the plaint are taken to be true and it disclose a cause of action, the plaint cannot be rejected at this stage. It is a matter of trial, result of which would depend upon the evidence adduced by the plaintiff. At this stage, the Court is not concerned with the correctness of averments except to state that the plaintiffs have to discharge the burden of proving their case. He further submits that at this stage the Court will proceed only to examine whether the plaint discloses a cause of action and no further. He has relied on the judgment of the Hon'ble Supreme Court in ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali and Ors.*** reported in ***(2020) 7 SCC 366*** and the judgment of this Court in ***Mostt. Shanti Devi & Another Vs. Lallu Ram & Ors.*** reported in ***2024 (2) PLJR 47***.

7. On the other hand, learned counsel for defendant/ respondent has submitted that the learned Trial Court has rightly rejected the plaint of the plaintiffs vide the impugned judgment/ order which requires no interference by this Court. He has further submitted that the unregistered document cannot be used or considered for granting the relief of specific performance of such agreement to sell as the same was unregistered.

8. Having heard the learned counsels for the parties and considering the submissions made by them, the only question which arises for consideration by this Court in this appeal is whether on the basis of a document not registered the suit for specific performance can be rejected under Order 7 Rule 11(d) of the CPC.

9. It is not in dispute in this case that the *Mahadnama* (agreement to sell) dated 04.06.2009 in favour of Plaintiff No. 1 is not a registered document. The Hon'ble

Supreme Court in ***Kamla and Others Vs K.T. Eshwara Sa and Others (2008)12 SCC 661*** opined that for invoking clause (d) of Order VII Rule 11 C.P.C., only the averment in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merit of the matter would not be within the realm of the Court this stage.

10. The Court at this stage would not consider any evidence or enter into a disputed question of fact or law. It is one thing to say that averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law. In the event, the jurisdiction of the Court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained. Similar view was expressed in ***Shakti Bhog Food Industries Ltd. Vs. Central Bank of India and another (2020) 17 SCC 260*** and ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Others (2021) 9 SCC 99***.

11. The Hon'ble Supreme Court with regard to the scope of Order 7 Rule 11 CPC in the judgment of ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali and Ors.*** (supra) summed up the law applicable under Order VII Rule 11 CPC and made the following observation:-

> *"**23.2**. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*
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> ***23.3.** The underlying object of Order 7 Rule 11 (a)is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*
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> ***23.4.** In Azhar Hussain v. Rajiv Gandhi, 1986Supp. SCC 315 this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p.324, para 12)"12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."*
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> ***23.5.** The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in*

Order 7 Rule 11are required to be strictly adhered to.

23.6. *Under Order 7 Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint* ***[Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512]****, read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

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23.9. *In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint* ***[Sopan Sukhdeo Sable Vs. Charity Commr. (2004) 3 SCC 137]*** *on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.*

23.11. *The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I & Anr., (2004) 9 SCC 512) which reads as: (SCC p.562, para 139).*

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. *In Hardesh Ores (P.) Ltd. v.*

Hede & Co.(2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh Vs. Dukh Haran Nath Singh, AIR1962 SC 941].

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.*

23.14. *The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi,1986 Supp SCC 315].*

23.15. *The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint."*

12. The Hon'ble Supreme Court reiterated the said principle in ***Kum. Geetha Vs. Nanjundaswamy & Ors.*** reported in ***2023 SCC OnLine SC 1407*** and observed in para 7 that in simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the C.P.C. must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.

13. In ***K.B. Saha and Sons Pvt. Limited Vs. Development Consultant Limited (2008) 8 SCC 564*** the Hon'ble Supreme Court held that a document is required to be registered, but if unregistered, can still be admitted in evidence of a contract in a suit for specific performance.

14. In the case of ***S. Kaladevi Vs. V.R. Somasundaram & Ors.*** reported in ***2010 (5) SCC 401***, the Hon'ble Supreme Court quoted the principles laid down in ***K.B. Saha case*** (supra) and ***Kalavakurti Venkata Subbaiah Vs Bala Gurappagari Guruvi Reddy (1999) 7 SCC 114*** wherein it was held that under Section 49 of 1908 Act, unregistered 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. In the said ***Kaladevi case*** (supra) it has been observed that by admission of an unregistered sale deed in evidence in a suit for specific performance as evidence of contract, none of the provisions of 1908 Act is affected; rather Court acts in consonance with proviso appended in Section 49 of 1908 Act.

15. When protection is sought for under Section 53-A of T.P. Act, law expects that the sale agreement can be acted upon only if it is registered. The question whether agreement to sell (*Mahadnama*) can be acted upon when the same being unregistered document has been answered by the Hon'ble Supreme Court in ***Ameer Minhaj Vs. Dierdre Elizabeth(wright) Issar and Others*** reported in ***(2018) 7 SCC 639***. The relevant portions are extracted hereunder:

> *"9. In other words, the core issue to be answered in the present appeal is whether the suit agreement dated 9th July 2003, on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17(1A) of the 1908 Act came into force with effect from 24th September, 2001.Whereas, the suit agreement was executed subsequently on 9th July, 2003.*
> *Section 17 (1A) of the 1908 Act reads thus:*
> "*17. Documents of which registration is compulsory (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866,or the Indian*

Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:

XXX XXX XXX

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

XXX XXX XXX"

10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53A of the 1882Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53A of the1882 Act. The issue, in our opinion, is no more res integra. In ***S. Kaladevi Vs. V.R. Somasundaram and Ors., AIR 2010 SC 1654*** *this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.*

11 Section 49 of the 1908 Act reads thus:

*"**49. Effect of non registration of documents required to be registered**. No document required by section 17 [or by any provision of*

the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall
(a) affect any immovable property comprised therein, or
(b) confer any power to adopt, or
(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:
Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."
12. In the reported decision, this Court has adverted to the principles delineated in ***K.B. Saha and Sons Private Limited Vs. Development Consultant Limited, (2008) 8SCC 564*** *and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment that the sale agreement dated 9th July, 2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the Trial Court after the parties adduce*

oral and documentary evidence."

16. It is clear from the above that even where the sale agreement is not registered, the document can be received as evidence for considering the relief of specific performance and the inadmissibility will confine itself only to the protection sought for under Section 53-A of the T. P. Act.

17. The Hon'ble Supreme Court in ***R. Hemlata Vs. Kashthuri 2023 SCC OnLine 381*** observed as under:

> *"12. At this stage, it is required to be noted that the proviso to Section 49 came to be inserted vide Act no.21 of 1929 and thereafter, Section17 (1A) came to be inserted by Act No.48 of2001 with effect from 24.09.2001 by which the documents containing contracts to transfer or consideration any immovable property for the purpose of Section 53 of the Transfer of Property Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then there shall have no effect for the purposes of said Section 53A. So, the exception to the proviso to Section 49 is provided under Section 17(1A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1A) shall be applicable.*
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> *13. Under the circumstances, as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any*

> *collateral transaction not required to be effected by registered instrument, however, subject to Section 17 (1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that unregistered document in question namely unregistered agreement to sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49."*

18. In the present case, if the statements in the plaint are taken to be true, it cannot be said that it does not disclose a cause of action and the plaint shall be rejected. This is a matter of trial, the result of which would depend upon the evidence adduced by the plaintiff. At this stage, the Court is not concerned with the correctness of the averments, except to state that the plaintiffs have to discharge the burden of proving their case. Insofar as the application under Order VII Rule 11 of C.P.C. is concerned, the court will proceed only that far, to examine whether the plaint discloses a cause of action or suit is barred by law and no further.

19. The genuineness, validity and binding nature of document will have to be adjudicated at the appropriate stage after the parties adduce oral and documentary evidence.

20. In view of the aforesaid facts and circumstances and the law discussed above, the impugned judgment and award is liable to be set aside.

21. The appeal is, accordingly, allowed. The application under Order VII Rule 11(d) C.P.C. is dismissed and the suit is hereby restored.

22. The impugned judgment and award is set aside and the learned trial court shall proceed with the suit. Both the parties are directed to appear before the learned Trial Court on **18.10.2024** in Title Suit No. 113 of 2012. Parties will bear their own costs.

23. The trial Court shall adjudicate the suit on its own merits in accordance with law and uninfluenced by the observation made in this judgment.

24. Let the LCR be returned to the concerned Court forthwith.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	27.08.2024
Uploading Date	18.09.2024
Transmission Date	