

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.298 of 2023

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Awadh Bihari Prasad @ Vijay Kumar son of Late Mahanand Prasad, resident of Village-Mauna, P.S. Chhapra Town, District-Saran at Chapra.

... .. Appellant/s

Versus

1. Prabhawati Devi Wife of Late Mohan Prasad, resident of Village-Mauna, P.s.-Chhapra Town, District-Saran at Chhapra.
2. Gorakh Prasad, son of Late Mohan Prasad, resident of Village-Mauna, P.s.-Chhapra Town, District-Saran at Chhapra.
3. Amar Kumar, son of Late Mohan Prasad resident of Village-Mauna, P.s.-Chhapra Town, District-Saran at Chhapra.
4. Hardan Prasad, son of Late Mohan Prasad, resident of Village-Mauna, P.s.-Chhapra Town, District-Saran at Chhapra.
5. Mamta Devi (D/o Late Mohan Pd.) W/o Prasant Kumar, resident of Village-Mauna, P.s.-Chhapra Town, District-Saran at Chhapra.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Kamala Kant Tiwary, Adv.
For the Respondent/s	:	Mr. Ranjan Kumar Dubey, Adv.
		Mr. Shashank Kashyap, Adv.
		Mr. Kumar Gaurav, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

8 27-06-2024 Heard Mr. Kamala Kant Tiwary learned counsel for the appellant and Mr. Ranjan Kumar Dubey learned counsel for the respondents.

2. This Second Appeal has been filed by the defendant/appellant against the judgment of affirmance. Title Suit No. 416 of 2002 was filed by the original plaintiff for specific performance of contract on the ground of registered agreement to sale dated 21.09.1999. However, the original plaintiff died during pendency of trial and his heirs were substituted. The said suit was decreed by the learned Sub-Judge-I, Saran at Chhapra by the judgment and decree dated



21.08.2021. Against the aforesaid judgment and decree defendant/appellant filed Title Appeal No. 16 of 2021 which was dismissed by the learned Additional District Judge-11, Saran at Chhapra by judgment and decree dated 05.04.2023. Aggrieved by the said judgment and decree, appellant is challenging the same in the instant Second Appeal.

3. The case of the plaintiffs, is that, the land in question belongs to defendant/appellant. The defendant agreed to sell the suit property to the original plaintiff for a consideration of Rs. 1,50,000/- out of which sum of Rs. 1,00,000/- was paid by the plaintiff to the defendant in advance. It was further agreed between the parties that plaintiff would get the sale deed registered on or before 21.09.2002 upon payment of the full consideration. The said agreement to sale dated 21.09.1999 was executed by the defendant in presence of two witness and it was registered. Further case of the original plaintiff, is that, the plaintiff approached the defendant with the balance consideration amount several times and requested the defendant to execute the sale deed in his favour but the defendant kept postponing execution of the sale deed on one pretext or the other.

4. On the other hand, the defendant's case, is that,



defendant in his written statement pleaded that the house of the defendant is situated 20-30 yards north from the two double storied residential houses of the plaintiff which are adjacent with each other and plaintiff resides there with his family members and adjacent to his other tenants reside in another house. The plaintiffs run the business of gold, silver and ornaments and are affluent and influential persons.

5. Further case of the defendant, is that, the defendant was only a bread earner in his family and have liability to maintain wife and three minor children. It is further alleged that original plaintiff asked the defendant that he cannot maintain his children from a petty tea stall and he cannot impart education to his children. The plaintiff advised the defendant to start a tea and sweet shop in his own house from which he shall earn substantially. However, the defendant told the original plaintiff that he has no any proper source of income to start his own business. The defendant will have to manage Rs. 25,000/- to Rs. 30,000/-. Thereafter, the plaintiff asked the defendant that the Manger of State Bank Chhapra is known to the plaintiff and plaintiff will approach for sanctioning loan of Rs. 30,000/- to the defendant. The defendant believed the version of plaintiff and got ready to take loan in order to open shop for which loan



was required. On the next date, the plaintiff obtained a form so as to get sanction loan from the Bank and got several signature on the form from the defendant and asked the defendant to attach the original document of gift (document of title) of his house along with the Bank loan form handed over deed of gift dated 10.04.1981 to the plaintiff. The defendant visited the house of the plaintiffs on 19.09.1999 and informed that process of sanctioning of loan of Rs. 30,000/- was already complied but a written agreement is required to be given to the Bank which require signature of the defendant. On faith and belief upon the plaintiff, the defendant put his signature on every paper along with agreement to sale. The plaintiffs assured the defendant that he would get loan of Rs. 30,000/- sanctioned within a month and the defendant would soon lead a good life after starting the said business. However, after lapse of one month, the defendant did not get any money from the Bank despite assurance of the plaintiff. Further, after one month, the plaintiff did not return the original gift deed and told the defendant that despite reluctant efforts, the Bank was not ready to sanction loan to the defendant and the Bank Manager has been transferred. The entire paper has been destroyed by the Bank. Further, it is said that Letter No. 1103 dated 14.12.2007 issued by Anchal Adhikari, Sadar,



Chhapra was received by the younger brother of the defendant, namely, Shyam Bihari Prasad through the peon of Anchal Adhikari from which it transpired that Mohan Prasad has sought decree with regard to the house of Awadh Bihari Prasad (defendant) and the said letter relates to the eviction order against the defendant Awadh Bihari from his house. Thereafter, the defendant informed his brother and his brother's wife about the case and requested his Advocate to inspect the case record, whereafter the fraud was revealed. The defendant got convinced that the plaintiff has committed fraud and manufactured a forged agreement to sale with the help of scribe and witness and wanted to capture the residential house of the defendant and any how obtain an ex-parte decree against the defendant. The defendant further pleaded that the defendant has not executed any agreement for sale at any time nor signed it. The agreement to sale in question is forged and fabricated one. The defendant has never negotiated to sell his own house or required Rs. 1,50,000/-. It is also pleaded that the house in question is not the house of defendant only but half share belongs to his brother Shyam Bihari Prasad @ Munna and the defendant resides on ground floor of his house and his brother resides at the first floor of the said house. The defendant has no right to sell out the



disputed house.

6. After considering the pleadings and materials on record, the learned trial court decreed the suit on 21.08.2021 by judgment and decree passed in Title Suit No. 416 of 2002 in favour of the plaintiff/respondent. Being aggrieved by the aforesaid judgment and decree, the defendant/appellant filed Title Appeal No. 16 of 2021 before the learned District Judge, Saran, Chhapra. The learned appellate court also affirmed the judgment of trial court and dismissed the title appeal.

7. Having considered the submissions made on behalf of the parties and on perusal of materials on record including the judgment of the learned courts below, it appears that the learned court of appeal below, which is final court of facts, after considering pleadings of the parties and evidences adduced by them came to a clear finding that registered agreement to sale dated 21.09.1999 executed by the defendant in favour of the plaintiffs is legal and valid.

8. The plaintiffs have proved their readiness and willingness to perform their obligations under the agreement whereby Rs. 1,00,000/- was paid in advance and the balance of Rs. 50,000/- was required to be paid. The plaintiffs have pleaded and adduced in their evidence that they were always ready and



willing to perform their part and they were in good financial position to pay the balance amount. The learned appellate court noted that plaintiffs have filed documentary evidence but no documentary evidence has been filed on behalf of the defendant. The defendant failed to prove his case on the ground of fraud committed by the plaintiffs. The learned appellate court also held that suit is not barred by the relief of Specific Performance of Contract.

9. Considering the aforesaid facts and circumstances of the case as well as materials on record, it is quite apparent that the judgment and decree of the courts below are covered by the findings of the facts and no question of law much less substantial question of law arises for consideration in the instant Second Appeal, which is accordingly dismissed at the stage of hearing under Order XLI Rule 11 CPC.

10. The interim order granted *vide* order dated 16.05.2024 stands vacated.

11. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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