

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.598 of 2016

=====

Bipin Bihari Sinha Alias Bipin Prasad Singh Son of late Brajkishor Prasad
Resident of Mohalla- Mithanpura, P.O. Ramna, P.S.Mithanpura, in the town
of Muzaffarpur, District- Muzaffarpur Bihar.

... .. Appellant/s

Versus

Shri Harish Jaiswal Son of late Shri Jamun Prasad Chaudhary Resident of
Club Road, Mohalla Mithanpura, P.S. Mithanpura, P.O. Ramna in the town of
Muzaffarpur, District- Muzaffarpur Bihar.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Naresh Chandra Verma, Adv.
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

5 15-07-2024 Heard learned counsel for the appellant.

2. This Second Appeal has been filed against the judgment of affirmance dated 29-10-2016 passed by the learned Additional District and Sessions Judge 13th, Muzaffarpur in Title Appeal No. 42 of 2015 whereby the learned appellate Court has affirmed the judgment and decree dated 20-06-2015 passed in Title Suit No. 155 of 1990 by the learned Sub Judge-IV, Civil Judge, Senior Division.

3. The plaintiff- appellant filed Title Suit No. 155 of 1990 for specific performance of Contract for sale of schedule-I property in terms of *Mahadnama (agreement to sale)* dated 26-12-1986, directing the defendant to execute a registered deed of sale with regard to schedule-I property in favour of the



plaintiff and handing over sale deed for its registration after due endorsement. Further relief of the plaintiff- appellant is to restrain the defendant from interfering with the possession of the plaintiff in respect of the suit house.

4. The plaintiff's case in brief is that the Schedule property belonged to the defendant. The defendant negotiated for sale of the said property and executed *Mahadnama* of settlement on the terms *inter alia* the price for sale was agreed and fixed at Rs. 63,000/- (Rupees Sixty three thousand) between the contracting parties i.e, the plaintiff and defendant on 26-12-1986 for house on one katha seventeen and half dhurs, out of which a house on 10.185 hectares and *sahan* area 115 hectares, appertaining to R.S. Khata No. 706, R.S.P. No. 121, Ward No.32, holding No. 287, Circle No. 6A, situated at Club Road, Mohalla- Mithanpura, P.S.- Mithanpura, Thana No. 410, Anchal- Mushahari, Muzaffarpur, which belongs to the defendant. The aforesaid house is divided internally into two blocks. It is submitted that prior to *Mahadnama*, the plaintiff had been living in one block of the house at a monthly rental of Rs. 350/- (Rupees three hundred and fifty) and is still in possession not as a tenant, but as a promisee purchaser and another block had been occupied by the defendant's son-in-law



and married daughter. It was settled between the parties that out of total sum of Rs. 63,000/- the defendant would receive Rs. 18,000/- as an earnest money and balance amount of Rs. 45,000/- would be received by him from the plaintiff at the rate of Rs. 15,000/- annually and plaintiff will obtain receipt for the same. It was further agreed that on full payment of the consideration money the defendant shall execute a registered deed of sale with respect to Schedule-I property. Further case of the plaintiff is that the defendant agreed that his son-in-law and his daughter would continue to live in another block of the said house till they jointly or severally construct their own house by December, 1989 and vacate another block of the house and if there is delay in constructing their own house within the aforesaid period, the present agreement (*Mahadnama*) will automatically get extended till 31st August, 1990. The son-in-law and daughter of the defendant vacated the second block in the month of April, 1990. According to terms of agreement, the relationship of landlord and tenant between the defendant and plaintiff ceased to exist. It was further agreed that when the entire consideration money for sale of Schedule-I property shall be fully paid by December, 1989 then from that date the plaintiff shall be entitled to use the entire house comprising both the



blocks, along with *Sahan*, as he likes. It was further agreed that the defendant was in need of Rs. 18,000/-(Eighteen thousand) so the amount of Rs. 18,000/-was paid to him at the time of execution of agreement to sale as an advance consideration money. The said agreement to sale was executed on 26-12-1986 in presence of two witnesses, namely, Vijay Kumar Srivastava and Shri Shiv Chandra Prasad Sharma and attested by his son-in-law, namely, Shri Krishna Bhushan Chaudhary. It is submitted that plaintiff paid the money on 25-12-1987, 23-12-1988 and on 28-12-1989, the entire balance amount of Rs. 45,000/- at the rate of 15,000/- annually to defendant by December, 1989 was paid and obtained receipts (Ext. 2 series). The further case of the plaintiff is that after payment of entire amount in terms of agreement to sale the plaintiff several times requested the defendant to execute the sale deed in terms of *Mahadnama* (agreement to sale), but the defendant began to evade. Thereafter, the plaintiff sent notice through his lawyer on 07-07-1990 under registered cover with A/D to the defendant informing him that the entire balance money of Rs. 45,000/- payable in terms of *Mahadnama* had been paid and the plaintiff was entitled to get the sale deed as per the terms of *Mahadnama* and he had become entitled to use the house comprising both



the blocks along with *Sahan* since 1989 and demanded the execution of the sale deed within a fortnight of the receipt of the notice. In this way, the plaintiff was already ready and willing to perform his part of contract and get the sale deed executed from the plaintiff. Despite the receipt of the legal notice, the defendant neither cared to give reply to the aforesaid notice nor executed the sale deed in terms of *Mahadnama* dated 26-12-1986 and, hence the necessity of the suit.

5. After issuance of summons, the defendant appeared and filed written statement. Apart from formal objection regarding maintainability of the suit and limitation, the defendant contended that the alleged *Mahadnama* and alleged receipt of payment of the consideration money of the alleged contract have not been filed along with the plaint. The suit is also bad under the provisions of Order VII Rule 14 CPC. The suit was filed on 11-09-1990. The defendant inspected the record of the suit and the alleged *Mahadnama* in question. It appears that the alleged *Mahadnama* bears the seal of the Court, dated 16-01-1991, but from the other circumstances, it will be evident that the alleged *Mahadnama* was not filed in Court even on 16-01-1991 and the plaintiff any how managed to obtain the seal of the Court dated 16-01-1991 on the said *Mahadnama* as



the order sheet dated 16-01-1991 does not even mention the filing of any document or of the alleged *Mahadnama* on that date. The alleged *Mahadnama* in question is forged, fabricated, antedated and the same does not bear writing and signature of the defendant. It is further contended that Sri Krishna Bhushan Chaudhary, son-in-law of the defendant did never witness the alleged *Mahadnama* and the same does not bear his signature and his alleged signature over the same is also forged and fabricated. The defendant does not know the alleged witness of the said *Mahadnama*, namely, Shiv Chandra Prasad Sharma. He must be the man and friend of the plaintiff or his signatures would also had been forged. So far Vijay Kumar Srivastava is concerned, he was an employee and friend of the plaintiff and this defendant, at present, is not in a position to say that whether his alleged signature over the same is genuine or forged, but it is submitted that all the signatures over the alleged *Mahadnama* in question of the alleged attesting witnesses, scribe and the identifier are antedated, fraudulent and manufactured one. It is further pleaded that the three alleged money receipts dated 25-12-1987, 23-12-1988 and 28-12-1989 filed by the plaintiff are also forged, fabricated, antedated and the same also does not bear the signature of the defendant. It is contended that the



plaintiff is a tenant of the defendant in a portion of the suit premises. He is a defaulter and the defendant was requiring the portion in occupation of the plaintiff for *bona fide* personal necessity and in the circumstances, the plaintiff was asked to vacate the same and pay arrears of rent. The plaintiff did neither pay the arrears of rent nor vacated the premises in occupation and the defendant, ultimately, had to file Eviction Suit No. 49 of 1989 against the plaintiff for eviction and recovery of arrears of rent. This caused annoyance to the plaintiff. It is further pleaded that defendant has no son and only three daughters and he was a person of substantial means having landed properties and houses and there was no necessity for sale of any of his landed properties, muchless executing any contract for sale. It is admitted fact that the southern block of the premises i.e., the southern flat was in occupation of Sri Krishan Bhushan Chaudhary and Smt. Sushma Chaudhary and after their vacation in August, 1989, the same remained under occupation and tenancy of Anil Kumar Gupta on monthly rental of Rs. 600/- and he too vacated it on 27-10-1991 and since after the above vacation, the defendant is in physical possession of the same. There was never any negotiation and talk for sale and purchase as falsely alleged by the plaintiff. It is absolutely false to say



that it was settled between the parties that out of the alleged total sum of Rs. 63,000/-, the defendant would receive Rs. 18,000/- as earnest money and that balance amount of Rs. 45,000/- would be received by him from the plaintiff in yearly instalment of Rs. 15,000/- each per year and that the plaintiff will obtain receipt for the same. It was further agreed that on full payment of the consideration money, the defendant shall execute registered sale deed with respect to Schedule-I property and it was further agreed that the defendant's son-in-law or daughter would continue to live in another block of the said house till they jointly or severally constructed their own house by December, 1989 and vacated another block of the house. Further, it was agreed that if he failed to construct his own house within the aforesaid period, the present alleged agreement to sale will automatically get extended till 31-08-1990. The defendant vehemently contended that each and every word of the aforesaid allegations are not only false, concocted, but ridiculous too besides being dishonestly made and are totally wrong, incorrect and emphatically denied by the defendant. The plaintiff laid a false claim to grab the defendant's valuable property worth Rs. 8,00,000/- (eight lacs).

6. The learned Trial Court, after considering the



pleadings, evidence adduced by the parties and materials on record, dismissed the suit and has held that the *Mahadnama* was not executed by the defendant in favour of the plaintiff and one of the attesting witnesses of the *Mahadnama* examined on behalf of the defendant as DW-2, namely, Krishna Bhushan Chaudhary, has deposed to the effect that his signature is forged and fabricated in the alleged *Mahadnama*. The plaintiff has failed to substantiate and prove the *Mahadnama* dated 26-12-1986 and three receipts dated 25-12-1987, 23-12-1988 and 28-12-1989 as genuine, valid and legal and further observed that the plaintiff is not entitled to get the decree of Specific Performance of Contract. Since the plaintiff has failed to establish the *Mahadnama* and receipts of money as genuine, valid and legal, there is no question of any part performance of contract on the part of the defendant. The suit is also hit by provision of Specific Relief Act.

7. Being aggrieved by the judgment and decree dated 20-06-2015, passed in Title Suit No. 155 of 1990, the plaintiff-appellant preferred Title Appeal No. 42 of 2015. After hearing the parties and considering the materials on record, the learned Additional District and Sessions Judge-13th affirmed the judgment and decree of the learned Trial Court and dismissed



the appeal *vide* judgment and decree dated 29-10-2016. The learned Trial Court has held that the defendant-respondent specifically denied the existence of *Mahadnama* and denied their execution at the instance of defendant-respondent. Therefore, the burden is strictly cast upon the plaintiff to prove the genuineness of *Mahadnama* as incorporated in issue No. 3 which was framed by the learned Trial Court and genuineness of three receipts alleged to have been issued on 25-12-1987, 23-12-1988 and 28-12-1989 and also considered whether the *Mahadanam* has been proved according to the provision of law. This issue has been dealt with in detail by the learned Appellate Court and it has been held that plaintiff- appellant has failed to explain the reasonable question firstly, the stamp paper obtained seven months earlier prior to the execution of *Mahadnama*, secondly, the plaintiff failed to establish that he is also known by his alias name as Bipin Prasad Singh because the stamp paper was *prima facie* obtained on behalf of one Bipin Prasad Singh, thirdly, receipts in terms of *Mahadnama* appears to have been issued till 1989, but non- filing of these receipts in Eviction Suit though he filed written statement on 04-10-1993 leads doubt to its genuineness and fourthly as the genuineness of *Mahadnama* was a core issue under the provision of Evidence



Act, the plaintiff had an opportunity to get verification of writing and signature of the executant, but in absence of availing such verification, pointed a question mark to the genuineness of document. The plaintiff was required to explain in satisfactory manner to answer for coming to proper adjudication of this case and dismissed the appeal and affirmed the judgment and decree of the learned Trial Court. Against the judgment and decree passed by the learned Appellate Court, the plaintiff- appellant has filed the instant Second Appeal.

8. Learned counsel for the appellant submitted that both the Courts below have failed to consider the *Mahadnama* (Ext.1), three receipts (Exts. 2, 2A and 2B), which were marked and exhibited by the Court during cross examination of the plaintiff-appellant by the defendant-respondent without objection as to the proof and admissibility in evidence of the said documents. From bare perusal of cross-examination of the plaintiff- appellant, it transpires that the documents, namely, agreement to sale and money receipts were produced and identified and were proved by a competent witness, namely, plaintiff himself and no dispute or objection has been raised by the defendant-respondent on the veracity of said documents. It is vehemently submitted that where the documents are admitted



into evidence without objection, the contents thereof automatically go into evidence and the contents thereof cannot be challenged either by way of cross-examination or otherwise. The learned Courts below wrongly shifted the onus on the plaintiff to prove the genuineness of the documents i.e., agreement to sale (Ext. 1) and money receipts (Ext. 2 series) .

9. The learned counsel for the appellant has relied upon a judgment in the case of ***Gian Chand and Brothers and Anr. vs. Rattan Lal alias Rattan Singh*** reported in ***(2013)1 SCC (Civ) 1150*** in which the Hon'ble Supreme Court has held that burden of proof lies on person asserting a particular fact to affirmatively establish it. The assertion of plaintiff as to acknowledgment of amount under signature of defendant proven by witnesses, and there is evasive reply by defendant in written statement. The Hon'ble Apex Court has further observed in para 22 of the said judgment that the "*High court has fallen into error in holding that it was obligatory on the part of the plaintiffs to examine the handwriting expert to prove the signatures. The finding that the plaintiffs had failed to discharge the burden is absolutely misconceived in the facts of the case*".

10. Learned counsel for the appellant further submitted that lower appellate court has made out a third case



with regard to the discrepancy in the agreement to sale which is unpleaded facts of the defendant. In this regard, reliance has been placed in the case of ***Dharmarajan & Ors. vs. Valliammal & Ors*** reported in ***2008(3) PLJR 342 (SC)*** wherein, the Hon'ble Apex Court has observed that the high court *gravely erred in finding out an entirely new case on the basis of unpleaded facts and non-existent rights. That was neither a case pleaded nor proved.*

11. On the other hand, learned counsel for the respondent submitted that both the courts below concurrently held that the plaintiff-appellant has failed to prove the genuineness of the *Mahadnama* and money receipts. It is manifest that the signatures on the *Mahadnama* and receipts have not been proved by the witness. The plaintiff-appellant miserably failed to establish his case on the basis of *Mahadnama* (unregistered) which has been concurrently held by both the courts below not to be genuine. Both the learned courts below have rightly dismissed the case of the plaintiff-appellant.

12. After considering and analyzing the impugned judgments and materials on record, it is apparent that both the courts below concurrently held that agreement to sale is not



genuine and the Ext. 2 series, has not been proved by the plaintiff-appellant. The learned court below has further observed that the genuineness of the agreement to sale and three money receipts (Ext 2 series) in terms of agreement to sale, are prime issue and all other issues are ancillary to this prime issue and held that plaintiff failed to prove the genuineness of the document i.e., agreement to sale and three receipts in terms of *Mahadnama* (Ext.1) and Ext 2 series respectively.

13. In view of the aforesaid facts and circumstances of the case, as discussed above, it is quite apparent that the judgments and decree of the courts below are covered by the finding of facts and no question of law much less substantial question of law arises for consideration in the instant Second Appeal.

14 Accordingly, this Second Appeal is dismissed at the stage of admission itself under Order XLI Rule 11 of the Civil Procedure Code.

(Khatim Reza, J)

shyambihari/-

U			
---	--	--	--

