

Item No.- 101
13.12.2024
Rohan
Court No. 8

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**SAT 103 OF 2024
with
CAN 1 OF 2024**

**Ashok Chandra Guchait
Versus
Bimal Rana**

**Ms. Sohini Chakraborty,
Mr. Kaushik Chowdhury,
Ms. Soumoyadipa Kanu
... for the Defendant/Appellant**

**Mr. Krisna Das Poddar,
Mr. Soumen Samanta,
Ms. Rubina Akhtar
... for the Plaintiffs/Respondents**

1. Both the Courts have concurrently held that the appellants has executed the deed/agreement for sale in favour of the plaintiff/respondent and having failed to complete the sale transaction, the decree for specific performance of contract should be passed.
2. The case made out in the plaint is required to be adumbrated before we determine the points urged by the appellant before us. Admittedly, the property being the subject matter of the suit, was purchased by the defendant/appellant from one Surendra Manna on 13th January, 1989. It is further averred that the appellant showed his intention to sell the said property and offered the plaintiff/respondent to purchase the same at Rs. 20,000/- which was duly accepted by him.
3. On the basis of an oral agreement having entered into, the entire consideration money was paid and a deed of sale of the said property was prepared and

duly executed. But on the date when the same was required to be registered, the appellant did not appear, as a resultant effect, the sale transaction could not be completed. On the other hand, the appellant took a defense that on 30th October, 1991, he was abducted by the plaintiff/respondent along with some unknown persons and the left thumb impression was taken on several pages/papers, which infact, has been converted into the alleged document.

4. It is a specific stand of the defendant/appellant that he never intended to sell the said property on such consideration price, and therefore, the decree for specific performance should not be passed on the basis of such fabricated and manufactured documents.
5. As indicated above, both the Courts have held against the defendant/appellant who could not prove the defense so taken in the written statement, more particularly, the story of an abduction and taking the left thumb impression on the blank papers.
6. Ms. Sohini Chakraborty, learned Advocate appearing for the defendant/appellant submits that there is a contradiction in the evidence adduced by third and fourth witnesses of the plaintiff/respondent and both the Courts have duly ignored and/or overlooked such disparity. She further submits that one of the witnesses to the said deed, in unequivocal terms, deposed that he did not stand as a witness to the said deed which would corroborate the stand of the defendant/appellant that the said deed was subsequently manufactured on the blank papers containing the left thumb impression of the appellant. She submits that the instant Second

Appeal involves a substantial question of law and to be admitted.

7. The facts as unfurled are explicit and clear to the extent that a deed containing an agreement was sought to be specifically performed at the behest of the plaintiff/respondent containing the left-thumb impression of the defendant/appellant. There is no dispute or denial on the part of the defendant/appellant on the left-thumb impression put on the said alleged document but a stand is taken that it was taken by using force after his abduction by the plaintiff/respondent. It further transpires that a criminal complaint was lodged which was registered as an FIR and the investigation was conducted, but ultimately, the plaintiff/respondent was discharged and/or acquitted from such proceedings.
8. There appears to be a fallacy on the stand of the defendant/appellant on the story of abduction for the simple reason that in the evidence, he categorically deposed that he was abducted on 30th October, 1991 but the complaint or FIR appears to have been filed on 25th December, 1991 after a gap of nearly two months. According to the defendant/appellant, request was made to the plaintiff/respondent to return those papers but the same was not honoured. The story of an amicable settlement does not appear to hold water that a person, who has been abducted and forced to put the LTI with the sinister motive, would still wait for such a long time to initiate a criminal proceeding against the plaintiff/respondent. Even apart, the allegation of abduction and taking LTI on the blank papers could not be proved against the plaintiff/respondent. We further find from the record that the said document for which the

specific performance is sought was marked exhibit in the case.

9. Though we do not find from the examination-in-chief of the first witness of the plaintiff, that the said document was marked but from the judgment of the High Court, it appears that the said document was marked without recording any objection thereto. The moment a document is marked as an exhibit, meaning thereby received in evidence, the evidentiary value of the same is required to be considered by the Court at the time of deciding the case. Mere minor discrepancy hither and thither of a witness cannot overshadow the tenet of such deposition as the Court is required to look into the deposition in its entirety and not in a piece meal. Segregating a word or the sentence from the context should not be permitted but the Court must take into account the entire purport of the evidence in order to find out the reliability and the credibility of the witness. The appellant could not bring out any disparity or inconsistency in the evidence of the first witness of the plaintiff/respondent.
10. The third witness of the plaintiff/respondent upon whom strong reliance is placed by the appellant initially, deposed that he was all along present during the transaction entered between the plaintiff and the defendant. He was recalled at the behest of the plaintiff/respondent and in the examination-in-chief after the recall, he categorically asserted that he was personally present at the time of the proposal and the acceptance including the consideration so agreed upon by the parties. However, in the cross-examination, he stated that apart from his own two deeds, he did not stand as a witness in any other deed but we find from the

other portion of the said cross-examination that he stood firm that he was present when the offer and acceptance in respect of a sale of the property was held.

11. We, thus, do not find any involvement of a substantial question of law.
12. The appeal being **SAT 103 of 2024** is dismissed.
13. Connected application being **CAN 1 of 2024** is disposed of.
14. No order as to costs.
15. Urgent certified Photostat copy of this order, if applied for, be supplied to the parties after complying with all necessary formalities.

(HARISH TANDON, J)

(PRASENJIT BISWAS, J)