

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.228 of 2021

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1. Mosmat Chandrakala Prasad W/o- Late Arun Kumar Prasad Resident of Rampur, P.s.- Madhusudanpur, (Nath Nagar), P.O.- Nathnagar, Distt.- Bhagalpur.
 2. Vikash Anand S/o- Late Arun Kumar Prasad Resident of Rampur, P.s.- Madhusudanpur, (Nath Nagar), P.O.- Nathnagar, Distt.- Bhagalpur.
 3. Vinit Anand S/o- Late Arun Kumar Prasad Resident of Rampur, P.s.- Madhusudanpur, (Nath Nagar), P.O.- Nathnagar, Distt.- Bhagalpur.

... .. Appellant/s

Versus

1. Sanjay Anand Prasad S/o Late Shivanand Prasad Resident of Rampur, P.O.- Nathnagar, P.s.- Madhusudanpur, (Nath Nagar), Distt.- Bhagalpur.
2. Shalini Verma W/o- Murari Mohan Verma Resident of Village- Anandbag, Bhikhanpur, Distt.- Bhagalpur.
3. Mintu Guha W/o- Narayan Guha Resident of Sudeen Chowk, Tatma Toli, Distt.- Purnea.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Deepak Kumar, Advocate
Mr. Bhaskar Anand, Advocate

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

7 05-08-2025 Heard Mr. Deepak Kumar, learned counsel for the appellants.

2. This Second Appeal has been filed against judgment of affirmance dated 28.01.2021 passed by the learned District and Sessions Judge, Bhagalpur in Title Appeal No. 152 of 2018 whereby the judgment and decree of Trial Court dated 31.08.2018 passed by the learned Civil Judge (Senior Division) Sub Judge-I, Bhagalpur in Title Suit No. 338 of 2016 has been upheld.



3. The respondent Ist set was the plaintiff before the learned trial court. The appellants herein were defendants. The plaintiff-respondent-respondent filed Title Suit No. 338 of 2016 against original defendant Arun Kumar Prasad. The appellants are heirs of late Arun Kumar Prasad. Suit was filed for a decree of Specific Performance of Contract, directing the defendant to execute and register sale deed with respect to the suit land in favour of the plaintiff-respondent after receiving balance consideration amount of Rs. 4 lakhs from the plaintiff and also for possession of plaintiff-respondent over the suit be confirmed and in case it is found that plaintiff is dispossessed from the suit land during the pendency of the suit, the plaintiff-respondent be put in possession of the suit land through the process of Court. Further alternative relief was sought that if the Court comes to a conclusion that the plaintiff-respondent is not entitled to the decree for Specific Performance of Contract in that case a decree of 5 lakhs altogether with interest at the rate of 12% per annum further be allowed in favour of the plaintiff-respondent against the defendant.

4. The case of the plaintiff, in brief, is that the suit land is situated in between the residential house of the plaintiff and Dariyapur Road. The plaintiff and his brothers acquired



right over the suit land as they used the suit land for the purpose of “ingress and egress” from their residential house. However, the defendant-appellants started creating trouble in their peaceful enjoyment of the suit land and hence in order to avoid litigation the plaintiff-respondent entered into an agreement to purchase the suit land from the defendant-appellants for a total consideration amount of Rs. 9 lakhs and there was a final settlement of the terms and conditions of the agreement between the plaintiff-respondent and the defendant-appellants for sale and purchase of the suit land. In pursuance of the agreement, the plaintiff-respondent paid a sum of Rs. 5 lakhs to the defendant-appellants through cheque as an earnest money out of total consideration money of Rs. 9 lakhs towards part performance of Contract on 29.10.2015. It was agreed between the parties that the plaintiff-respondent would pay the balance consideration amount of Rs. 4 lakhs to the defendant-appellants by 30.12.2015 and thereafter the defendant-appellants would execute and register the sale deed with respect to the suit land in favour of the plaintiff-respondent. Further case of the plaintiff-respondent is that since 25.12.2015, the plaintiff-respondent tried several times to tender the balance consideration amount of Rs. 4 lakhs to the defendant-appellants and requested the defendant-



appellants to receive the said amount and execute sale deed with respect to the suit land in favour of the plaintiff-respondent but the defendant-appellants refused to do so on one pretext or the other.

5. It is further case of the plaintiff that on 29.12.2015, plaintiff-respondent along with one Dilip Kumar Deepak went to tender Rs. 4 lakhs to the defendant-appellants and requested to execute the sale deed but the defendant-appellants without any justification refused to receive the balance consideration amount and also refused to execute and register the sale deed in favour of the plaintiff-respondent. Thereafter, on the same day i.e. 29.12.2015, plaintiff got a legal notice prepared through Mr. Rajendra Kumar Sah, Advocate but the same could not be posted on 29.12.2015 due to paucity of time and the said legal notice was sent to the defendant-appellants by registered post on 30.12.2015. In response to said pleader notice, the defendant replied on 04.01.2016 by which the defendant refused to receive the balance consideration amount from the said respondent and also refused to execute and register sale deed in favour of plaintiff-respondent. However, the defendant-appellants agreed to return the earnest money of Rs. 5 lakhs to the plaintiff-respondent. It is further contended that the plaintiff was always



ready and willing to perform his part of contract but the defendant-appellants refused to perform his part of contract in terms of agreement dated 29.10.2015.

6. On the other hand, defendant appeared and filed his written statement and it was pleaded that the plaintiff has filed the suit with malafide intention concealing the fact that the plaintiff-respondent had already encroached about 280 Sq ft. of the suit land. Defendant was the real owner of the suit land having perfect right, title and possession over the suit land which was used by the defendant-appellants as ingress and egress and the plaintiff had no inherent right over the suit land to use the suit land as Sahan. The defendant-appellants admitted in the written statement that as per agreement in between the parties, the defendant-appellants were ready to transfer the suit land in favour of the plaintiff-respondent for a total consideration amount of Rs. 9 lakhs and it was mutually agreed orally that the plaintiff-respondent would pay the entire consideration amount to the defendant-appellants by 29.10.2015. It was also admitted by the defendant-appellants in his written statement that plaintiff-respondent paid a sum of Rs. 5 lakhs out of total consideration amount of Rs. 9 lakhs and promised to pay the balance consideration amount of Rs. 4 lakhs



by 29.10.2015 and accordingly an agreement for the same was prepared incorporating the terms and conditions and it was agreed between the parties that failure to deposit the balance consideration amount by 29.10.2015 would lead to rescinding the contract. Further case of the defendant-appellants was that there was mutual negotiation between the parties to pay the entire consideration amount by 29.10.2015 which was not complied by plaintiff-respondent. The plaintiff-respondent sought extension of two months more time for payment of balance consideration amount to which the defendant-appellants agreed and it was promised by the plaintiff-respondent that plaintiff-respondent would pay the entire consideration amount by 30.12.2015 and after that defendant-appellants would execute the sale deed. Thereafter, the plaintiff-respondent instead of paying the balance consideration amount started laying undue pressure upon the defendant-appellants to execute the required sale deed for a consideration amount of only Rs. 5 lakhs which was paid by the plaintiff-respondent to defendant-appellants.

7. It is further pleaded that on 29.10.2015 at about 10 pm, the plaintiff-respondent along with two men namely, Dhiraj Anand and Dilip Kumar Deepak came at the house of



defendant-appellants and threatened with dire consequences if the defendant-appellants would not execute and register the sale deed in favour of the plaintiff-respondent for which defendant-appellants filed Sanha bearing no. 41 of 2016 in the court of learned CJM, Bhagalpur. It is further case of the defendant that plaintiff-respondent never tendered the balance consideration amount to the defendant-appellants. Again on 29.12.2015, plaintiff along with Dilip Kumar Deepak came to the house of defendant-appellants and threatened to execute sale deed for a consideration amount of Rs. 5 lakhs only which was already paid to the defendant-appellants but the defendant-appellants denied to do so. The defendant-appellants admitted the fact that plaintiff-respondent sent a legal notice which was replied by the defendant-appellants. It was also pleaded that the contract became voidable as per Section 55 of the Indian Contract Act because the essence of time was the prime factor of contract and the contract became invalid and unenforceable as the defendant-appellants did not receive the total consideration amount as per agreement within stipulated period of time. The original defendant was ready to perform his part of contract but the plaintiff-respondent never tendered the balance consideration amount and therefore, the suit was fit to be dismissed.



8. On the basis of pleadings of the parties, the learned trial court framed issues and after hearing the parties decreed the suit in favour of the plaintiff-respondent.

9. Being aggrieved by the said judgment and decree, the defendant-appellants preferred Title Appeal No. 152 of 2018. The said appeal was decided by the judgment and decree dated 28.01.2021 and the judgment and decree of the trial court was affirmed. Against the aforesaid judgment and decree of the learned Courts below, the instant Second Appeal has been filed.

10. The learned Appellate Court considered the evidences, documentary as well as oral, available on record, perused the judgment of Trial Court and discussed about the admitted facts of the case which are as follows:-

1. It is an admitted fact that the suit land described in Schedule A of the plaint having an area of 680.66 square feet situated at village- Rampur, P.S.- Nathnagar, District- Bhagalpur belonged to the appellants/ defendant.

2. It is also admitted fact that an agreement for sale and purchase of the suit land was made in between the parties for total consideration money of Rs. 9 lac (Nine lac).

3. It is also admitted fact that the respondent/plaintiff paid Rs. 5 lac (five lac) to the appellants/ defendant out of total



consideration money of Rs. 9 lac (Nine lac) as an earnest money and it was agreed in between the parties that the respondent/plaintiff would pay the balance consideration amount of Rs. 4 lac (four lac) to the appellants/ defendant by 30.12.2015 and thereafter the appellants/defendant would execute and register sale deed with respect to the suit land in favour of respondent/plaintiff.

11. The Appellate Court considered the issue with regard to as to whether the plaintiff was ready and willing to perform his part of contract or not?

12. The learned trial court elaborately discussed Ext. 2 which is the passbook of the State Bank of India in the name of plaintiff bearing Account no. 20059302506. It appears that on 22.12.2015, plaintiff withdrew Rs. 40,000/- five times at G.C.C. (Green Channel Counter) i.e. a total amount of Rs. 2 lakhs. Similarly on 24.12.2015, plaintiff withdrew two lakhs which shows that total 4 lakhs was withdrawn by the plaintiff from his account and as per the case of the parties total 4 lakhs was remaining as balance consideration amount which was to be paid by the plaintiff-respondent to the defendant-appellants before 30.12.2015 as per the agreement to sell and further, it was agreed that the defendant-appellants would execute and



register a sale deed with respect to the suit land in favour of the plaintiff-respondent on such payment. The conduct of the plaintiff-respondent shows that plaintiff was ready and willing to perform his part of contract. Before 30.12.2015, the plaintiff along with Dhiraj Anand and Dilip Kumar Deepak went to the house of the defendant-appellants to pay the said balance consideration amount of Rs. 4 lakhs but the defendant refused to receive the said amount, this fact has been clearly admitted by the defendant that on 29.10.2015, the plaintiff along with other persons came to his house but the defendant stated that they threatened him to execute the sale deed without payment of balance consideration amount. Plaintiff witness no. 2 stated that from 25.12.2015 to 29.12.2015, the plaintiff tried and requested several times to tender the balance consideration amount to the defendant-appellants but defendant-appellants refused to receive the same. P.W. 3, Dilip Kumar Deepak, who was one of the witnesses of agreement to sell, also stated in his examination-in-chief that on 29.12.2015, the defendant refused to receive the balance consideration amount and also refused to register sale deed in favour of the plaintiff. P.W. 5 (plaintiff) supported his case in his examination-in-chief and stated that since the time of his ancestors, the plaintiff-respondent and his brothers were



using suit land for ingress and egress to go over Dariyapur road from his house and when the defendant-appellants tried to obstruct the plaintiff-respondent from using the suit land then there was an agreement between the parties that appellants would execute and register sale deed in favour of plaintiff-respondent for total consideration amount of Rs. 9 lakhs out of which 5 lakhs was paid to the defendant-appellants through cheque and it was agreed between the parties that plaintiff-respondent would pay the balance consideration amount of Rs. 4 lakhs to the appellants by 29.10.2015 but by mutual consent of both the parties the said time was extended till 30.12.2015. He was always ready to tender the balance consideration amount to the defendant-appellants and for that purpose on 29.12.2015, he along with Dilip Kumar Deepak went to the house of defendant-appellants to pay the balance consideration amount of Rs. 4 Lakhs and requested to execute and register sale deed after receiving the balance consideration amount. The defendant-appellants refused to accept the balance consideration amount. This witness has stated that he was always ready and willing to perform his part of contract. D.W. 1 admitted in his examination-in-chief that there was an agreement to sell between the parties for total consideration amount of Rs. 9 lakhs



out of which 5 lakhs was paid by the plaintiff to the defendant through cheque. D.W. 3 and D.W. 4 stated in their respective examination-in-chief that on 22.12.2015, the plaintiff came along with two persons to force the defendant to execute the sale deed for consideration amount of Rs. 5 lakhs only and the plaintiff refused to tender the balance consideration amount of Rs. 4 lakhs to the defendant. The original defendant-appellant examined himself as D.W. 5 and he accepted about the agreement to sell for consideration amount of Rs. 9 lakhs out of which 5 lakhs was paid by the plaintiff to the defendant-appellants and also stated that it was agreed that the plaintiff-respondent would pay the balance consideration amount by 30.12.2015 but on 22.12.2015, the plaintiff came along with two persons and threatened the defendant to execute the sale deed for a consideration amount of Rs. 5 lakhs only for which a Sanha no. 41 of 2016 was filed in the court of learned C.J.M., Bhagalpur. D.W. 5 admitted that plaintiff sent a legal notice which was received and replied by him.

13. On the basis of evidence adduced by the parties and materials on record, the learned Appellate Court held that it is clear from the evidence available on record that on 29.12.2015, the plaintiff along with other persons went to the



house of defendant to tender the balance consideration amount which were withdrawn on 22.12.2015 and 24.12.2015 which is apparent from the passbook of the plaintiff (Ext. 2) before the due date i.e. 30.12.2015. It is admitted by the appellants that on 29.12.2015, the plaintiff along with other persons visited his house but in other words. Defendant also admitted the fact of sending legal notice by the plaintiff to him which was received and replied by him.

14. Considering the evidence adduced by the parties and the findings of the trial court with regard to readiness and willingness of the plaintiff to perform part of his contract and the materials available on record, the appellate court affirmed the judgment of trial court.

15. Having considered the facts and circumstances of the case as well as impugned judgment of the learned Courts below, it appears that the learned Appellate Court, which is final court of facts after considering the pleading of the parties and evidence adduced by them came to a clear finding that the plaintiffs proved their case with regard to readiness and willingness through ext. 2 and it is admitted fact that appellants received Rs. 5 lakhs as advance money in lieu of said agreement and remaining balance consideration money which was to be



paid was withdrawn from the bank (Ext. 2) and he is still ready with money to perform his part.

16. Considering the facts and circumstances of the case, I am not inclined to interfere with the concurrent findings of the learned Courts below. There is no question of law much less substantial question of law involved in this appeal.

17. Accordingly, this Second Appeal is dismissed at the stage of hearing under Order XLI Rule 11 CPC.

(Khatim Reza, J)

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