

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.238 of 2003

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1. Manik Nandan Singh, Son of late Jagatmaya Devi, Resident of Garh Banaili (Deorhi), P.S. Kasba, District- Purnia.
 2. Priti Jha, D/o of late Jagatmaya Devi, Resident of Garh Banaili (Deorhi), P.S. Kasba, District- Purnia .
 3. Shri Jyoti Nandan Singh, Son of late Babu Girja Nandan Singh, Resident of Garh Banaili (Deorhi), P.S. Kasba, District- Purnia.
 4. Chanda Singh, W/o of late Rajiv Nandan Singh, R/o Village Garhbahaili (Deorhi), Near -Kanchan Talkies, P.S. Kasba, District-Purnea.
 5. Rohit Nandan Singh, Son of late Rajiv Nandan Singh, R/o Village Garhbahaili (Deorhi), Near -Kanchan Talkies, P.S. Kasba, District-Purnea.
 6. Kanchan Jha, D/o of late Rajiv Nandan Singh, R/o Village Garhbahaili (Deorhi), Near -Kanchan Talkies, P.S. Kasba, District-Purnea.
 7. Smt. Rekha Singh, W/o late Deepak Nandan Singh, R/o Village Garhbahaili (Deorhi), Near -Kanchan Talkies, P.S. Kasba, District-Purnea.
 8. Nikhil Nandan Singh, Son of late Deepak Nandan Singh, R/o Village Garhbahaili (Deorhi), Near -Kanchan Talkies, P.S. Kasba, District-Purnea.
 9. Nishant Nandan Singh, Son of late Deepak Nandan Singh, R/o Village Garhbahaili (Deorhi), Near -Kanchan Talkies, P.S. Kasba, District-Purnea.
 10. Nitin Nandan Singh, Son of late Deepak Nandan Singh, R/o Village Garhbahaili (Deorhi), Near -Kanchan Talkies, P.S. Kasba, District-Purnea.
 11. Shri Sanjiv Nandan Singh, Son of late Babu Girja Nandan Singh, Resident of Garh Banaili (Deorhi), P.S. Kasba, District- Purnia.

... .. Appellant/s

Versus

1. Smt. Chandani Devi, Wife of Shri Ram Kishore Choudhary, Resident of Red Cross Road, Mohalla Adampur, P.S. Barari, District-Bhagalpur.
2. Smt. Meena Singh @ Meena Kumari, Wife of Sri Santosh Singh, Resident of Mohalla- Bhikhampur Gumti No. 2, P.S. Kotwali, District-Bhagalpur.
3. Smt. Renu Devi@ Renu Sinha, Daughter of late Ram Bilash Singh and Wife of Sri Manohar Prasad Singh, Resident of Mohalla- Bhikhampur Gumti No. 2, P.S. Kotwali, District-Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Pramod Kumar Sinha, Advocate
For the Respondent/s : Mr.Awadhesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 29-05-2025



Heard Mr.Pramod Kumar Sinha, learned counsel for the appellants and Mr.Awadhesh Kumar, learned counsel for the respondents.

2. This appeal is directed against the judgment and decree dated 26.07.2003 passed by learned 4th Subordinate Judge, Bhagalpur, in Title Suit No.242 of 1993 whereby and whereunder the defendant No.1 is directed to execute the sale deed in respect of Schedule-III property in favour of the plaintiff within 60 days after receiving the balance consideration amount of Rs.61,001/- (Rs. Sixty One Thousand One), failing which the plaintiff is entitled to get the sale deed executed through the process of the Court after depositing the balance consideration amount.

3. The plaintiff, who is respondent in the present appeal, has filed suit for specific performance of contract, in respect of property Schedule-III, upon receiving balance amount of consideration and also prayed refund of whole amount as alternative relief. The case of the plaintiff is that on 23.11.1989, defendant No.1 in presence of her husband Babu Girja Nandan Singh orally agreed to sell property Schedule-I for Rs.7,50,001/- (Rs. Seven Lacs Fifty Thousand One) the said property includes her homestead lands i.e. 18 kathas alongwith standing building thereon known as Gol Kothi.



4. The property (Municipal Plot No.939 of Khata No. 279) is in peaceful possession of defendant No.1 but front portion of said Gol Kothi is under tenancy of Food Corporation of India on monthly rent. The case of the plaintiff is that he has paid Rs. 25,000/-(Rs. Twenty Five Thousand) to defendant No.1 on 23.11.1989 in cash of Rs. 50,000/-(Rs. Fifty Thousand) to defendant No.1 on 24.11.1989 by way of demand draft. It was agreed between the parties that defendant No.1 would ask for remaining consideration amount from time to time when required and she will execute the sale deed for said property for consideration amount of Rs. 6,45,001/- (Rs. Six Lacs Forty Five Thousand One). The case of the plaintiff was that he has already paid Rs.6,72,000/-(Rs.Six Lacs Seventy Two Thousand) by part consideration on various dates between 23.11.1989 to 15.04.1989 where Rs.4,78,000/-(Rs. Four Lacs Seventy Eight Thousand) by way of demand draft in favour of defendant No.1, her husband, namely, Girija Nandan Singh, her sons, representatives, nominees and agents. In consequence of the part performance, defendant No.1 allowed to plaintiff to occupy Gol Kothi and also allow to construct double storied building on 05 kathas out of 07 Kathas of the land, the defendant No.1 on 02.06.1990 and 03.07.1991 also executed two sale deeds, 02 kathas without knowledge of plaintiff



and handed over the registration receipt to plaintiff. Plaintiff remitted Rs. 35,000/-(Thirty Five Thousand) out of Rs. 78,001/- (Rs. Seventy Eight Thousand One) by three bank drafts in favour of defendant No.1 but the same was returned by defendant No.1. The case of the plaintiff is that the plaintiff was apprehended that the defendant No.1 was in search of some other buyer of higher price for higher value plaintiff then sent notice regarding the same to defendant No.1 on 07.04.1992 requesting to complete the same in respect of Gol Kothi. The land in question (disputed) is already transferred by defendant No.1 in favour of plaintiff to various sale deeds described in Schedule-II of plaint.

5. The Plaintiff-respondent No.1 party Smt. Chandni Devi Chaudhary instituted the T.S. No. 242/1993 on 07.12.1993, in the court of the Subordinate Judge, Bhagalpur for (1) passing of a decree for specific performance of contract directing the original defendant 1st party-original appellant, to execute the sale deed in respect of Schedule-III Property in her favour on deposit of 61,001/-(Rs. Sixty One Thousand One) only being balance consideration money, (ii) if it could not be possible for the court to pass a decree for specific performance of contract as sought for balance money of deposit with interest at the rate of 12% per annum.



6. All that the remaining lands and Gol Kothi of Schedule-I property measuring 14 Kathas of land and the building thereon being part of Holding No. 1. Plot No. 939, Khata No. 279, at Red Cross Road, Ward No. 5/6, P.S-Barari in the town and district of Bhagalpur with the following boundary:

North- Vivekanand Path

South Red Cross Road and in Part the double story building of the plaintiff on the same holding and Plot of land.

East- Katchari Road

West-Dr. R.N.Jha and in part of the double story building of the plaintiff.

7. Plaintiff-respondent 1st set instituted the T.S. No. 242/1993 stating therein that on 23.11.1989 by and oral agreement original defendant 1st party-original appellant, her husband Babu Girija Nandan Singh, since deceased, agreed to the plaintiff-respondent 1st set to sell her homestead land measuring 18 Katha with building standing there over known as Gol Kothi detailed in Schedule-I of the plaint for a total price at Rs.7,50,001/-(Seven Lacs Fifty Thousand One) only and it was represented to the plaintiff-respondent 1st set that the original defendant 1st set party-appellant did own and possess the said Schedule-I land and some lands measuring 12 Kathas 7 dhurs and 3 dhurkies from western



side she sold to one Dr. R.N. Jha and put him in possession thereof.

8. On 23.11.1989, plaintiff-respondent 1st party paid a sum of 25,000/-(Rs. Twenty Five Thousand) only to the original defendant 1st party-original appellant in cash and again on 24.11.1989 paid a sum of 50,000/-(Rs.Fifty Thousand) to her by a bank draft and it was further agreed that from time to time the original defendant 1st party-appellant would demand the further sum of consideration money, as and when she would be required and the plaintiff respondent 1st set would pay the same in the manner she would ask for, and it was further agreed that the original defendant 1st party would first, executed the sale deeds in respect of part lands laying towards south of Gol Kothi facing Road Cross Road at the rate of Rs. 15,000/-(Rs.Fifteen Thousand) per Katha at her convenience and would execute the sale deeds in respect of lands and Gol Kothi in the last for a total price of Rs.6,45,001/- (Rs. Six Lacs Forty Five Thousand One) and the plaintiff-respondent 1st set already paid to the original defendant 1st set-appellant a sum of Rs.6,72,001/- (Rs. Six Lacs Seventy Two Thousand One) only by way of part consideration on various dates between 23.11.1989 to 15.04.1989 and shown the said payments in Para-5 of the plaint with the further assertion that in part



performance of the said contract, the original defendant 1st party appellant allowed the plaintiff-respondent 1st set to occupy the parti potion of the land measuring about 7 Kathas and odd laying towards south of Gol Kothi and allowed her to construct a double story building thereon covering more than 5 Kathas out of the 7 Katha of the said land.

9. The case of plaintiff-respondent 1st party that on 02.06 1990, the original defendant No.1-appellant executed two sale deeds with respects to 2 Kathas of land (Ext.-6/C and 6 / D) and on 03.07.1991, executed 02 sale deeds (Ext-6/A and 6/B) for 01 Katha of land (10 dhurs each) in her favour and since these lands were already in possession of the plaintiff-respondent 1st set given as part performance of the contract without the knowledge of the plaintiff-respondent 1st set and handed over registration slips.

10. Plaintiff-respondent 1st set remitted on sum of Rs.35,000/-(Rs. Thirty Five Thousand) only as required by the original defendant 1st party-appellant out of the remaining balance amount of Rs.78,000/-(Rs.Seventy Eight Thousand) by three bank drafts of 15,000/-(Rs.Fifteen Thousand) Rs.10,000/-(Ten Thousand) but the same were returned back without assigning any reason and appellants evaded to execute the sale deeds for remaining lands as contracted.



11. The plaintiff-respondent 1st set apprehended that the original-defendant 1st party-appellant was in search of some other buyer for higher price particularly in respect of the building known as Gol Kothi on breach of the terms of the said agreement dated 23.11.1989, and the plaintiff-respondent 1st set on 07.04.1992 (Ext.- 1 / A) sent lawyers notice to the original defendant 1st party-appellant and her husband Late Girija Nandan Singh requesting them to complete the sale in respect of Gol Kothi under the tenancy of F.C.I. but the same were refused to be accepted, again on 15.10.1993 (Ext.-I) the plaintiff-respondent 1st set sent a lawyer's notice under registered post with AD and also under certificate of posting to the original defendant 1st party-appellant requesting her to complete the sale deed receiving the balance consideration of Rs.61,000/-(Rs. Sixty One Thousand) at the earliest.

12. The original defendant 1st set-appellant on 20.01.1993 (Ext.- 6 / D) executed sale deeds with respect to 01 Katha 01 dhur of land coming already in possession of the plaintiff-respondent 1st set and the lands so transferred under said 5 sale deeds (Exbt-6 to 6 / D) with respect to 04 Katha and 01 dhurs of lands detailed in Schedule-II of the plaint.



13. Unfortunately on 18.09.1993 Babu Girija Nandan Singh, husband of the original defendant 1st set-appellant died and their eldest son Rajiv Nandan Singh, since deceased, on 20.09.1993, wrote a letter to Ram Kishore Choudhary, since deceased, husband of the plaintiff-respondent 1st set asking for a sum of Rs.1 Lakh for performance of Shradh of his father Late Girija Nandan Singh but the plaintiff-respondent 1st set, advanced a sum of Rs.17,000/-(Rs.Seventeen Thousand) only through bank draft of Rs.10,000/-(Rs.Ten Thousand) in the name of the said Rajiv Nandan Singh and Rs.7,000/-(Rs.Seven Thousand) as cash through Samar Mishra.

14. Original defendant 1st party-appellant Late Jagatmaya Devi filed written statement on 09.12.1994, through her power of attorney holder Samar Mishra opposing the suit on number of grounds but mainly with following grounds:-

(I) There was no oral agreement dated 23.11.1989 with the plaintiff-respondent 1st set as alleged in the plaint rather there was an agreement by way of Zarbeyana dated 18.12.1989 (Ext-C) for sale of 04 Kathas and odd lands adjoining west to boundary of Dr. R.N. Jha at a rate of Rs.1,25,000/-(Rs.One Lac Twenty Five Thousand) per Katha with the plaintiff-respondent 1st set and Late Girija Nandan Singh husband of the original defendant 1st party-



appellant received only Rs.92,000/-(Rs. Ninety Two Thousand) and the said Zarbeyana was received by Ram Kishore Chaudhary, since deceased, husband of the plaintiff-respondent 1st set. Late Girija Nandan Singh again received bank draft of Canara Bank of Rs. One Lakh only on 13.01.1990, and cash of Rs. 3200/- (Rs.Three Thousand Two Hundred) out of the said consideration money and made endorsement of the same on the said Zarbeyana (Ext-C).

(II) on 22.03.1990, drafts of Rs.79,000/-(Rs.Seventy Nine Thousand) of Canara Bank and another draft of Rs. 15,000/- (Rs.Fifteen Thousand) of SBI was received by said Girija Nandan Singh, further sum of Rs.5,000/-(Five Thosand) in cash through Uday Kand Jha and sum of Rs.5,000/-(Rs.Five Thousand) cash if and made endorsement on Zarbeyana on 22.03.1990. Bank drafts No. 376562 to 4237660 as given to Late Girija Nandan Singh, who made endorsement on Zarbeyana were taken back by Ram Kishore Chaudhary, since deceased, husband of the plaintiff-respondent 1st set, on his oral request and false pretence that the said husband of the plaintiff-respondent 1st set for their own use but cancelled the same subsequently and no payment of the said draft amount of Rs. 79,000/-(Rs.Seventy Nine Thousand) was made to the original defendant 1st party-appellant.



15. Learned counsel for the appellants submits that Original defendant 1st party-appellant never thought to sell the building and imaginary statements made to grab her land and building on a very nominal price. On 23.11.1989, only a sum of Rs.2,500/-(Rs.Two Thousand Five Hundred) were paid and not Rs.25,000/-(Rs.Twenty Five Thousand) being claimed in cash and a draft of Rs.50,000/- (Rs.Fifty Thousand) a day after and entries whereof too were made in the Zarbeyana (Exbt-C). The Original defendant 1st party-appellant denied the factum of agreement for sale at the rate of Rs.15,000/-(Rs.Fifteen Thousand) per Katha and a further talk for sale of remaining area total price of Rs.6,45,001/- (Rs.Six Lacs Forty Five Thousand One) and also returned the plaintiff-respondent 1st set's plea that during 23.11.1989 to 15.04.1991, a total sum of Rs.6,72,000/-(Rs. Six Lacs Seventy Two Thousand) was paid by the plaintiff to her. Original defendant 1st party-appellant admitted to have received Rs.4,17,700/-(Rs. Four Lacs Seventeen Thousand Seven Hundred) in total and pleaded that an amount of Rs.88,000/-(Rs. Eighty Eight Thousand) due out of the total consideration amount of Rs.5,06,250/-(Rs. Five Lacs Six Thousand Two Hundred Fifty) (4 Katha, 1 dhur) @ Rs.1,25,000/ per katha-(Rs. One Lac Twenty Five Thousand).



16. Learned counsel for the appellants further submits that the Original defendant 1st party-appellant never asked the plaintiff to occupy 07 Kathas of land towards south of Gol Kothi facing Red Cross Road and the plaintiff-respondent 1st set encroached excess land for the which T.S. No. 49/1989 was filed in the court of the learned Subordinate Judge, Bhagalpur, which the plaintiff-respondent 1st set did taking advantage of the absence of the ailing original defendant 1st party-appellant and in spite of the letter demanding money on the eve of Shradh of Late Babu Girija Nandan Singh a sum of Rs.One Lakh, only Rs.17,000/- (Rs.Seventeen Thousand) could be managed by the plaintiff-respondent 1st set which she paid.

17. Learned counsel for the appellants further submits that the since the original defendant-appellant sold lands to Smt. Meena Singh and Smt. Renu Devi, who were also made defendant-respondent 3rd set and defendant-respondent 4th set respectively, in the aforesaid suit but their claim lie in the shoes of the original defendants 1st set-appellant and in other words they supported the appellant's case.

18. Learned counsel for the appellants submits that on the basis of the rival pleadings of the parties, the learned Trial Court framed the following 13 issues:-



- (I) Is the suit as framed maintainable?
- (II) Has the plaintiff got any cause of action for the suit?
- (III) Is the suit barred by general law of limitation?
- (IV) Is the suit hit by waiver, estopples and acquiescence?
- (V) Does the suit suffers from joinder of unnecessary parties?
- (VI) Was there any concluded oral agreement between the plaintiff and defendant no. 1 for sale of suit property or part thereof, if so at what rate and on what terms and on what area of land?
- (VII) Was there any agreement to sell the entire suit property for total consideration of Rs. 7,50,001/-?
- (VIII) Whether the plaintiff as per terms of agreement produced by her as always been willing and ready to act and such as has acted according?
- (IX) Whether there was any deed of agreement dated 18.12.1989 for sale of 4 khattas of land at the rate of Rs. 1,25,000/- between the parties?
- (X) Is the transfer of suit property to defendant no. 6 & 7 by defendant no. 1 during the pendency of suit is hit by the principle of lis pendence?



(XI) Are the subsequent purchaser of part of suit property (defendant no. 6 & 7) protected under Section 19 and other provisions of specific relief act and on the ground of equity in the circumstances of the case?

(XII) Whether the plaintiff is entitled to decree of specific performance of contract of the suit land?

(XIII) What relief or reliefs the plaintiffs entitled to?

The plaintiff-respondent no. 1st set in support of her case lead the following oral and documentary evidence.

ORAL EVIDENCE

P.W-1 - Sameer Kumar – proved legal notice (Exhibit 1 and Exhibit 1/A) and registered envelopes (Exhibit 2 to 2/C) and receipts of acknowledgment (Exhibit 3 to 3/B) (Formal witnesses).

P.W-2 - Nityanand Rai - proved pleader notice dated 04.05.1992 (Exhibit 1/E) proved pleader notice dated 24.12.1993 (Exhibit 1/F) proved acknowledgment receipt under certificate of posting (Exhibit 3/C) and under certificate of posting receipt (Exhibit 4 to 4/A) (Formal witnesses).

P.W-3 - Ramdev Pd. Sah (Material witness).

P.W-4 - Md. Ansari (Material witness).



P.W-5 - Bipin Kumar Singh (Material witness and relative of plaintiff).

P.W-6 - Kaushal Kishore Choudhary (Material witness relative to the plaintiff).

P.W-7 - Ram Kishore Choudhary (Material witness, husband of the plaintiff).

P.W-8 - Ravi Shankar Kumar (on the point of the cancellation of drafts and payment of Girijanandan Singh).

P.W-9 - Ajay Kumar Rai (staff of P.W.7 forks draft to P.W.8).

DOCUMENTARY EVIDENCE

Exhibit 1- Pleader notice dated 15.10.1993.

Exhibit 1/A- Pleader notice dated 07.04.1992.

Exhibit 1/B- Pleader notice.

Exhibit 1/E- Pleader notice sent under certificate of posting dated 04.05.1992.

Exhibit 1/F- Pleader notice dated 24.11.1993 sent after institution of the suit dated 07.12.1993.

Exhibit- 2 to 2/C- Registered envelopes.

Exhibit- 3 to 3/C- Acknowledgment under certificate of posting.



Exhibit- 4 to 4/A- Receipt of under certificate of posting.

Exhibit- 5- Receipt of money of Rs. 2,000/- dated 13.04.1991 given by Samir Mishra on behalf of defendant 1st party (original appellant).

Exhibit- 5/A- Money receipt dated 15.04.1991 of Rs. 5,000/- by Samir Mishra on behalf of original defendant 1st party/appellant.

Exhibit- 5/B- Money receipt dated 18.03.1991 of Rs. 5,000/- by Samir Mishra on behalf of original defendant 1st party/appellant.

Exhibit-6- Sale deed dated 03.07.1991 with map with respect to 10 dhurs of land at price of Rs. 13,000/- executed by original 1st party-appellant in favour of the plaintiff-respondent 1st party-appellant.

Exhibit-6/A- Registered sale deed dated 03.07.1991 with respect to 10 dhurs of land executed by original defendant/appellant in favour of plaintiff-respondent 1st party.

Exhibit-6/B- Sale deed dated 21.10.1992 executed by original defendant 1st party/appellant in favour of the plaintiff-respondent 1st set with respect of one kattha and



one dhur of land at the price of Rs. 45,000/-.

Exhibit-6/C- Registered sale deed dated 02.06.1990 with respect to one katha of land executed by original defendant 1st party/appellant in favour of plaintiff-respondent 1st party for the consideration of Rs. 14,500/-.

Exhibit-1/D- Registered sale deed dated 20.01.1993 executed by original defendant 1st party/appellant in favour of plaintiff-respondent 1st set with respect to one katha of land for consideration of Rs. 14,500/-.

ORIGINAL DEFENDANT NO. 1/APPELLANT'S EVIDENCE

The original defendant 1st set appellant also lead following oral and documentary evidence.

Oral evidence (8 in numbers).

D.W-1 - Harendra Nath Choudhary “(Formal witness proved Jarbayana Exhibit- C dated 18.12.1989)” in the writing of Girjanandan Singh husband of original defendant 1st set appellant.

D.W-2 - Ramesh Chandra Choudhary, on the point of talk of sale between Girjanandan Singh and Ram Kishore Choudhary.



D.W-3 - Shyam Sundar Das (formal witness).

D.W-4 - Raj Kishore Choudhary.

D.W-5 - Bateshwar Jha, on the point of non-existence of oral agreement dated 23.11.1983.

D.W-6 - Jyoti Nandan Singh (appellant no. 3) son of original defendant 1st party/appellant.

D.W-7 - Ishanath Jha, on the point of Jarfbayana dated 18.12.1989 and the rate of sale price at the price of Rs. 1,75,000/- per katha.

D.W-8 - Dr. Kedarnath Jha witness on the point of illness of Girjanandan Singh.

Documentary Evidence

Exhibit- A- Application for cancellation of four drafts dated 11.04.1990 by Ravi Shankar Kumar, P.W-8, staff of Canara Bank to manager, Canara Bank, Bhagalpur Branch.

Exhibit- B- Signature of Ravi Shankar Gupta, P.W-8 of receipt of Rs. 63,000/-(Rupees Sixty Three Thousand) from Canara Bank, Bhagalpur as proceeds of cancellation of 4 bank drafts.

Exhibit-C- Jarfbayana dated 18.12.1989 under the signature of Girija Nandan Singh on the letter head of



original defendant 1st set appellant with respect to sale of the land shown in the map of Ram Kishore Choudhary, husband of plaintiff, respondent 1st set.

Exhibit-D- Letter dated 17.03.1990 authorize one pitamber to intimate Ram Kishore Choudhary of money.

Exhibit-D/1- Letter dated 14.04.1990 of Girija Nandan Singh authorize pitamber to inform Ram Kishore Choudhary for the draft.

Exhibit-D/2- Letter of intimation of Ram Kishore Choudhary to keep prepared of the draft written by Girija Nandan Singh.

Exhibit-E- Hand written money receipt of Girija Nandan Singh.

Exhibit-F/2 to F/1- Municipal Rent receipts.

Exhibit-G- Sale deed dated 18.06.1996 acquitted by original defendant no.1 appellant in favour of Meena Sinha with respect to 2 kathas of land for a consideration of Rs.1,11,000/- (Rupees One Lakh Even Thousand).

Exhibit-G/1- Sale deed dated 12.08.1996 executed by original defendant 1st party appellant in favour of defendant no.6 Meena Sinha with respect to 1056 sq. feet of land.



The trial Court took up issue no (vi),(vii),(iii), (viii) and (xi) jointly and held in favour of the plaintiff respondent 1st set and issue no. (i), (ii), (iii),(iv), (v),(xii), (xiii) jointly and decided in favour of the plaintiff respondent 1st set and under the impugned judgment and decree the suit by directing the original defendant 1st party appellant to execute the sale deed with respect to Schedule-III property within 60 days of the order after receiving balance consideration amount of Rs. 61,000/- and on failure of the same would be executed through the process of Court.

19. Learned counsel for the appellant submits that the trial court acted illegally and without jurisdiction in shifting burden of proof which primarily did rely under Section 101 of Evidence Act on the plaintiff respondent 1st set and only when plaintiff respondent 1st set would have succeeded in proving her case of oral agreement the said burden shifted on the original defendant appellant thereafter the issue is none *res-intergra*.

20. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Apex Court in the case of the **Anil Rishi vs Guruvak Singh reported in 2006 5 SCC 558**, paragraph Nos. 8, 9 and 10 while interpreting Section 101, 102 and 103 of Evidence Cct. The Hon'ble Apex Court held that that “ *the initial burden of proof would be on plaintiff in view of the Section 101 of*



the Evidence Act in terms of the said provision of burden of providing the facts rest on the party to substantially asserts the affirmative issue and not the party to deny it”.

“Pleading is not evidence, far less proof. Issues are raised on the basis of the pleading the defendant appellant having not admitted or acknowledge the judiciary relationship between parties, indisputably their relationship between the parties itself could be on issue. The suit will fail in if both the parties do not adduce any evidence in view of Section 102 of Evidence Act. Thus accordingly the burden of proof would be on party to assert the affirmatives on the issue and in rest after evidence is gone into upon the party against whom at that time the question arises.”

21. It was incumbent upon the trial Court to definitely be satisfied and 1st be sure that the plaintiff-respondent 1st party proved her substantive and affirmative claim of oral agreement more so when the original defendant appellant denies and in order to weight the same the learned trial Court glossed over the very pleading of the plaintiff respondent 1st set who in her plaint has asserted into oral agreement dated 23.11.1989 directly with original defendant 1st party and her husband, Babu Girija Nandan



Singh and not through anyone (para-1 of the plaintiff) and the trial Court as would appear from its finding at page 31 of the impugned judgment that “ *it is true that there is nothing on record to show that there was talk between plaintiff and defendant no. 1st for agreement for sale dated 23.11.1989*”. It is also clear that defendant no.1 has executed 5 sale deeds in the name of plaintiff respondent 1st set in pursuance of the payment received from him. The trial Court thus failed to appreciate that the 5 sale deeds (Exhibit 6 to 6 D) executed by the original defendant 1st party/appellant with respect to four kathas and one dhur of land in terms of the Jardebayana dated 18.12.1989 (Exhibit-C) had not on the basis of the oral agreement to sale dated 23.11.1989 as claimed by the plaintiff respondent 1st set which the plaintiff respondent 1st set accepted and brought on record in evidence of her own. The learned trial Court it is submitted would have held the evidence on oral agreement to be falsely and immeasurably even on the grounds itself.

22. Learned counsel for the appellants submits that plaintiff respondent 1st set affirmative pleading for leave was based on oral agreement dated 23.11.1989. It is a settled proposition of law that no evidence can be beyond the pleading which the Hon’ble Apex Court in the case of **Srinivasan Raghunandan Rao**



Desai Vs Kumar Verman Rao alias Alok reported in **2024 SCC online page 226** paragraph 25 of the aforesaid judgment is reproduced herein under:-

“25. There is no quarrel with the proposition of law that no evidence could be led beyond pleadings. It is not a case in which there was any error in the pleadings and the parties knowing their case fully well had led evidence to enable the Court to deal with that evidence. In the case in hand, specific amendment in the pleadings was sought by the plaintiffs with reference to 1965 partition but the same was rejected. In such a situation, the evidence with reference to 1965 partition cannot be considered.”

23. It is submitted that plaintiff respondent 1st set pleading as would evident from paragraph 1,2, 4 and 5 of the plaint that on 23.11.1989, plaintiff respondent 1st set direct oral agreement of sale was with original defendant 1st party/appellant and her husband for purchase of 18 kathas of land together with building, not in presence of anyone, but on date no price of the rate per katha or the period by which the parties to the said alleged agreement would perform their respective obligation with respect



to property details instituted in the complaint, it was further agreed as would appear from paragraph Nos.- 3 and 4 of the plaint but without any date the first the sale deed was respect to *parati* land at the rate of Rs.15,000/- per katha would be executed and thereafter, the sale deed with respect to the building commonly known as *Gol Kothi* would be executed and the payments were to be made from time to time. The defendant would demand the further some of consideration money as and when they would require, from such pleading one could ascertain that even for the sake of argument oral agreement to sale deed 23.11.1989 is accepted, no subsequent rate of parti land and the building has been agreed and so the period of performance of the contract. The modulus of payment as pleaded to be made as and when original defendant first party/appellant would require itself makes claim of oral agreement cloudy inasmuch as the suit property details in Schedule-III, the part and parcel of of Schedule-1 property set to be covered under the oral agreement, situate in the heart of town of Bhagalpur whose price go to excelling day to day and one could very understand that speculation that a consideration amount would be paid as and where original defendant 1st party appellant would require itself expose the factum of the oral agreement arbitrarily, irrational and unbelievable. The plaintiff respondent 1st



party set stay claim on the basis of the oral agreement dated 23.11.1989 directly enter in between her and original defendant 1st set appellant and her husband Girija Nandan Singh and the plaintiff appellant 1st party herself verified the complaint but did not come to the witness box submitting herself for examination and cross examination on the point on her pleading, which itself was fit to be rejected since in none of the witnesses examined on her behalf deposed that the complaint was verified by the plaintiff respondent 1st party her which did bear her signature which cast doubt about her case of oral evidence and learned trial court would have drawn adverse defense interference. Learned counsel for the appellants relied upon the case of **Sardar Gurubak Singh vs. Gurudayal Singh**, reported in **AIR 1927 Privy Council Page-230** and the relevant portion of the said judgment, which is quoted hereinbelow:-.

“ The disappearance of bhagwan and the manifest approval of the co-widow, the refusal by her to come to the Court to submit to a medical examination, or even to remain for a reasonable period in her own home but in preference to go outside jurisdiction of court and to native state, would in any view have thrown the greatest doubt upon the story of her



having given birth to a the son as alleged and the second feature of the case her continue absence for long period after the alleged work the core of this to the allotship but part of a transaction which was simply a nefarious plot.

It must be stated that in taking a different view the High Court went very far, as for instance when they say, “We do not find any proof that bhagwan got did not in fact shirk examination”.

Their lordships think it unnecessary to repeat the numerous details of the story, but as it involves a general and important question of procedure and practice, they think it expedient to make the following references what accurate at the trial at the civil suit.

At the bar of the board it was admitted by the respondent that she, bhagwan had been present in the Court when the evidence was being taken and that she did not go into the witness box and was not examined as a witness on her own or her alleged sons herself”

“If her story were not withstanding at this, a true story it was her burden/duty to give evidence in the



suit, telling the whole facts in support of her and her alleged sons case but if under advise she did not do so that advise was of the worse description and worthy of the animadversion ever made.”

24. The said ratio has been relied upon the Division Bench of this Hon'ble Court in the case of the **Devji Shivaji Vs Karsan Das Ramji** and another reported in **AIR 1954, Patna page 280**, and Paragraph Nos.13 and 14 of the said judgment, which are quoted hereinbelow:

“13.I fail to understand how the plaintiff or his intelligent wife Kamala Bai with her advisers thought of succeeding in this case if the plaintiff himself was not called to swear to all the statements which he had made in his plain, and to refute the allegations which had been made by the defendant in his written statement and which he had Bought to prove by nis own evidence. I think we must refuse to entertain the plea that the document was intended to be a benami document and that the plaintiff had no intention of making any provision for his daughter Parbati when the plaintiff has not come forward to depose as a witness in this case, and when the defendant has put



forward certain circumstances which go strongly to support his allegation that out of love and affection for Parbati the plaintiff had at first thought of gifting his house properties to her and, later on, after his wife objected to the gift of the house properties, conveyed to his son-in-law the goodwill and the assets of his fairly flourishing business, namely, the coal business.

“14. The plaintiff has miserably failed to show the motive for a benami transaction of this nature, the plaint says that in August, 1947, the defendant No. 1 advised the plaintiff to execute a farzi and a benami deed of assignment in his name in respect of the business of Devji Shivji and Sons and represented to the plaintiff that the deed would enable him to manage the business in case of long and Continuous absence of the plaintiff from Jharia on account of the illness of his son. This is the only reason given in the plaint for executing the deed of assignment dated 78-1947. The plaintiff never appeared before the Court for proving this allegation, and his wife gave an entirely different reason for executing a benami deed.



Sne says that during the illness of his son the plaintiff was very much worried on account of income tax assessment and that a consideration of Rs. 1000/- was mentioned in the deed for income tax purposes. The motive given by the lady in her deposition is not the same which is stated in the plaint, and this inconsistency on the point of motive cannot be Ignored as an inconsistency of a minor nature.”

25. The Hon’ble Apex Court in the case of the **Iswar Bhai C. Patel vs Harihar Behear** reported in (1999) 3 SCC 457 relied upon the aforesaid decision of the privy counsel reported in **AIR 1927 page 230** and approved the said judgment of this Hon’ble Court reported in **AIR 1954, Patna page 280**.

26. The legal principle on the effect of non-examination of the plaintiff, the plaintiff respondent 1st set has as to relied upon the judgment of the Hon’ble apex Court rendered in the case of **Ratan Dev vs Pason Devi** reported in (2002)7 SCC 441 but the aforesaid case is not applicable in the facts and circumstances of the present case.

27. In proving her case, the plaintiff/respondent-1st party excluding herself examined altogether 9 witnesses but none of them has submitted aforesaid deposed that plaint was verified by



the plaintiff respondent 1st set and the same got her signature and documentary evidence from Exhibit-1 to Exhibit-6D out of whom PW-1, Samir Kumar and PW-2 were the formal witness who proved the legal notice dated 15.10.1983(Exhibit 1) and dated 07.04. 1992 (Exhibit-1/A) and the registered envelope (Exhibit 2 to Exhibit 2/C) receipt of acknowledge (Exhibit 3 to Exhibit 3/B). In paragraph-4 of the cross examination PW-1 admitted himself to be not registered advocate clerk and the said legal notice not signed in his presence. Another formal witness PW-2, Nityanand Rai proof pleader notice dated 04.05.1992 (Exhibit 1/E) pleader notice dated 24.12.1993 (Exhibit 1/F) and acknowledgment receipt (Exhibit 3/C and Exhibit 4/A) but in cross examination admitted that he could not say that whether the legal notice was delivered or not and no post peon to process server was examined and in the plaint in the paragraph-9 the plaintiff had pleaded of sending of the said legal notice which has been replied in paragraph-23 of the written statement filed by the original defendant 1st set appellant through her power attorney Sameer Mishra to the effect that the averments made in the paragraph-9 of the plaint was totally false and only pretense to lead false claim and DW-6, Jyoti Nandan Singh, one of the son of the original defendant 1st set/ appellant, in paragraph-17 of his cross examination on the query of the receipt



of the legal notice clearly denied to have received the same. PW-2 has also proved pleader notice dated dated 24.12.1993 (Exhibit 1/F) which was sent after institution of the suit dated 07.12.1993. PW-3, Ramdeo Prasad Sah and PW-4, Moh. Sanad Ansari claim to be the witness and the point of some oral talk and some payment made in the presence but PW-3 in the chief not stated about the dates of the disclosures of the mind and he told Ram Kishan Choudhary, PW-7, husband of the plaintiff about sale of *gol kothi* but in paragraph-8 of his cross examination admitted that on 23.11.1989 he was called on by Babu Saheb but no knew the purpose and further admitted that Rs. 25,000/- was paid by Ram Kishore Choudhary that no paper was prepared similarly PW-4, Mohd. Sanad Ansari in paragraph-2 of his chief examination that prior to 17.12.1989 he did not talk between the parties and on 17.12.1989 a sum of Rs. 11,000 was paid by PW-7, Ram Kishan Choudahry to original defendant no.1 and her husband, Girija Nandan Singh and PW-7, Ram Kishan Choudahry further told that by tomorrow he would pay Rs. 1,25,000/- but in paragraph-4 of his cross examination he admitted to be the Advocate Clerk and in paragraph-6 he admitted that PW-7, Ram Kishan Choudhary is a *Munshi* engaged in motor driving license preparation business further admitted that no receipt was given. PW-5, Vipin Kumar



Singh, relative of the plaintiff-respondent 1st party deposed that he was present when the talk was finalized on 23.11.1989 but the plaintiff does even that on 23.11.1989 when the oral agreement was finalized with the original defendant 1st appellant and her husband Girija Nandan Singh since he died on 18.09.1993 i.e. prior to institution of the suit and the payment made on that date and so is the evidence of PW-6, Kaushal Kishore Singh the another relative of PW-7, Ram Kishore Choudhary.

28. The another was P.W. 7- Ram Kishore Choudhary, the husband of the plaintiff-respondent 1st set, whose claim of presence at the time of finalization of the oral agreement was not supported as per the pleading made in the plaintiff and none of these witnesses too had deposed in Court on the advice and instruction of the plaintiff-respondent 1st set, therefore their evidences on this issue alone the trial court ought to have rejected and held to non trustworthy and non suited the plaintiff-respondent 1st set.

29. The interesting contradiction evidence is of P.W.-8, Ravi Shankar Kumar, an employee of Canara Bank, Bhagalpur Branch, who in chief stated that 5 Bank Drafts of Rs. 79,000/- (Seventy Nine Thousand) and Rs. 80,000/- (Eighty Thousand) with letter came to him and Babu Girija Nandan Singh told him to get it cancelled meaning thereby the said Girija Nandan Singh



produced the said drafts for cancellation which stands controverted by P.W.-9, Ajay Kumar that he on 11.04.1990, took a sum of Rs. 70,000/- (Seventy Thousand) and handed over to P.W.-8 Ravi Shankar Kumar at the instance of P.W.-7 Ram Kishore Choudhary, and in paras 2 and 3 of his cross examination P.W.-9 admitted to be the employee of P.W.-7 Ram Kishore Choudhary and P.W. 8- Ravi Shankar Kumar do not took his signature on the paper and kept the money in his purse on this point Exhibit-A dated 11.04.1990, is interesting which P.W.8- Ravi Shankar Kumar endorsed to the manager of Canara Bank, Bhagalpur Branch, for cancellation of 4 Bank drafts dated 23.03.1990 of the amount of Rs. 60,000/- (Sixty Thousand) and Exhibit-B is further interesting of the receipt of the said amount of Rs. 63,000/- (Sixty Three Thousand) being the proceeds of the said cancelled drafts paid to P.W.-8 but in para-5 he has admitted to be the class fellow of P.W.-7 Ram Kishore Choudhary and admitted in para-5 of his cross-contamination that he did not take the receipt them Girija Nandan Singh of giving him the amount of cancelled drafts. From the Plaintiff-respondent 1st set's side only 3 receipts could have been exhibited as the payment that too of a meager amount of Rs. 12,000/- (Twelve Thousand) to Samar Mishra, manager of the original defendant 1st party/appellant one was dated 13.04.1991 (Exhibit-5) of Rs.



2,000/- (Two Thousand), another dated 15.04.1991 (Exhibit-5/A) of Rs. 5,000/- (Five Thousand), and third dated 18.03.1991 (Exhibit-5/B) of Rs. 5,000/-. It is submitted that the majority of the cash payment without any receipt moreso which in the case of specific performance of contract based on oral agreement the trial court ought not to have accepted the receipt of part of the consideration amount as has been held by a Coordinate Bench of this Court in the case of Ganesh Rai Vs. Jitendra Gautam dated 21.06.2017 (First Appeal No. 208 of 2007) and this Court had held that :

“ On the point of payment of consideration amount P.W.1 who happens to be the plaintiff no. 1 says that Rs. 1,72,000/- (One Lac Seventy Two Thousand) has paid to defendant no. 1 through and in presence of P.W.3, namely, Ramesh Kumar, Rs. 1,55,001/- (One Lac Fifty Five Thousand and one) was paid to the defendant no. 1 through and in presence of Sanjay Kumar (P.W.5) Rs. 20,000/- (Twenty Thousand) was paid to defendant no. 1 and in presence of P.W.4 and similarly Rs 54,000/- (Fifty Four thousand) was paid to the defendant



no. 1 through and in presence of P.W. 3, namely Ramesh Kumar, P.W. 3-Ramesh Kumar supported the factum of payment of Rs. 1,77,000/- (One Lac Seventy Seven Thousand) and Rs. 54,000/- (Fifty Four Thousand) through him. Plaintiff failed to give even a chit of paper to prove payment of consideration amount. Learned Court below rightly observed that plaintiff have no right to make any claim on the basis of agreement of sale dated 22.11.2023.”

30. Mr. Awadhesh Kumar, learned counsel for the respondents submits that there was an oral agreement on 23.11.1989 between Babu Girja Nandan Singh (since deceased) and Shri Ram Kishore Choudhary, in the presence of defendant no. 1 Smt. Jagat Maya Devi, whereby it was orally agreed between the parties to sell the immovable property mentioned on Schedule-I of the plaint, with a building thereon, to the plaintiff (through her husband Shri Ram Kishore Chaudhary) for total consideration amount of Rs. 7,50,001/-. The entire deliberations and transactions were conducted between husband of Jagat Maya Devi -Defendant no. 1 / Appellant and Shri Ram Kishore Choudhary (husband of the plaintiff/respondent no. 1). The scheduled land measuring 18



kathas, by measurement of 720 sq. ft. per katha. Land bearing Plot no. 939, Khata no. 279 situated at Red Cross Road in Ward No. 3 comprising of total area of .2010 hectares with a pukka makaan and sahan on it was owned by the defendant no. 1. As per oral agreement, defendant 1st party would transfer the parti piece of land towards south of the plot facing Red Cross Road as per convenience of the defendant No.1/appellant. The plaintiff/respondent No.1 would make the payment of total price on demand made by defendant No.1/appellant in the manner as would be required by them from time to time. The building portion named as Gol Kothi shall be transferred after the eviction of the tenant FCI within three years.

31. Learned counsel for the respondents submits that in pursuance of the oral agreement dated 23.11.1989, a sum of Rs.25,000/- was paid on 23.11.1989 in cash which was handed over to Late Babu Girja Nand Singh and the very next day i.e. on 24.11.1989, a bank draft amounting to Rs.50,000/- was drawn in favour of the defendant No.1/appellant. Total amount to a sum of Rs. 6,72,000/- was already paid by the plaintiff respondent no.1 on different dates ranging from 23.11.1989 to 15.04.1991. The plaintiff respondent no. 1 paid an amount of Rs. 4,78,000/-by Bank drafts in different names including the defendant no. 1 and to her



husband, sons, representatives and their agents and Rs. 1,94,000/- paid in cash in different dates.

32. Learned counsel for the respondents further submits that the two Sale Deeds were executed on 02.06.1990 for two kathas of land which was executed and registered by the defendant no/1/appellant on her own. Subsequently, on 03.07.1991, further two sale deeds were executed for one katha of land by the defendant no. 1/appellant on her own and after execution and registration of the sale deed, the copy of the same was handed over to the husband of the plaintiff/respondent no. 1 by the husband of defendant no. 1/ appellant.

33. Learned counsel for the respondents submits that after the execution of sale deeds for 3 kathas of land by defendant no. 1, the plaintiff respondent no.1 on 05.02.1992, remitted a sum of Rs. 35,000/-out of remaining balance of Rs. 78,001/- by three bank drafts of Rs. 15,000/- and two each amounting to Rs. 10,000/- drawn in favour of Uday Kant Mishra and Abhay Kant Mishra but the same was returned back without assigning any reason whatsoever. This particular act of the defendant no. 1/appellant created an apprehension in the mind of the plaintiff/respondent no. 1 that the defendant no.1 is trying to evade to execute the sale deeds for the remaining part of the land.



34. Learned counsel for the respondents submits that thereafter the plaintiff/respondent no. 1 gave a legal notice dated 07.04.1992 (Exhibit-1/B) addressed to the defendant no. 1 and her husband Babu Girja Nand Singh (since deceased) requesting them to complete the sale in respect of the remaining portion of the land including the Gol Kothi, but they have refused to receive the said legal notice. Since, the refusal by the defendant no.1 to accept the legal notice, again the notice was sent vide dated 04.05.1992 by ordinary post under "CERTIFICATE OF POSTING", but the same was again not replied. The respondent no. 1 executed another sale deed dated 20.01.1993 for an area of 1 katha 1 dhur of land in favor of the plaintiff/respondent no. 1. All the sale deed has been executed and signed by Smt. Jagatmaya Devi herself and all sale deeds have been exhibited as (Exhibit 6 Series). Five sale deeds, 4 kathas and 1 dhur of land was executed and registered in favour of plaintiff/respondent no.1 which has been detailed in Schedule-II of the plaint. After the sudden demise of the Babu Girija Nandan Singh on 18.09.1993, the husband of the plaintiff/respondent no.1 received a letter dated 20.09.1993 by Rajiv Ranjan Singh asking Rs 1,00,000/- for performance of Shradh of his father, although the due amount was only Rs 78,001/-. The plaintiff gave Rs. 17,000/- (Rs. 10,000/- by Bank Draft in favour of Rajiv Ranjan Singh &



cash of Rs. 7,000/- to Samar Mishra (Manager) leaving the balance consideration amount of Rs. 61,001/-.

35. Learned counsel for the respondents submits that thereafter the plaintiff/respondent no. 1 served another legal notice dated 15.10.1993 to the defendant no. 1 to complete the sale of the remaining land of 14 kathas after receiving the balance consideration amount of Rs. 61,001/- from plaintiff /respondent no.1, but the same was returned with wrong endorsement. Thereafter, the plaintiff/ respondent no.1 has filed a suit which is subject matter of the present case. During the pendency of the Title Suit, the defendant no. 1 sold certain portion of suit land in favour of defendant nos. 6 and 7 by registered sale deed dated 10.08.1996, 12.08.1996 and 19.06.1997 respectively.

36. Learned counsel for the respondents submits that the moot question in the present case whether the suit filed by the plaintiff before the learned court below was barred by Limitation Act. As per Section 54 of the Limitation Act, the period of limitation prescribed for a suit for specific performance of contract is for 3 years and it has been further specified that with regard to the time from which the period of limitation begins to run is the date fixed for the performance, or if no such date is fixed, when the plaintiff has noticed that the performance has been refused.



The defendant failed to execute the sale deed for remaining land, then the Plaintiff/respondent no.1 sent a legal notice dated 07.04.1992 and subsequently the last sale deed dated 20.01.1993 was executed by defendant no. 1 for 1 katha 1 dhur of land. In the present case, the period of limitation has to be counted from 20.01.1993 when the last sale deed was executed and got registered by defendant No.1 and the period of limitation in the present case has to be completed from 20.01.1993 and not from 23.11.1989.

37. Learned counsel for the respondents has placed reliance upon the judgment in the case of **Panchanan Dhara & Ors. Vs Monmath Nath Maty(Dead)** reported in **AIR 2006 SC 2281**, relevant portion of the said judgment is as follows:

"It has been held that a suit for specific performance of a contract is required to be filed within 3 years in the event no date is fixed for the performance, within a period of 3 years from the date when the plaintiff has noticed that the performance is refused.

It has been further observed that in respect of a contract for sale of immovable property, time is not of the essence of the contract but the question as



regards the conduct of the appellant must be considered in the backdrop of the events."

38. It is relevant that the notice dated 07.04.1992 and the last sale deed executed by the defendant no. 1 dated 20.01.1993 is required to be construed in the context of the agreement dated 23.11. 1989.

39. Learned counsel for the respondents has also relied upon the judgment in the case of **Iswar Bhai C. Patel Vs. Harihar Behera** reported in (1999) 3 SCC 457, whereby it was held by the Supreme Court that:

"An adverse presumption must be drawn against defendant who does not present himself for cross-examination and refuses to enter the witness box in order to refute allegations made against him or to support his pleadings in his written statement."

"If such a party abstains from entering the witness box, it must give rise to an inference adverse against him."

40. The exhibits relied upon on behalf of the defendant No. 1, particularly relating to the transactions the so called Zarbeyanama which is Exhibit-C, the different letters written by Girja Nand Singh which have been exhibited as Exhibit-D Series



and the depositions of different witnesses on behalf of both the parties clearly suggest that the talks and transactions were held between husband of the plaintiff and Husband of defendant No.1. Mr. Ram Kishore Choudhary has been examined as P.W 7 and the defendants have also cross-examined him. So far as Smt. Chandni Devi Choudhary was concerned, only the land consisting of 18 kathas along with Gol Kothi was intended to be purchased in her name and except the same no role has been played by her in the transactions.

41. Learned counsel for the respondents has also relied upon the judgment in the case of **Ratan Dev vs Pasan Devi**, reported in **(2002) 7 SCC 441**.

42. Learned counsel for the respondents submits that an oral agreement has to be proved by letters, memos, bills, receipts, etc. on the validity of oral agreements while dealing with several cases the courts recognized the acceptability of oral agreements once they were found to be fulfilling the essentials provided in Section 10. An oral agreement is valid and the same has also been held in **Alka Bose Vs. Parmtama Devi & Ors.**, reported in **(2009) 2 SCC 589**. The plaintiff/respondent No.1 has further made reliance on the case of **Sheela Gehlot Vs. Sonu Kochar & Ors.**, reported in **2006 (92) DRJ 498**.



“ oral agreements are valid and enforceable and there could be no dispute about it until there is anything which needed to be retained, and oral agreement will enforce. Further for a contract, there has to be some proposal and acceptance and for oral agreement, there should be some circumstances surrounding the legal oral agreement. No one can question the oral agreement as invalid”

43. Learned counsel for the respondents further submits that a portion of the said schedule land was sold to one Dr. R.N.Jha in the year 1979-80 which has been discussed at page-34 of the judgment, where it was stated that 07 kathas 07 Dhurkies land had been sold to Dr.R.N.Jha for total consideration amount of Rs.25,000/- i.e. more than Rs. 3,000/- per katha in 1979-80. The readiness and willingness on behalf of the plaintiff for performing her part of the contract have been sufficiently proved on the basis of the illegal notices which all contained the readiness and will of the plaintiff to make payment of the remaining amount more so, in the facts and circumstances that she had already made a payment of Rs. 6,89,000/- and when a payment of Rs. 35,000/- was made through three bank drafts, the same was returned back without any reason. Hence, the readiness and willingness has always been



present from the plaintiff. The entire payments have been made on behalf of the plaintiff to defendant, legal heirs and to her representatives which has been detailed in paragraph-5 of the plaint. The defendant side have deviously accepted only such payments which have been made by demand draft or cheques. The agreement was to the effect that firstly sale deed would be executed with respect to the parti land lying South of Gol Kothi, which was around 07 kathas @ Rs.15,000/- per katha and thereafter sale deed with respect to the land of Gol Kothi would be executed in total consideration amount for Rs.6,45,001/-.

44. In view of the aforesaid, learned counsel for the respondents submits that the learned Trial Court, after careful scrutiny of the all the evidence, has been pleased to allow the suit in favour of the plaintiff/respondent 1st Set, so there is no merit in the present appeal and the same may be dismissed.

45. Having heard counsel for the parties and perused the lower court records, this Court from the evidence demonstrated hereinabove, it is established that there cannot be said to be consensus ad idem between the plaintiff-respondent 1st set and the original defendant no.1-appellant on the issue of the alleged oral agreement dated 23.11.1989 therefore, the story of oral evidence falls on the ground even according to three authoritative decisions



of the Hon'ble Apex Court on the issue of oral agreement to sell in the case of **Ouseph Varghese Vs. Joshef Aley and other, reported in 1969 (2) SCC 539**, paragraph-9 of the said judgment which is quoted hereinbelow:

“9. This takes us to the decree passed by the High Court in respect of plaint Item 1. This decree is purported to have been passed on the basis of the admission made by the defendant. It may be noted that the agreement pleaded by the defendant is wholly different from that pleaded by the plaintiff. They do not refer to the same transaction. The plaintiff did not at any stage accept the agreement pleaded by the defendant as true. The agreement pleaded by the plaintiff is said to have been entered into at the time of the execution of Exh. P-1 whereas the agreement put forward by the defendant is one that is said to have been arrived at just before the filing of the suit. The two are totally different agreements. The plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement



pleaded in the written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the First Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court in Prem Rai v. D.L.F. Housing and Construction (P) (Ltd.) and another, that it is well-settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not



maintainable.”

46. In the case of **Brij Mohan and others Vs. Sugra Begum and others, reported in 1990 (4) SCC 147**, paragraph nos. 20 and 22 of the said judgment which are quoted hereinbelow:

“20. We have given our careful consideration to the arguments advanced by learned counsel for the parties and have thoroughly perused the record. We agree with the contention of the learned counsel for the appellants to the extent that there is no requirement of law that an agreement or contract of sale of immovable property should only be in writing. However, in a case where the plaintiffs come forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the plaintiffs to prove that there was consensus ad idem between the parties for a concluded oral agreement for sale of immovable property. Whether there was such a concluded oral contract or not would be a question of fact to be



determined in the facts and circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties orally and a written agreement if any to be executed subsequently would only be a formal agreement incorporating such terms which had already been settled and concluded in the oral agreement.

22. In the oral evidence PW 1 Shri Brij Mohan, plaintiff 1 stated that in the meeting arranged in the third week of April 1979 Shri Ibrahim and Shri Arif Ali came to the plaintiff's shop and then they all went to the residence of defendant 1. Plaintiff 2 also accompanied them. The husband of defendant 1 Shri Yunus was also present at the meeting. He was introduced to them as the retired Law Secretary. Defendant 1 insisted for Rs 10,00,000 as consideration of the suit property and told the plaintiffs that she would obtain the permission from the ceiling



authority. Shri Brij Mohan then stated that they raised their offer to Rs 8,00,000 defendant 1 told them that she would think over for two or three days and inform them through Shri Arif Ali. Thereafter Shri Brij Mohan states regarding the bargain held on May 3, 1979. According to him he himself, plaintiff 2 and Mr Ibrahim Moosa went to Shri Arif Ali on May 3, 1979. Shri Arif Ali told them that defendant 1 was not willing to sell the suit property for less than Rs 10,00,000. And if they were willing to purchase for Rs 10,00,000 then they were welcome to do so at any time. Shri Brij Mohan then said that they agreed to purchase the suit property for Rs 10,00,000 and asked Shri Arif Ali to get the confirmation from defendant 1. Shri Arif Ali spoke to defendant 1 on telephone and then informed that defendant 1 was willing to sell the property to them for Rs 10,00,000. Shri Arif Ali then said that they would buy the stamps for agreement and fixed May 6, 1979 morning for a meeting with defendant 1. From a perusal of the



above evidence it would be abundantly clear that nothing was settled on May 3, 1979 except the fact that the plaintiffs had conveyed their approval to purchase the suit property for Rs 10,00,000 and Shri Arif Ali after speaking to defendant 1 was willing to sell the property for Rs 10,00,000. Admittedly at the same time a meeting was fixed with defendant 1 on the morning of May 6, 1979. According to the case set up by defendant 1 she had never agreed to obtain the permission from the Ceiling Authority. It would be important to note that no averment was made in the plaint that defendant 1 had agreed to obtain the permission from the Ceiling Authority in the meeting held in the third week of April 1979. However, Shri Brij Mohan plaintiff has sought to introduce this fact for the first time in his statement in the court that defendant 1 had told them in the meeting held in the third week of April 1979 that she would obtain the permission from the Ceiling Authority. We are unable to accept the above



statement of Shri Brij Mohan that in the meeting held in the third week of April 1979 itself defendant 1 had agreed that she would obtain the permission from the Ceiling Authority. It is an admitted position that till the meeting held in the third week of April 1979 the plaintiffs had offered Rs 8,00,000 and defendant 1 had told them that she would consider and communicate her views through Shri Arif Ali some time later. We agree with the conclusion of the High Court in this regard that without first determining the sale price, it was quite unlikely that the parties would have bargained as to who should obtain the clearance under the Urban Land Ceiling Act. It was known to the parties that until the clearance under the Urban Land Ceiling Act and the income tax clearance, the property will not be registered. The High Court was right in concluding that it is unbelievable that in the third week of April 1979 when still there was a wide gap of Rs 2,00,000 in the price payable for the suit building the parties would have



stipulated about the condition as to who should obtain the permission under the Urban Land Ceiling Act. It is further pertinent to mention that even in Exs. A-1 and A-2 which are drafts of agreement of sale there is no reference to the oral agreement said to have taken place on May 3, 1979. In case all the terms had already been concluded in the oral contract between the parties on May 3, 1979 and only a formal agreement was to be reduced in writing on May 6, 1979, then in that case there ought to have been a mention in the draft agreement Exs. A-1 and A-2 regarding the oral agreement of May 3, 1979. According to the statement of Shri Brij Mohan plaintiff 1 himself, nothing was discussed with defendant 1 herself and for that reason a further meeting was fixed at the house of defendant 1 in the morning of May 6, 1979. Shri Arif Ali may have been an income tax advocate looking after the income tax and wealth tax matters of defendant 1 but he was not a general power of attorney holder to negotiate



or settle any terms with regard to any transaction of immovable property belonging to defendant 1. It is further important to note that even in the agreement to sell Ex. B-4 dated June 22, 1979 between defendant 1 and defendants 3 and 4, no responsibility had been taken by defendant 1 for obtaining the clearance from the Urban Land Ceiling Authority. The High Court in these circumstances rightly believed the contention of defendant 1 that the agreement fell through because the plaintiffs insisted that defendant 1 should obtain the permission from the Urban Land Ceiling Authority while defendant 1 did not agree for the same. There was no clinching evidence to show that this stipulation was thought of by the parties on any day prior to May 6, 1979. Thus in the above circumstances when the parties were consciously negotiating about the bringing of no objection certificate from the Urban Land Ceiling Authority and the case put forward by defendant 1 in this regard has been believed



there is no question of applying the principle contained in Section 55 of the Transfer of Property Act. The general principle contained in Section 55 of the Transfer of Property Act regarding rights and liabilities of buyer and seller can only apply in the absence of a contract to the contrary and not in a case where the parties consciously negotiated but failed in respect of any term or condition, as a result of which the agreement itself could not be settled or concluded. Once it is held established in the present case that no agreement was finally concluded or settled on May 6, 1979 and negotiations failed and before this date it was never settled that defendant 1 would bring the no objection certificate from Urban Land Ceiling Authority, there is no question of applying general principles contained in Section 55 of the Transfer of Property Act.”

47. In the case of **K. Nanjappa Vs. R.A. Hameed**, reported in **2016(1) SCC 762**, paragraph nos. 21, 22 and 33 of the said judgment which are quoted hereinbelow:



“21. There is no dispute that even a decree for specific performance can be granted on the basis of oral contract. Lord Du Parcq in a case observed, while deciding a suit for specific performance, that an oral contract is valid, binding and enforceable. A decree for specific performance could be passed on the basis of oral agreement. This view of a Privy Council was followed by this Court in Kollipara Sriramulu v. T. Aswatha Narayana and held that an oral agreement with a reference to a future formal contract will not prevent a binding bargain between the parties.

22. However, in a case where the plaintiff comes forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement or a written contract, heavy burden lies on the plaintiff to prove that there was consensus ad idem between the parties for the concluded agreement for sale of immovable property. Whether there was such a concluded contract or



not would be a question of fact to be determined in the facts and circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties.

33. For all these reasons, this appeal is allowed and the impugned judgment passed by the High Court is set aside. Consequently, the judgment of the learned trial court is restored. Hence, the suit is liable to be dismissed.”

48. The story set forth of the oral agreement to sale dated 23.11.1989 was nothing but totally a false and concocted case in order to grab the valuable land and building of the original defendant-appellant. It appears that the defendant 1st party-appellants have received Rs. 4,17,700/- (Rs. Four Lacs Seventeen Thousand Seven Hundred) in total and pleaded that an amount of Rs. 88,000/- (Rs. Eighty Eight Thousand) due out of the total consideration amount of Rs. 5,06,250/- (Rs. Five Lacs Six Thousand Two Hundred Fifty) (4 Katha, 1 Dhur) @ Rs. 1,25,000/- per katha (Rs. One Lac Twenty Five Thousand) and the defendant 1st party-appellants have executed the sale



deed in favour of plaintiff-respondents for 04 Katha 01 Dhur in favour of the plaintiff-respondents and it appears that there was no oral agreement with respect to entire land in question i.e. 18 Kathas along with standing building thereon known as Gol Kothi.

49. The judgment and decree dated 26.07.2003 passed by the learned 4th Subordinate Judge, Bhagalpur, in Title Suit No. 242 of 1993 is set aside and accordingly, this appeal stands allowed.

50. Interlocutory application, if any, is pending, also stands disposed of.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	22.08.2024
Uploading Date	27.07.2025
Transmission Date	NA

