

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.55 of 2016

=====

Shashi Bhushan Singh S/o Late Madho Singh, R/o Village Anuan, P.S.- Karpi,
District- Jehanabad, now Arwal. at present Mohalla Raja Bazar, Salempur
Dumra, P.S.- Shashtri Nagar, P.O.- B.V. College, District- Patna Pin Code-
800014.

... .. Defendant no.1- Appellant- Appellant
Versus

1. Ramjanam Prasad Singh S/o Late Madho Singh, Resident of Village-
Anuan, P.S.- Karpi, District- Jehanabad, Now Arwal, at present Holding No.
583/A Chaudhary Hotel Road Mohalla Raja Bazar, P.S. Shastri Nagar, P.O.-
B.V. College, District- Patna, Pin code- 800024.
2. Sunil Kumar S/o Late Ramesh Chandra Singh R/o Village Mangurahi, P.S.-
Baroon, District- Aurangabad at present Superintendent Custom Central
Government of India Goshala Road Sanhau, P.S. Sanhau, P.O.- Khagaria
District- Khagaria, Pin code- 851204.

... .. Defendant no.2- respondent no.2-respondent no.2

=====

Appearance :

For the Appellant/s : Mr.Bal Bhushan Choudhary, Advocate
For the Respondent/s : Mr.Rajendra Prasad Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

6 16-10-2025 Heard Mr. Bal Bhushan Choudhary, learned counsel for
the appellant and Mr. Rajendra Prasad Singh, learned counsel
for the respondent No.1.

2. This Second Appeal has been preferred by the
defendant-appellant against the judgment of affirmance dated
07.11.2015 passed in Title Appeal No. 282 of 2007 by the



learned 6th Additional District Judge, Patna City, Patna, whereby the judgment and decree dated 27.11.2007 passed in Title Suit No. 63 of 1998 by the learned Execution Munsif, Patna, has been upheld by which the learned Trial Court decreed the suit in favour of plaintiff/respondent and dismissed the counter claim of the defendant no.1- appellant.

3. The respondent no.1 herein was the plaintiff before the learned Trial Court.

4. The plaintiff-responder had filed Title Suit No. 63 of 1998 seeking a decree for specific performance of contract and also for declaration that the judgment and decree passed in Title Suit No. 9 of 1997 in favour of the defendant-appellant was null and void. The plaintiff sought a direction upon defendant no.2 (respondent-defendant second party) to execute and register a sale deed in his favour. The learned Trial Court held that the suit was maintainable and that the defendant-appellant had obtained an *ex parte* decree in Title Suit No. 9 of 1997 by playing fraud upon defendant no.2 as well as upon the Court. It was further found that the plaintiff was in possession of the disputed holding on the basis of the agreement for sale and not as a tenant under defendant no.1. The learned Trial Court also held that the plaintiff is entitled to a decree as claimed on the



basis of the agreement for sale dated 12.11.1989 executed by defendant no.2 and defendant no.1 is not entitled to obtain any eviction decree against the plaintiff as claimed in his counter-claim and further held that the suit is not barred by law of limitation as well as the defendant no.1 has no right, title or interest over any part of the suit holding and that the plaintiff has valid cause of action to file the present suit.

5. Being aggrieved, the defendant-appellant filed Title Appeal No. 282 of 2007, which was dismissed and the judgment and decree was affirmed by the learned 6th Additional District Judge, Patna City *vide* judgment and decree dated 07.11.2015. Hence, the present Second Appeal has been filed by the defendant-appellant.

6. In order to gauge the matter in its correct perspective, it is necessary to briefly restate what the suit entails. The plaintiff-respondent filed Title Suit No. 63 of 1998 for specific performance of contract in respect of the land appertaining to Survey Plot No. 889, under Khata No. 265, Tauzi No. 5296, Thana No. 10, situated at Mauza-Raja Bazar, Pargana- Phulwari, P.S. Gardanibagh, District-Patna. The said land originally belonged to Bibi Ayasha Khatoon and others, who sold the southern portion measuring six decimals to defendant no.2



through a registered sale deed dated 19.02.1979 on payment of valuable consideration and put the purchaser in possession thereof. Subsequently, said Bibi Ayasha Khatoon and others sold a portion of the land of Survey Plot No. 889, which had earlier been purchased by defendant no.2, in favour of Sri Hari Saran Singh, the father-in-law of defendant no.2 and also delivered possession to the purchaser. Further case of the plaintiff-respondent is that defendant no.2 being in need of money for meeting his legal necessities advertised for sale of the Schedule-I property described in the plaint. The negotiation for sale was finalized with the plaintiff-respondent for a total consideration of Rs. 12,500/-. Since defendant no.2 urgently required the entire amount for the medical treatment of his father, the plaintiff-respondent paid the full consideration of Rs. 12,500/- to defendant no.2. Upon receipt of the entire consideration amount, defendant no.2 executed an agreement for sale dated 12.11.1989 in favour of the plaintiff-respondent.

7. Further case of the plaintiff is that the agreement to sell was drafted by the defendant-appellant, who is the full brother of the plaintiff, and after fully understanding the terms and conditions thereof, and upon receiving the entire consideration amount, the defendant/appellant made an endorsement on the



agreement to sell in presence of witnesses, namely Hari Sharan Singh, the father-in-law of defendant no.2, who also, in his own pen, endorsed that Sunil Kumar Singh had received the entire consideration amount in his presence. As per the terms of the agreement, defendant no.2 delivered possession of the Schedule-I property of the plaint to the plaintiff and allowed him to use the property as owner with absolute rights of possession, enjoyment and control thereof. All acts carried out on the property were performed by the plaintiff-respondent in his capacity as owner. According to the terms of the deed of agreement, the sale deed was to be executed and registered after the medical treatment of the father of defendant no.2. In the event of failure on the part of defendant no.2, the plaintiff was entitled to get the sale deed registered through the process of law. It is further pleaded that the sale deed with respect to the Schedule-I property could not be executed and registered at the relevant time because the father of defendant no.2 was seriously ailing and the plaintiff, being an employee in the subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, was required to obtain prior permission from his department before purchasing any property in his name. Under these circumstances, the agreement to sell dated 12.11.1989 was



executed.

8. It is further pleaded that the plaintiff-respondent no.1, along with the original agreement to sell dated 12.11.1989, applied for permission from his department, and such permission was accorded on 14.12.1989 by the Central Intelligence Office, S.I.B., Patna. A few days after the permission was granted, the plaintiff-respondent no.1 was transferred to Kohima (Nagaland) and was relieved from his posting. Due to the great distance, there was a gap in communication between the plaintiff-respondent no.1 and defendant no.2, on account of which the plaintiff could not obtain any information regarding the illness of defendant no.2 and his father nor did defendant no.2 provide any such information. The plaintiff further pleaded that he made several requests to defendant no.2 for the execution and registration of the sale deed, both personally and through registered/UPC postal communication, but the defendant no.2 evaded the same on one pretext or another. In accordance with the terms of the agreement, the plaintiff constructed a house on the suit land and began residing there with his family. Consequently, the plaintiff's name was mutated in the records of Patna Municipal Corporation (PMC) and he has been paying municipal taxes



thereon. The plaintiff also obtained electricity and water connections and transferred his ration card and gas connection to the suit property. After completing construction, the plaintiff performed the *Grih Pravesh* ceremony thereby confirming his right, title, interest and possession over the Schedule-I property under the agreement to sell dated 12.11.1989. It is further pleaded that the defendant-appellant has no connection or claim with regard to the right, title, interest or possession of any portion of the Schedule-I property. The plaintiff further contends that the defendant-appellant, being aware of the agreement to sell and having drafted it himself, started creating hindrance. On 14.07.1998, the plaintiff learnt that the defendant-appellant had obtained an *ex parte* decree from the Court of Munsif, 2nd Patna, in Title Suit No. 09 of 1997 against defendant no.2, without impleading the plaintiff as a party. The plaintiff immediately approached the Civil Court, Patna, and obtained certified copies of the relevant papers of Title Suit No. 09/1997. From the certified copy of the records, it transpired that the defendant-appellant committed fraud against both defendant no.2 and the plaintiff by obtaining the alleged *ex parte* decree on 06.09.1997. The defendant-appellant had falsely disclosed the address of defendant no.2 as West Lohanipur and in collusion



with the *Nazarat* Peon, showed service of summons upon him to the Court. It is further alleged that the defendant-appellant obtained the signature of defendant no.2 on blank papers and *Vakalatnama* in respect of the proceedings of T.S. No. 258/85 pending in the Court of Sub-Judge- X, Patna, wherein he was the lawyer for the plaintiff and then used those signatures to fabricate the appearance and written statement of defendant no.2 in T.S. No. 09/97 without the knowledge or consent of defendant no.2. On subsequent dates, the defendant-appellant failed to appear and got the suit fixed for *ex parte* hearing and obtained an *ex parte* decree in his favour. The plaintiff-respondent no.1 further submits that he was always ready and willing to perform his part of the contract and remained willing to complete the registration of the sale deed, but the defendant no.2 refused to perform his part of the contract under the agreement. Further, it is pleaded that the defendant/appellant has neither acquired any right, title, or interest in the suit property nor has any *locus standi* to institute the suit and the alleged decree is not binding either on the plaintiff or on defendant/respondent no.2.

9. On summons, defendant no.2/respondent no.2 appeared and filed his written statement. He admitted all the averments of



the plaint. He further stated that the defendant-appellant, who is the plaintiff's own brother, drafted the agreement dated 12-11-1989 in his own handwriting and affixed his signature therein, representing himself as the legal practitioner. In accordance with the terms of the agreement, defendant no.2 placed the plaintiff in possession of the lands mentioned in the agreement for sale and also authorized him to manage matters relating to the remaining portion of the property as defendant no.2 primarily resides elsewhere due to his official duties and the care of his ailing father. It is further stated that defendant no.2 was always ready and willing to execute and register the requisite sale deed in favour of the plaintiff; however, owing to unavoidable circumstances arising from his father's illness and lack of time due to official duties, the sale deed could not be executed despite the plaintiff having obtained the necessary permission from his department. Further case of defendant-respondent No. 2 is that he has never avoided his obligations under the agreement and remains ready and willing to perform his part of the contract. It is admitted that the plaintiff-respondent constructed a house on a portion of the land measuring three decimals and is residing there with his family. He also got his name recorded in the Patna Municipal



Corporation (PMC) in accordance with the terms of the agreement and has obtained an electricity connection for the premises. It is further pleaded that the defendant-appellant, who is the brother of the plaintiff and had earlier acted as the plaintiff's lawyer in Title Suit No. 258/85, was well aware of the agreement to sell executed in favour of the plaintiff by this defendant, as he was the scribe of the said agreement. Taking advantage of the defendant's lack of time and without his permission, the defendant-appellant received the original deed of agreement from the court of the Sub-Judge I, Patna, and retained it in his possession. Having become aware of this, defendant-respondent No.2 lodged a complaint before the learned Trial Court and also before the Bar Council alleging professional misconduct on the part of the said lawyer. It is further pleaded that Title Suit No. 258/85 was decreed by judgment and decree dated 16.03.1991. In that judgment, the learned Trial Court found that despite the mischief involved, all defendants in that suit admitted that the plaintiff was entitled to recover possession of the suit land, which included six decimals belonging to defendant No.2. Defendant-respondent No. 2 also states that the defendant-appellant filed a frivolous Title Suit No. 09/97 in the Court of Munsif 2nd, Patna, using a fictitious



address purportedly belonging to this defendant. Upon verification of the records of that suit, it was discovered that the plaintiff of the said suit, who is a practicing lawyer, committed fraud and deception by falsely showing this defendant's address as being in Lohanipur West, Patna. In collusion with the *Nazarat* Peon, the plaintiff attempted to show that summon was served even by forging the defendant's signature. Further, it was revealed that the said Shashi Bhusan Singh filed a forged and fictitious '*Vakalatnama*' and a fabricated written statement in the name of defendant no. 2. All these acts, including the alleged receipt of summons, appearance in Court and filing of a written statement were fraudulent and carried out by defendant-appellant, who engaged a lawyer of his own choice and intentionally failed to pursue the case, thereby obtaining an *ex parte* decree against defendant no. 2 in Title Suit No. 09/97. This *ex parte* decree is void *ab initio* and does not create any legal rights or interests in favor of Shashi Bhusan Singh; hence, it is not binding on defendant no. 2. At the relevant time in 1997, this defendant was posted in Gaya and resided there with his family and therefore, was not residing at Lohanipur West, Patna. He never received any summons in connection with Title Suit No. 09/97 and never appeared in the proceedings nor filed any



written statement. The original deed of agreement to sell executed by this defendant in favour of the plaintiff never came into the possession of the defendant-appellant. All allegations and assertions made by the defendant-appellant in that suit against this defendant are categorically false, baseless and denied. It is further stated that defendant no. 2 never received any payment whatsoever from Shashi Bhushan Singh (appellant) nor did the said Shashi Bhushan Singh have any involvement in the transaction except that he acted as the scribe of the agreement to sell. He only learnt about the transaction because he worked as a lawyer in Title Suit No. 258/85. In conclusion, it is asserted that the plaintiff-respondent is entitled to a decree of specific performance against defendant no. 2.

10. The defendant-appellant has appeared and filed his written statement-cum-counter claim, wherein he pleads that the plaintiff-respondent has no *locus standi* to file the present suit against the defendant-appellant. The defendant-appellant submits that the suit is based on a deed of agreement for sale dated 12-11-1989 allegedly executed by defendant no. 2/respondent no. 2, which creates a right only against the vendor. Consequently, the plaintiff-respondent cannot assert any interest in the property against any other person until his suit for



specific performance is decreed. Further, the defendant-appellant pleads that the plaint erroneously combines two distinct causes of action against two separate parties: one arising on 12-11-1989 involving defendant no. 2/respondent No. 2 and the another on 14-07-1998 based on the decree in Title Suit No. 09/97 against the defendant no.2. This combination is barred under law and hit by the law of limitation. The deed of agreement for sale is dated 12-11-1989 and the suit was filed by the plaintiff on 28th July 1998 i.e., after a lapse of 8 years, 8 months and 16 days which is time-barred and the limitation period for filing a suit for specific performance of contract is only three years. Therefore, the present suit is barred by the statutory limitation period. It is further pleaded that the delay in filing the suit is attributable only to the plaintiff and not to defendant no. 2. Consequently, the suit is liable to be dismissed on this ground alone. Further, the decree in Title Suit No. 09/97 is against defendant no. 2 only and does not affect the plaintiff, who was neither a party nor impleaded on either side. The plaintiff has not acquired any right, title or interest in the property by virtue of the alleged agreement for sale. Therefore, the plaintiff has no *locus standi* to seek any relief from the Court against the defendant-appellant. It is further submitted that the



plaintiff has no connection with defendant no. 2 nor does the plaintiff hold possession through him under the alleged agreement for sale. The plaintiff's claim of having constructed a building on the suit premises is entirely false, fabricated and a concocted story intended only to unlawfully misappropriate the monthly rent payable to the defendant-appellant. The land in question, measuring six decimals of S.P. Plot No. 889 was acquired by the defendant-appellant from his own income. The entire construction on the land was carried out by him between 1992 and 1997. The defendant-appellant has also been regularly paying all government taxes related to the property and has been residing permanently on the southern side of the plot for a long time. All allegations made by the plaintiff in the plaint are denied by the defendant-appellant.

11. The further case of the defendant-appellant is that the plaintiff is his elder brother, who took the premises in-question on a monthly rent of Rs. 2,000/- starting from 01-10-1997 and granted receipt dated 03-07-1997. In this receipt, the plaintiff acknowledged that the entire consideration amount had been paid by the defendant-appellant himself, as stated in the alleged deed of agreement. The plaintiff has been residing in the defendant-appellant's premises as a tenant. If the plaintiff has



obtained any receipt from the Patna Municipal Corporation (PMC), such receipt was procured collusively and without the knowledge or consent of the defendant-appellant. Further, as part of the counter-claim, it is stated that the plaintiff occupies the suit premises as a month-to-month tenant according to the English calendar month. Consequently, the rent due for the suit premises amounts to Rs. 36,000/- for the period from 01-10-1997 to March, 1999. The defendant-appellant has not received any rent in respect of the monthly amount of Rs. 30,000/- which was adjusted against expenses incurred for fixing the door, windows, grills and other fittings, the cost of which was paid by the defendant-appellant based on the commitment made at the time of letting out the premises. Therefore, a rent arrear of Rs. 6,000/- remains due and payable by the plaintiff. The plaintiff has become a defaulter under the law and is liable to eviction under Section 11(a) of the Bihar Buildings (Lease, Rent and Eviction) Control Act. (B.B.C. Act). Further, the plaintiff has committed a breach of contract by filing the present suit. The defendant-appellant claims this counter-claim under Order VIII, Rule 6A of the Civil Procedure Code (C.P.C) to avoid multiplicity of litigation. Accordingly, the defendant-appellant prays for relief in the form of eviction of



the plaintiff/respondent from the suit premises as described in Schedule-1 of the plaint and a decree for Rs. 6,000/- as arrears of rent in favour of the defendant-appellant against the plaintiff.

12. In response to the counter-claim filed by the defendant, the plaintiff-responder has submitted a written statement denying all allegations made in the defendant-appellant's written statement-cum-counter claim. The plaintiff asserts that these allegations are entirely false, incorrect and therefore, not maintainable. Further, it is completely untrue that the plaintiff, Ranjan Prasad Singh, is residing in the suit premises as a tenant of the defendant-appellant. In fact, the suit premises were handed over to the plaintiff by defendant No. 2, the original landlord, pursuant to an agreement for sale dated 12-11-1989. The defendant-appellant, being the younger brother, was fully aware of the legal procedures and had even drafted the aforementioned agreement for sale. Consequently, the defendant-appellant has no interest or concern of any kind in the suit property. The defendant-appellant's claim of ownership over the suit premises is wholly baseless and contrary to the facts and the plaintiff accordingly denies it. Since no landlord-tenant relationship has ever existed between the plaintiff and the defendant-appellant, the provisions of the B.B.C. Act have no



applicability in this case. The plaintiff is in lawful possession of the premises and is not liable to eviction. The plaintiff denies the defendant's allegations made in the counter claim and further states that the written statement-cum-counter claim is false, fabricated and without merit. The alleged rent amount claimed by the defendant is imaginary and incorrect. The defendant-appellant has no cause of action to file the counter claim against the plaintiff and therefore, the counter claim is not maintainable and should be dismissed outright.

13. The learned Trial Court, after considering the pleadings, evidence adduced by the parties and materials on record, decreed the suit and dismissed the counter claim filed by the defendant-appellant, which was challenged by the defendant-appellant in Title Appeal No. 282 of 2007.

14. After hearing the parties and considering the materials on record, the learned 6th Additional District Judge, Patna City (Patna), dismissed the appeal *vide* judgment and decree dated 7.11.2015, thereby affirming the judgment and decree of the learned Trial Court. Aggrieved by the said judgment and decree of the learned Court of Appeal, the instant Second Appeal has been filed.

15. After hearing the submissions made on behalf of the



parties and on perusal of the materials on record, including the judgment of the learned Courts below, it appears that the learned Court of Appeal below, being the final court of facts, after considering the pleadings of the parties and the evidence adduced by them, came to a clear finding that the plaintiff/respondent has valid right and possession over the suit land by virtue of the agreement for sale dated 12.11.1989 and after execution of the sale deed, he became the absolute owner of the disputed land. The title will be transferred to the plaintiff after the execution of the sale deed by defendant no. 2. The learned Appellate Court further held that upon perusal of Ext. 6, the deed of agreement for sale, it is evident that this Exhibit was drafted by the younger brother of the plaintiff, namely Sashi Bhushan Singh, the defendant-appellant. Defendant No. 2 has asserted in Ext. 6 that after receiving the consideration amount of Rs. 12,500/- from Ramjanam Singh (plaintiff), he executed the deed of agreement for sale in respect of 3 decimals out of 6 decimals of land and put the plaintiff in possession of the suit land and allowed the plaintiff to utilize the same as the owner of the suit land. It is also mentioned that the plaintiff has the liberty to get the execution of the sale deed after the death of his father. Therefore, it is clear from perusal of Ext. 6 that the deed of



agreement for sale was executed by defendant No. 2 in favour of the plaintiff-respondent on 12.11.1989 and that defendant No. 2 received the consideration money and that defendant No. 2/respondent No. 2 put the plaintiff-respondent in possession of the land as mentioned in the deed of agreement for sale. The defendant-appellant (D.W.1), in his deposition at paragraph 5, stated that he paid the consideration money on 12.11.1989 and kept the said money at his home. He admitted that he has not been an income tax payer since 1989 till date. Further, he asserted that he is unable to produce any receipt or document to prove the payment of the said consideration amount. This witness also admitted in paragraph 20 that he drafted the deed of agreement for sale (Ext. 6) on 12.11.1989. However, defendant no. 2, in his written statement, has admitted the fact that the plaintiff paid the consideration amount of Rs. 12,500/-. Ext. 6 also clearly shows that defendant no. 2 put the plaintiff in possession of the land as mentioned in the deed of agreement for sale. Ext. A-1 is the receipt filed and proved on behalf of the defendant-appellant alleged to be a rent receipt for Rs. 2,000/- dated 03-07-1997 as monthly house rent. The plaintiff has denied that the signature of R.J.P. Singh on the receipt is his. Moreover, the receipt appears to be on a plain sheet of paper



rather than on stamp paper or full scape (non stamped) paper. The learned Appellate Court, upon comparing the plaintiff's signature on the alleged receipt dated 03-07-1997 (Ext. A-1) with the signature of the plaintiff on the verification of the plaint in Title Suit No. 63/98 and on Ext. 1/A *Vakalatnama*, found that the signatures do not match. The plaintiff has denied and not admitted his signature on Ext. A-1. The defendant-appellant having taken the risk of not examining an expert witness despite the opportunity to do so, cannot now challenge the judgment under appeal on the ground of not affording an opportunity to examine an expert. Therefore, the learned Appellate Court held that Ext. A-1 was not executed by the plaintiff/respondent. Exts. 2 and 2/e are municipal tax receipts, which demonstrate that the plaintiff-respondent, Ram Janam Singh, paid municipal tax for holding No. 583/A from 1996 to 2000. It is a settled principle of law that an agreement for sale does not confer title. However, this document supports the fact that possession of the property under the agreement for sale was delivered to the plaintiff. The recital of the agreement for sale clearly shows that possession of the land, in question, was delivered to the plaintiff. Exhibits 2 to 2/e, as well as Exts. 8 to 8/a (electricity bills) establish the plaintiff's possession over the suit land.



16. The learned Appellate Court further held that upon perusal of the records, it transpires from the order sheet dated 20-01-2005 that the affidavit of evidence of defendant no. 2 was filed and he was partly examined on that date. The case was then fixed for further cross-examination on 22-01-2005, and on that date defendant no. 2 was cross-examined by the plaintiff and partly examined by the defendant-appellant. The case was subsequently adjourned. On 05-03-2005, defendant no. 2 was again partly examined by the defendant-appellant, and the suit was fixed for further cross-examination on 11-03-2005. On that date, the defendant-appellant filed a petition to close the evidence of defendant no. 2. It is further observed that the defendant-appellant had the opportunity to cross-examine defendant no. 2 but he deliberately delayed the proceedings. In view of these facts, it cannot be said that defendant no. 2 absconded from the witness box or that his written statement could not be considered. Defendant no. 2 appeared, filed his written statement gave evidence in court and was cross-examined at length by the plaintiff. Despite two dates scheduled for cross-examination, the defendant-appellant could not conclude the process, and the learned court below closed the evidence on the prayer of defendant no. 1. Defendant no. 2



admitted the plaintiff's case, including the fact that Ext. 6, the deed of agreement for sale was executed by defendant no. 2 in favour of the plaintiff. It is also admitted that the said Ext. 6 was drafted by defendant no. 1. Defendant no. 2 admitted the entire facts of the plaint in his written statement. It is a well-settled principle of law that admitted facts do not require further proof. Therefore, it is clear that the appellant had personal knowledge of the terms settled in the agreement for sale between defendant no. 2 and the plaintiff. The transaction was concluded in presence of the defendant-appellant. Accordingly, the defendant-appellant cannot challenge the validity of the deed of agreement for sale or the payment of consideration money. In light of the above facts, the written statement filed by defendant no. 2 cannot be discarded and must be taken into account in resolving the dispute between the parties. Further, the alleged rent receipt, Ext. A-1, was not signed by the plaintiff and is not a genuine rent receipt. It appears to have been fabricated by defendant no. 1 for reasons best known to him. There is no landlord-tenant relationship between the plaintiff and the defendant-appellant with respect to the alleged suit premises. The learned lower Appellate Court rightly held that the defendant-appellant is not entitled to an eviction decree against the plaintiff as claimed in



the counter claim. Accordingly, dismissed the appeal filed by the defendant.

17. Considering the materials on record and the submissions of the learned counsel for the parties, it appears that both the Courts below have concurrently held that the deed of agreement for sale (Ext. 6) was executed by defendant no. 2 in favour of the plaintiff and that the entire consideration money was paid at the time of execution of the agreement for sale in presence of witnesses, namely Hari Saran Singh, the father-in-law of defendant no. 2, who endorsed that Sunil Kumar Singh received the entire consideration money in his presence. It is also an admitted fact that the defendant-appellant, who drafted the deed of agreement is a lawyer. It is further admitted that the defendant-appellant is the full brother of the plaintiff. The defendant-appellant failed to prove his counter-claim that 6 decimals of land of S.P. Plot No. 889 were acquired by him from his own income and that the entire construction work was carried out by him. The plaintiff is the elder brother of the defendant-appellant and as per the case of defendant-appellant, his elder brother (plaintiff) had taken the premises in-question on a monthly rent of Rs. 2,000/- from 01-10-1997, as evidenced by the receipt dated 03-07-1987, in which the plaintiff



acknowledged the payment of the entire consideration money by the defendant-appellant himself. The defendant-appellant produced Ext. D, which is a receipt of Patna Municipal Corporation standing in the name of Shanti Bhusan Singh related to house No. 583 dated 21-09-2000. However, the disputed house of the plaintiff, bearing house No. 583/A, does not help the defendant-appellant in establishing possession of the suit premises. Both the Courts have concurrently held that document Ext. A-1 was not signed by the plaintiff and is not a valid rent receipt. A comparison of the plaintiff's signatures on the verification of the plaint in Title Suit No. 63/98 and on Ext. 1/A '*Vakalatnama*' clearly shows that the signatures on Ext. A-1 do not match from those of the plaintiff-respondent no. 1. Consequently, both Courts have held that Ext. A-1 was not executed by the plaintiff. Moreover, defendant no. 2 fully supported the case of the plaintiff and confirmed the execution of the deed of agreement for sale (Ext. 6) in favour of the plaintiff on payment of entire consideration money of Rs. 12,500 by the plaintiff to the defendant No.2.

18. Considering the facts and findings of both the Courts below, I am not inclined to interfere with the concurrent finding of the learned Courts below. There is no question of law



inasmuch as no substantial question of law is involved in this case.

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

20. Pending interlocutory application(s), if any, shall stand disposed of.

(Khatim Reza, J)

shyambihari/-

U			
---	--	--	--

