

Bechan Purbey, aged about 49 years, Son of Late Kari Purbey Resident of Village- Madhepur, Post Office- Madhepur, Police Station- Madhepur, District- Madhubani.

Versus

- Respondent/s

For the Petitioner/s : Mr. Manoj Kumar, Advocate
For the Respondent/s : Mr. Yogendra Kumar, Advocate

23 19-12-2025 This civil revision application is filed
under Section 115 of the Code of Civil Procedure, 1908
(hereinafter referred as ‘CPC’), for setting aside the order dated
11.07.2019, passed in Title Suit No. 41 of 2017 by learned
Subordinate Judge, Jhanjharpur-III, whereby and where under
learned Subordinate judge has rejected the petition filed on



behalf of defendant no.5/petitioner for dismissal of the aforesaid suit.

2. Heard both the learned counsel for the petitioner and the opposite party 1st set.

3. The case of the petitioner, in brief, is that the Opposite Party 1st Set filed Title Suit No. 41 of 2017, originally in the Court of learned Subordinate Judge, Senior Division, Jhanjharpur, and currently pending in the Court of learned Subordinate Judge-III, Jhanjharpur, seeking a decree for specific performance of an alleged Agreement for Sale in respect of the suit premises. The subject matter of the suit is a house constructed on 15 dhur of land, appertaining to Khata No. 636 (Old) and 2791 (New), Plot No. 7752 and 7750 (Old) and 11474 (New), situated at Mauza Madhepur, Police Station and Anchal Madhepur, District-Madhubani, bounded in the North by Sushil Mandal (Son of Baldeo Mandal), South by Road, East by Surya Narayan Purbey, and West by Dukhan Mandal (Sebait Radha Krishna Mandir). The specific case of the petitioner is that the said property originally belonged to the Opposite Party 2nd Set (Opposite Parties No. 4 to 7), who had acquired the property in four equal parts through four separate registered sale deeds (marked as Annexure 1) dated 03.08.1992, totaling an area of 15



dhur. Prior to the dispute, half of the property (southern side of P.C.C. road) was under the tenancy of the petitioner, while the remaining half (eastern side) was under the tenancy of the Opposite Party 1st Set. Subsequently, the Opposite Party 2nd Set expressed their intention to sell the entire property, and upon finalization of negotiations, the petitioner purchased the same for lawful consideration via a registered sale deed (marked as Annexure 2) dated 14.02.2017. Following the purchase, the petitioner filed Eviction Suit No. 01 of 2017 in the Court of learned Munsif, Jhanjharpur, to evict the Opposite Party 1st Set from the tenanted portion. The petitioner asserts that upon learning of the eviction proceedings, the Opposite Party 1st Set, with *mala fide* design and by falsely alleging an oral Agreement for Sale with the Opposite Party 2nd Set, filed the aforesaid Title Suit No. 41 of 2017.

4. Learned counsel for the petitioner submits that a bare perusal of the plaint in the aforesaid suit reveals that the allegations regarding the Agreement for Sale are completely vague. He vehemently submits that the plaintiffs (Opposite Party 1st Set) failed to file any document whatsoever to substantiate the basis of their suit, thereby failing to comply with the mandatory provisions of Order VII Rule 14 of the CPC.



It is further submitted that upon receiving notice, the petitioner, along with the Defendant 1st Set/Opposite Party 2nd Set, filed a joint written statement categorically stating that there had never been any Agreement for Sale between the plaintiffs and the Defendant 1st Set, nor was any advance money received. Learned counsel for the petitioner emphasizes that Defendant 1st Set lawfully sold the property to the petitioner for valuable consideration through a registered sale deed, thereby vesting a valid title in the petitioner. Consequently, there was no occasion or cause of action for the plaintiffs to file the suit.

4.i. Learned counsel for the petitioner draws the attention of this Court to the certified copy of the order sheet of Title Suit No. 41 of 2017, marked as Annexure 4, to contend that the learned trial Court admitted the suit in a completely mechanical manner. Further, he argued that the learned trial Court failed to examine the plaint or require any basis for the suit before admission. It is submitted that in the absence of compliance with Order VII Rule 14 CPC and the non-disclosure of a valid cause of action, the plaint was liable to be rejected at the threshold and the suit ought not to have been admitted. It is further submitted that in light of these defects, the petitioner filed a petition on 20.02.2018 and a supplementary petition on



15.03.2018, copies of which are annexed as Annexure 5 and 5/A, specifically praying that the suit is not fit to proceed given the facts and circumstances. Learned counsel for the petitioner points out that although the plaintiffs filed rejoinders on 26.04.2018, marked as Annexure 6 and 6/A, they failed to provide any lawful reason or justification as to how the suit is maintainable or why the plaint is not liable to be rejected.

4.ii. Additionally, the learned counsel for the petitioner submits that it was explicitly admitted during arguments that no written Agreement for Sale exists between the plaintiffs/Opposite Party 1st set and the Defendant 1st set/Opposite Party 2nd set. He submits that to cover this lacuna, the plaintiffs relied on an audio recording of an alleged conversation between Plaintiff No. 1/Opposite Party No. 1 and Defendant No. 2/Opposite Party No. 5, filed belatedly on 06.12.2018 and displayed on 11.07.2019. It is vehemently argued that as this electronic material was neither pleaded nor produced at the time of presenting the plaint, its admission directly contravenes Order VII Rule 14 of the Code of Civil Procedure. He further challenges the order dated 11.07.2019, wherein the learned trial Court, upon listening to the recording regarding an alleged sale negotiation and an advance of Rs. 5



Lakhs, erroneously held that the voices tallied. The petitioner challenges the Court's reasoning that electronic voice evidence is equivalent to documentary evidence simply because "*voice can be understood by hearing*". It is submitted that the Court committed a grave error in allowing the suit to proceed based on material that was wholly absent from the pleadings and never annexed to the plaint.

4.iii. Furthermore, it is submitted that the learned court failed to appreciate that the suit property is not a single entity but comprises four distinct parts, as evidenced by the separate sale deeds in Annexure-1 (Series). It is argued that an alleged conversation with a single individual, Defendant No. 2/Opposite Party No. 5, cannot legally constitute a binding Agreement for Sale for the entire property, given that each member of the Defendant 1st set/Opposite Party 2nd set holds independent title. Consequently, he pleads that the rejection of the petitioner's petition was illegal, and the plaint ought to have been rejected.

5. Learned counsel for the Opposite Party 1st set submits that it is apparent that the plaintiff/Opposite Party 1st set who happened to be a tenant over half portion of the suit land had entered into an oral agreement with the Defendant 1st



Party/Opposite Party 2nd set on 17.06.2016 for purchase of the entire suit land for a total consideration of Rs. 60 Lakhs and the deal was finalized on 17.06.2016 in pursuance whereof the plaintiffs-Opposite Party 1st set paid a sum of Rs. 5 Lakhs to the Defendant 1st Party/Opposite Party 2nd set in presence of witnesses and it was orally agreed by Defendant 1st Party/Opposite Party 1st set that he would execute a sale deed with respect to the suit land and register the same in the month of March, 2017 after accepting the balance consideration money.

5.i. He further submits that the plaintiffs/Opposite Party 1st set in a follow up action made several requests and showed their readiness and willingness to make payment of the balance consideration money and requested the Defendant 1st set/Opposite Party 2nd set, for executing and registering the sale deed in terms of the said agreement. Learned Counsel for the Opposite Party 1st set further submits that Plaintiffs/Opposite Party 1st set requested the Opposite Party 2nd set by making repeated calls on 24.11.2016 through his mobile for executing and registering the sale deed after accepting the balance consideration money and lastly the Opposite Party 1st set learnt on 15.02.2017 that the



Opposite Party 2nd set executed and registered the sale deed with respect to the suit land in favour of Defendant 2nd set/petitioner. Additionally, the counsel for the Opposite Party 1st set alleges that the petitioner was well aware of the Agreement to Sale between the Opposite Party 1st set and the Opposite Party 2nd set, yet the petitioner purchased the suit land from the Opposite Party 2nd set collusively.

5.ii. The learned counsel for the Opposite Party 1st set submits that the ground on which the petitioner in the present case filed an application for rejecting the plaint on 20.02.2018 is that there is no registered agreement to sale with respect to the suit property, and hence the suit was not maintainable.

6. This Court has meticulously heard both the parties and perused the materials available on record, it is well settled law that for deciding an application under Order VII Rule 11 CPC, the relevant facts that need to be looked at are the averments made in the plaint because for the purpose of deciding an application under Clause (a) to (d) of Rule 11, the averments made in the plaint are germane. The pleas taken by the defendant 2nd set/petitioner in the written statement would be wholly irrelevant at that stage vide law laid down in the case of



Saleem Bhai vs State of Maharashtra, reported in **2003 (1) SCC 557** (Para 9; Pg. 560).

7. Further, in the case of *Hardesh Ores (P) Ltd Vs. Hede and Company*, reported in **2007 (5) SCC 614**, the Hon'ble Apex Court has held that the plaint has to be construed as it stands without addition or subtraction of words. If the allegation in the plaint, *prima facie*, shows a cause of action, the court cannot embark upon a query whether the allegations are true in fact at the stage of Order 7 Rule 11 application.

8. As regards to the issue of maintainability of the suit for specific performance of a contract on the basis of an oral agreement, 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 a plaintiff comes forward to seek a decree for specific performance of a contract of sale of the immovable property on the basis of an oral agreement alone, a heavy burden lies on the plaintiff to prove *consensus ad idem* between the parties of a concluded oral agreement for the sale of immovable property. Whether there was such and concluded oral contract would be a question of fact to be determined on the facts and circumstances of each individual case. The aforesaid principle has been laid down in the case of *Brij Mohan vs*



Sugra Begum reported in ***1990(4)SCC 147*** (Para 20).

9. Contract for sale has been defined in Section 54 of the Transfer of Property Act which says that “*a contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties*”. It does not of itself create any interest in or charge on such property. Since a contract for sale does not create any interest in or charge on such property, the ownership remains with the seller and hence, it does not require to be written on paper and it can be oral agreement as well.

10. In the present case, it has been specifically pleaded that there was an oral agreement and payment of part consideration money in pursuance of the said agreement was also done in good faith and hence, the only thing that is required by the plaintiff was to prove the same by leading evidence in support thereof vide law laid down in the case of ***Brij Mohan (supra)***. The proof of such pleading can only be done during trial and not at the threshold of the suit more so when an oral agreement for specific performance for sale of immovable property is permissible in the eve of law.

11. Opposite party 1st set in paragraph 23 of the plaint have specifically averred that on 24.11.2016, they through



his mobile phone, several times requested the Opposite party 2nd set to accept the balance consideration money and execute the sale deed whereupon the Opposite party 2nd set assured to execute the same and stated that to avoid future dispute, he is taking steps for removal of the goods kept by petitioner on the suit land. From the impugned order, it is evident that the Opposite party 1st set has filed the DVD cassette along with the other evidence as per the list in terms of the directions of the learned Subordinate Judge- III, Jhanjharpur Court pursuant to Order VII Rule 14 of the Code of Civil Procedure, on 06.12.2018, and a copy of such list was also handed over to the Opposite party 2nd set.

12. However, this Court finds itself unable to sustain the procedure adopted by the learned Court below regarding the admissibility and appreciation of the said electronic evidence. While it is true that Sections 65A and 65B of the Indian Evidence Act, 1872 recognize the admissibility of electronic records, such evidence must be proved strictly in accordance with the law in trial.

13. Accordingly, the Court must determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents



relied upon, or whether the suit is barred by any law.

14. In the present case, if the statements in the plaint are taken to be true, it cannot be said that it does not disclose a cause of action, and the plaint shall be rejected. This is a matter of trial, the result of which would depend upon the evidence adduced by the plaintiff. At this stage, this Court is not concerned with the correctness of the averments, except to state that the plaintiff has to discharge the burden of proving his case. Insofar as the application under Order VII Rule 11 of CPC is concerned, the court will proceed only that far, to examine whether the plaint discloses a cause of action and no further. The learned trial Court has rejected the application under Order VII Rule 11 CPC, considering the facts and circumstances of the case.

15. The genuineness, validity and binding nature of the document will have to be adjudicated at the appropriate stage after the parties adduce oral and documentary evidence. In view of the aforesaid facts and circumstances and the law discussed above, this Court does not find any valid ground for interference in the impugned order of the learned trial Court. This Civil Revision is devoid of merit and is liable to be dismissed.



16. Accordingly, it is hereby directed that the order in the present Civil Revision will not affect the merits of the Title Suit no. 41 of 2017 and the proceedings before the learned Subordinate Judge, Jhanjharpur-III.

17. This Civil Revision is, accordingly, dismissed.

(Ramesh Chand Malviya, J)

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