

D/L- 29
05/08/2025
Ct. No.-6
Aritra

C.O. 2624 of 2025

Sahana Haque
Vs.
Mohammad Saukat Hosssain @
Md. Saukat Hossain

Mr. Arup Krishna Das
Mr. Abdus Salam
Mr. Rajarshi Ghosh

....for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.13 dated April 23, 2025 passed by the learned Civil Judge (Sr. Div.), 2nd Additional Court, Burdwan, District-Purba Burdwan in Title Suit No.202 of 2023.

By the order impugned, the application under Order 7 Rule 11 of the Code of Civil Procedure stood rejected.

The learned advocate appearing for the petitioner submits that the opposite party filed the suit for specific performance of an oral agreement. He submits that Section 17 of the Registration Act, 1908 states that an agreement which purports or operates to create, declare assign, limit, extinguish, whether in present or in future any right, title, interest of the value of one hundred rupees or upwards in relation to an immovable property has to be by a registered instrument. He, therefore, submits that specific performance of an oral agreement is

barred by the provisions of Section 17 of the Registration Act, 1908.

The opposite party herein filed a suit for specific performance of an oral agreement of March 30, 2021 and for other consequential reliefs. In such a suit the petitioner filed an application under Order 7 Rule 11 of the Code of Civil Procedure which stood rejected by the impugned order.

Section 49 of the Registration Act, 1908 deals with the effects of non-registration of document which is required to be registered. It states that no document required by Section 17 or by any provision of the Transfer of Property Act, to be registered shall affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power unless it has been registered. Proviso thereto states that an unregistered document affecting immovable property and required by the Registration Act or the Transfer of Property Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act or as evidence of collateral transaction not required to be effected by registered document.

Thus, proviso to Section 49 makes it abundantly clear that an unregistered agreement can be received as an evidence of a contract.

This Court is therefore, of the considered view that the specific performance of an oral agreement cannot be said to be barred by the provisions of Section 17 of the Registration Act, 1908.

The learned trial judge was right in holding that specific performance can be granted on the basis of an oral contract if the same is valid, binding and enforceable.

For such reason, this Court is not inclined to interfere with such order impugned.

With the aforesaid observation, CO 2624 of 2025 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)