

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 44 of 2022

Nimai Ghosh.....

Appellant

Versus

1. Anil Singh
2. Kundan Verma
3. Miss. Namita Ghosh
4. Sabita Ghosh @ Sabita Dey.....

Respondents

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Coram: Hon'ble Mr. Justice Ananda Sen

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For the Appellants : Mr. Manjul Prasad, Sr. Advocate
Mr. A.K.Sahani, Advocate
Mr. Babban Prasad, Advocate

For the Respondents : -----

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5/30.06.2022 This appeal is being heard and disposed of at the stage of U/o 41 Rule 11 of the Code of Civil Procedure.

2. The appellant, herein, who was the defendant, challenges the judgment and decree passed by the Principal District & Sessions Judge, East Singhbhum at Jamshedpur in Civil Appeal No. 110 of 2020 (F.A. No. 51 of 1999), by which the first appellate court dismissed the appeal of this appellant upholding the judgment and decree passed by the Subordinate Judge-I, Jamshedpur in Title Suit No. 35 of 1996.

3. A suit was filed by the plaintiff for a decree directing the appellant, herein (Defendant No. 1) to execute and register the sale deed in favour of the plaintiff in respect of suit land on accepting the balance amount of Rs.50,000/-, the same being the agreed purchase value of the land less the money already received by the defendant from time to time. An alternative prayer was made to refund the earnest money alongwith pendente lite interest @ 12% Per Annum. A prayer was also made to restrain the defendant for making any construction over the property in question.

4. The brief fact is that the plaintiff and the defendant no.1 entered into an agreement for sell of the land in question, for which the plaintiff had paid the earnest money as an advance to the defendant. It is the case of the plaintiff that in spite of receiving consideration money, in terms of the agreement signed from time to time, the defendant did not execute the deed of sale. It was the duty of the defendant to execute the deed of sale and receive the balance consideration amount which is Rs.50,000/- on the date of registration of the sale deed, but as the defendant failed to perform his part of the contract thus, the suit was filed.

5. The principal defendant appeared and filed his written statement and denied the fact written in the plaint and also denied that he agreed to

sale the land in question and did not accept any amount. It is his case that the plaintiff, on the basis of some forged and fabricated documents, has lodged this case. Several other pleas were taken which have got no relevance with the relief sought for, which has been filed for specific performance of the Contract.

6. The trial court framed six issues. Issue Nos. 3 & 4 are of utmost importance, which are quoted herein below:-

“(i) & (ii).....

(iii) Whether the description of the land given in the schedule of the plaint is wrong and vague and whether an executable decree can be passed thereon?

(iv) Whether the defendant no. 1 entered into an Agreement for Sale dated 16th May, 1995 with the plaintiff in respect of the suit land for consideration of Rs.6,00,000.00. Whether the defendant no. 1 received the total amount of Rs.5,50,000.00 as earnest money? Whether the defendant no. 1 is along entitled to execute the Agreement in respect of the suit land to the plaintiff.”

7. The trial court, after considering the evidence of the parties, held that the plaintiff was ready to purchase the land in question. It was further held that the principal defendant had sold part of the holding to the plaintiff earlier vide registered sale deed no. 1401 dated 25th April, 1995. The trial court has also held that Exts.- 1, 1a, & 1b are the Agreements, which have been relied upon by the plaintiff and it is proved that these Agreements for Sale was executed by the defendant. The assertion of the defendant that these documents have been manufactured, has been turned down by the trial court. The trial court thus, decreed the suit with a direction for execution of the sale deed.

8. Challenging the said judgment, an appeal was filed. The Appellate Court concurred with the findings of the trial court and upheld the judgment. Thus, this appeal has been filed before this Court under Section 100 of the Code of Civil Procedure.

9. Learned senior counsel appearing on behalf of the appellant has submitted that the time was essence of contract and this fact has been lost sight of by both the courts below. He submits that as per the Agreement, which is Ext.1, the entire consideration amount should have been paid by November, 1995, but admittedly, as the said amount was not paid, the suit could not have been decreed. Further, he also challenges the existence of these three Agreements. During course of argument, learned senior counsel for the appellant has handed over to this Court the copies of these

Agreements, which were marked as Exts. 1, 1a & 1b.

10. From the evidence and submission of the party, I find that appellant, herein, has challenged the very existence of three documents. It is his case that the Agreements were forged and fabricated and confers no right upon the plaintiff. This was their plea before the trial Court and Appellate Court also. This plea is only a question of fact. Both the courts below, i.e. the Trial Court and the Appellate Court independently adjudicated the issue and came to the conclusion that the existence of these three documents cannot be doubted. I find no perversity in the aforesaid finding of fact. That being so, this question of fact cannot reopened in an appeal filed under Section 100 of the Code of Civil Procedure.

11. The next question, which the learned senior counsel addressed is that even if the Agreements are accepted then also time was an essence of contract. As the balance amount of Rs. 4,00,000/- in two installments were not paid by November, 1995, the Agreements could not be enforced.

12. To appreciate this issue, I have gone through the Agreements, i.e. Exts. 1, 1a & 1b, copies of which were supplied by the appellant herein. Ext.1 is dated 16.05.1995, which speaks that the area in question, is agreed to be sold for a consideration amount of Rs.6,00,000/-, out of which Rs.2,00,000/- was received in cash on the date of signing of the Agreement. It was also agreed that the balance amount of Rs.4,00,000/- will be paid in two installments by November, 1995. Further, there was an addenda to the said Agreement, which is dated 22.06.1995. The same is numbered as Ext.-1a, wherein it has been mentioned that the defendant has received further Rs.2,00,000/- on 22.06.1995 and the balance amount will be paid in November, 1995. The reference of Ext.1 has been mentioned in Ext.1a and Ext.1a is continuance of Ext.1. Further, another Agreement was signed on 06.11.1995, which clearly suggests that the same document is in continuance of documents dated 16.05.1995 and 22.06.1995, i.e. Exts. 1 & 1a, wherein it has been mentioned that the amount of Rs. 5,50,000/- has been paid out of Rs.6,00,000/- and the balance amount of Rs.50,000/- will be paid on the date the defendant executes the sale deed in favour of the plaintiff. The plaintiff also undertook to execute the sale deed in December, 1995. This Agreement was marked as Ext. 1b. Thus, Ext.1b modifies some of the conditions entered into by the parties by Exts. 1 & 1a including the time schedule and the condition of payment. It is also clear that these three documents cannot be read in isolation and has to be read in inclusion. By Ext. 1b the

defendant clearly undertook to execute the sale deed and accept the balance money of Rs.50,000/- at the time of execution of the sale deed. It is admitted, that the sale deed was not executed, thus the balance amount of Rs.50,000/- was also not paid, which resulted in this suit.

13. Thus, in view of Ext. 1b, which is in continuation of Exts. 1 & 1a, it is held that the time was not the essence of contract as the balance amount of Rs.50,000/- out of Rs.6,00,000/- was to be received by the defendant on the date he executes the sale deed. He undertook to execute the sale deed in December, 1995, but he failed to do so as a result of which, the suit was filed in the year 1996, praying for specific performance. Thus, the second ground taken by the defendant also has no legs to stand.

14. Considering what has been held above, I find that no substantial question of law involved in this appeal. Thus, this second appeal is dismissed.

(Ananda Sen, J)