

Form No.(J)2
HEADING OF JUDGMENT IN ORIGINAL SUIT

District-----Nalbari

IN THE COURT OF CIVIL JUDGE :::::::::::::::::::::NALBARI

Present : Smti. Himakshi Thakuria Buragohain
Civil Judge
Nalbari.

Saturday, the 29th day of February, 2020

TITLE SUIT NO : 37/17

Sri Bhubneswar Sarma

-----Plaintiff

- VS -

Sri Pratul Ch. Sarma

.....Defendant

The suit is coming on for final hearing on 05/02/2020 in presence of:-

Advocate for the Plaintiff : Sri Champak Dutta

Advocate for the Defendant : Sri Satyendra Nath Sarma

And having stood for consideration to this day, the court delivered the following Judgment:-

J U D G M E N T

1. This is a suit filed for specific performance of contract for sale, injunction along with other reliefs.

2. The plaintiff's case in brief is that the defendant agreed to sell to the plaintiff an area of land measuring 1 katha 5 lecha land covered by PK patta No 42 Dag No 35 situated at village Dhekiabari, Mouza Batahgila, in the district of Nalbari at a consideration price of Rs. 4 lakhs only. Accordingly on 10/10/2015 the defendant executed a deed of agreement on receipt of Rs. 2,00,000/- in cash from the plaintiff as earnest money and promised to execute and register the sale deed on receipt of a balance amount of the purchase price. Later on the defendant received Rs. 50,000/- on 12/10/2015 in cash as earnest money and accordingly made an endorsement to that effect on the over leaf of the first page of the said deed of agreement. The defendant also promised to execute and register the sale deed in respect of the suit land on receipt of the sale permission from the competent authority. The plaintiff agreed to pay the balance amount of the purchase price of Rs. 1,50,000/- to the defendant and thereafter requested the defendant several times to execute the sale deed in favour of the plaintiff. But inspite of the repeated demands made by the plaintiff the defendant has turned a deaf ear to the plaintiff's demand. On 14/12/2016 the plaintiff sent an advocate notice to the defendant to which the defendant issued a rejoinder dated 23/12/2016 through his advocate by narrating a false and concocted story. The plaintiff has further alleged that the defendant is now trying to sell the suit land to some other persons. Hence this case.

3. On receipt of summons issued, the defendant appeared in the suit and contested the suit by filing his written statement. In his written statement the defendant denied the entire averments made by the plaintiff in his plaint. The defendant has alleged that the plaintiff

allured him in the name of giving a job to his son Chinmoy Sarma for which he required Rs. 5 lakhs. When the defendant disclosed that he had nothing to pay, in that context the plaintiff asked the defendant to put his signature in a blank stamp paper and after giving job to the son of the defendant, if the defendant fails to pay the entire amount with interest then the defendant will have to execute the registered sale deed for transfer of 1 katha 5 lecha land of the defendant. In this way the defendant put his signature on the blank stamp papers. According to the defendant he did not execute any agreement for sale as alleged by the plaintiff. The defendant further averred that even his son did not get any job. Hence the defendant has prayed for dismissal of the suit.

4. On perusal of the pleadings following issues were framed--

- (i) Whether the suit is maintainable in its present form ?
- (ii) Whether the defendant executed a deed of agreement for sale on 10.10.15 on receipt of Rs. 2,00,000/- (Rupees Two Lacs) only in cash as earnest money from the plaintiff ?
- (iii) Whether the defendant received another Rs. 50,000/- (Rupees Fifty Thousand) only on 12.10.15 in cash as earnest money from the plaintiff ?
- (iv) Whether the defendant failed to perform his part of contract ?
- (v) Whether the plaintiff is entitled to any relief/ reliefs as prayed for ?
- (vi) To what other relief/ reliefs are the parties entitled to ?

FINDINGS AND REASONS THEREOF

5. In support of the case the plaintiff has adduced the evidence of 2 (Two) witnesses and has exhibited 6 (six) documents. On the other hand the defendant adduced 2 (two) witnesses but has exhibited no documents.

6. I have heard the arguments of the Ld. Counsels for plaintiff and defendant and have discussed the issues as follows :-

ISSUE NO (i) :

Whether the suit is maintainable in its present form ?

7. The defendant has stated in their written statement stated that the suit is not maintainable in its present form. However there is no specific pleadings as to how the suit is not maintainable in its present form or in which manner it should have been filed. The plaintiff has filed this suit for specific performance of contract along with permanent injunction. The suit is filed within proper jurisdiction and within the specified period of limitation. Proper court fee has also been filed. I find nothing to hold that the suit is not maintainable in its present form.

Accordingly, this issue is decided in the affirmative and in favour of the plaintiff.

ISSUE NO (ii) & (iii) :

Whether the defendant executed a deed of agreement for sale on 10.10.15 on receipt of Rs. 2,00,000/- (Rupees Two Lacs) only in cash as earnest money from the plaintiff ?

A N D

Whether the defendant received another Rs. 50,000/- (Rupees Fifty Thousand) only on 12.10.15 in cash as earnest money from the plaintiff ?

8. Issue No (ii) and (iii) are discussed together for the sake of convenience as they are inter-related. It is the pleadings of the plaintiff that the defendant had agreed to sale 1 katha 5 lecha land to the plaintiff at a consideration price of Rs. 4,00,000/-(Four lakh) only and on 10/10/2015 on receipt of Rs. 2,00,000/-(Two lakh only) in cash as earnest money the defendant executed the agreement for sale and promised to execute the sale deed. Thereafter on 12/10/2015 the defendant again received Rs. 50,000/- as earnest money from the plaintiff and accordingly made a endorsement to that effect on the over leaf of the first page of the said deed of agreement.

The defendant denied the averments of the plaintiff by stating that in the name of giving job to the defendant's son the plaintiff demanded Rs. 5,00,000/- from the defendant and when the defendant told him about his inability to pay the said money, the plaintiff took his signature on blank stamp papers and imposed condition that if the defendant fails to repay back the amount with interest, then the defendant will have to execute registered sale deed of 1 katha 5 lecha land in favour of the plaintiff. The defendant has alleged that after denying his signature on the said blank stamp papers the plaintiff converted the same into the alleged agreement for sale.

9. The learned counsel for the defendant submitted that as per the Registration Act, the agreement for sale marked as Ext-1 is not registered. The learned counsel for the defendant also submitted that even the scribe, Suklal Choudhury examined as PW 2 admitted that registration is a must in agreement for sale.

10. At this point let me discuss the relevant provision of Registration Act regarding the compulsory registration of documents. Indian Registration Act is an act to consolidate the enactments relating to the registration of documents. The object of registration is conservation of evidence and title. Section 17 of the Indian Registration Act, 1908 deals with the documents that a compulsory to be

registered. The documents registrable under the act falls under three categories.

In the 1st category, documents relating to transaction which according to the substantive law, can be affected only by registered documents. In order for a transaction to be valid must be affected by a registered instrument only. What it provides is that when there is a written instrument evidencing a transaction, it must be, in certain cases, be registered. Under Section 17 of the Registration Act, the compulsory registrable documents are given.

In the 2nd category, certain transaction can be affected without writing, i.e. partitions, releases, settlement, etc. But if the transaction is evidenced by a writing and relates to immovable property, the registration Act steps in and clause (b) and (c) of Section 17 (1) of the said Act require registration of such documents, subject to the exception specified in sub section (2) of that section.

In the 3rd category, it is open to the parties, if they choose, to get certain documents registered at their option and this is permitted by section 18 of the Registration Act.

11. An agreement to sale in respect of a immovable property containing recites as to payment of prise is not compulsorily registrable as an agreement to sell does not create any present right in property. It only recites an agreement arrived at between the parties that the sellers would transfer the proposed property to the purchaser by registration of a documents.

Hence, in my view agreement for sale is not required to be compulsorily registered.

12. On perusal of Exhibit 1 it is seen that the defendant has put his signatures in all the three pages. It is also seen that the defendant has also put his signature on the acknowledgement dated 12/10/2015 behind the back of the 1st page of Exhibit1. Apart from that it is seen that in his written statement the defendant has averred that the plaintiff took his signatures on blank stamp papers. But the third page of Exhibit 3 is not a stamp paper.

13. PW 1 has stated in his cross-examination that Chinmoy Sarma the son of the defendant and Mathur Deka were also witnesses of Exhibit 1. DW 1 has identified the signatures of his son Chinmoy Sarma, marked as Exhibit 1(4). DW 1 has also admitted his signatures which is marked as in Exhibit 1, Exhibit 1(1), 1(2), 1(3) and 1(11). Apart from that DW 1 has also admitted the endorsement marked as Exhibit 1(10) to the effect that on 12/10/15 he again took an amount of Rs. 50,000/- in cash from the plaintiff in connection with Exhibit 1. It is further stated by DW 1 that at the time of putting his signatures on the blank stamp papers, Guneswar Barman was a witness. But if we go through the cross of DW 2, Guneswar Barman, we find him stating that Pratul Sarma did not put any signature on any stamp paper in front of him.

14. In view of the above discussion it appears that the plaintiff has proved his case by examining the scribe of Ext-1 as PW 2. The defendant could not shake the plea of the plaintiff while cross examining the PWs. Whereas in his cross examination DW 1 admitted the acknowledgement as well as his signature and the signature of his sons.

15. There is no doubt that the defendant had executed Exhibit 1 in favour of the plaintiff after receiving Rs. 2,50,000/- from the plaintiff as earnest money on two installments.

Situated thus issue No (ii) and (iii) are decided in the affirmative and in favour of the plaintiff.

ISSUE NO (iv) :

Whether the defendant failed to perform his part of contract ?

16. Exhibit 4 makes it clear that on 14/12/2016 the plaintiff had sent an advocate notice to the defendant demanding the execution and registration of sale deed by receiving the balance money. Vide Exhibit 6 it appears that the defendant replied to the sale notice by completely denying the claim of the plaintiff by narrating a

different story. It is already held in the previous issue that the defendant has executed Exhibit 1 in favour of the plaintiff and received earnest money of Rs. 2,50,000/- from the plaintiff in two installments. Hence it can be presumed that the defendant failed to perform his part of contract.

Accordingly this issue is decided in the affirmative and in favour of the plaintiff.

ISSUE No (v) and (vi) :

Whether the plaintiff is entitled to any relief/ reliefs as prayed for ?

A N D

To what other relief/ reliefs are the parties entitled to ?

17. It is already discussed in the previous issue that the defendant executed Exhibit 1 in favour of the plaintiff but failed to execute the sale deed as promised. The plaintiff has prayed for a decree of Specific Performance of Contract with a direction to the defendant to execute the sale deed in favour of the plaintiff by accepting the balance amount of the purchased price from him. It is seen that as an alternative relief the plaintiff has also prayed for a decree to realize the earnest money of Rs. 2,50,000/- along with interest @ 12 % per annum due thereon and Rs. 25,000/- being the cost and expenses incurred by the plaintiff in respect of the transactions as compensation. Therefore keeping all aspects in mind I deem it proper to grant the alternative relief to the plaintiff as prayed for.

Accordingly these two issues are decided in favour of the plaintiff.

ORDER

18. In the result, the suit is decreed on contest with cost.

The plaintiff is entitled to get a sum of Rs. 2,50,000/- (Two lakhs Fifty Thousand only) along with interest @ 12% per annum due thereon and Rs. 25,000/- (Twenty Five thousand only) being the cost and expenses incurred by the plaintiff in respect of the transactions. As compensation from the defendant.

The defendant is directed to pay the aforementioned money to the plaintiff within two months from the date of this order.

Prepare decree accordingly.

Given under my hand and seal of this court on this the 29th day of February/2020.

Civil Judge
Nalbari

Dictated & Corrected by me

Civil Judge
Nalbari

A P P E N D I X

(A) Plaintiff's witnesses :

PW 1 : Bhubneswar Sarma,
PW 2 : Suklal Choudhury.

(B) Plaintiff's exhibited documents :

Ext-1 : Agreement for sale dated 10/10/2015.
Ext-2 : Certified copy of the Jamabandi of PK Patta No 42 of
village- Dhekiabari.
Ext-3 : Clearance certificate dated 7/10/2015.
Ext-4 : Advocate Notice dated 14/12/2016.
Ext-5 : Postal receipt dated 15/12/2016.
Ext-6 : Reply of the defendant dated 23/12/2016 against the
advocate Notice of the plaintiff.

(C) Defendant's witnesses :

DW 1 : Pratul Ch Sarma.
DW 2 : Guneswar Barman.

(D) Defendant's exhibited document : Nil.

Civil Judge,
Nalbari