

TS 65/19
Madan Thakuria
vs
Ashim Bharali
Amal Bharali

Form no. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Nalbari

IN THE ORIGINAL COURT OF THE MUNSIFF NO.1, NALBARI

Present: Rubina Yasmin, AJS

Dated: 4th day of Feb, 2020

Title suit: 65/2019

MADAN THAKURIA.....Plaintiff

Versus

ASHIM BHARALI

AMAL BHARALIDefendants

This suit/ case coming on for final hearing on the 4th day of January, 2020
in the presence of:

Mr. Champak Dutta--- Advocate for the Plaintiff

None -----Advocate for the Defendant

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

Judgment delivered on 4.02.20

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JUDGMENT

This is a suit for specific performance of contract and injunction.

1. The plaintiff's suit in brief is that, plaintiff and defendant are from the same village. Defendant no. 1 and 2 are two brothers and sons of late Punya Bharali. After the death of late Punya Bharali the defendants became the sole owner of their father's land. Plaintiff stated that in the month of October 2016 plaintiff came to know that defendants are intending to sell the scheduled land to prospective purchaser. As he resides in the same village so the plaintiff showed his willingness to purchase the said land. Accordingly, the plaintiff and defendant after negotiation executed a written sale agreement on 02.11.16 fixing the total consideration of the entire land at Rs 1,40,000/- only and that the plaintiff has paid the entire consideration amount to the defendant on the date of agreement itself and the defendant has acknowledged the same in the said agreement and plaintiff was then handed over the possession of the land. The plaintiff since then started living in the suit land by constructing chali house. Thereafter plaintiff on several dates went to defendant's house for obtaining signatures for land sale permission but failed. Thereafter he on several occasions requested the defendants to supply him the relevant documents for obtaining sale permission but in vain. Later he sent a pleader's notice requesting the defendant to do the needful but he did not respond. Again on 15.02.19 he sent a pleader's notice to take the necessary steps within 7 days but he did not pay any heed to it. When plaintiff tried to meet defendant he threatened plaintiff to

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evict him from the suit land by selling the same at a higher consideration. Thus plaintiff stated that he has performed his part of the contract but defendant failed to do their part of contract and hence filed this suit praying to direct the defendant to execute a proper sale deed in respect of the suit land and have the same duly registered.

2. The defendant no. 1 & 2, after receiving notice, did not appear before the Court and hence, case proceeded ex-parte against them.
3. Since there is no written statement I have framed following points for determination:
 - a. Whether the plaintiff is entitled to the decree as prayed for?
 - b. To what other relief(s), the plaintiff is entitled to?
4. The plaintiff has submitted evidence of 4 Pws and other relevant documents for establishing his claim.
5. Both the points for determination are taken together for the sake of convenience
6. In order to decide whether plaintiff is entitled to the decree it is essential first to decide as to whether the plaintiff has performed his part of contract as it is a case for specific performance of contract. To establish his claim, Plaintiff has furnished the agreement for sale as exhibit- 1, pleaders notice as exhibit 3 and 4. Perusal of the agreement it reveals that plaintiff on payment of consideration of Rs 1,40,000 was handed over the possession by the defendants. But plaintiff averred that later defendant did not take any steps for obtaining sale permission and execution and registration of sale deed. Perusal of the exhibit 1 it is seen that it is written as land sale deed. Even if it is considered as unregistered sale deed it is well admissible in evidence in case of specific performance of contract as held by Hon'ble Apex court in **S**

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Kaladevi v V.R. Somansundaram & Ors reported in (2010) 5 SCC 401. Further, Defendant on receiving of pleader's notice also did not pay any heed. The pleaders' notice dated 12.06.18 and 15.02.19 also reveals that plaintiff has clearly stated that he has paid Rs 1,40,000 as consideration for purchase of the suit land and requested the defendant to do his part of contract that is to obtain sale permission and execute the registered sale deed. Moreover, Pw 2, 3 and 4 have corroborated the same as Pw 1. Among them Pw 2 and 3 are the witnesses to the Exhibit 1. Thus plaintiff has been able to establish by preponderance of probability that indeed he has performed his part of contract. Since the defendant has failed even to obtain the permission to execute the sale and that plaintiff has already done his part of contract hence plaintiff is entitled to the decree as prayed for.
Accordingly point no. A and B are decided in favour of the plaintiff.

Order

In view of the discussions made above the plaintiff is entitled for a decree of specific performance of contract dated 02.11.16 and the defendant are directed to execute a registered sale deed for the suit land as described in the schedule of the plaint.

Prepare a decree accordingly.

The plaintiffs' suit stands decreed ex-parte with costs.

Given under my hand and seal of this court on this 4th day of February, 2020.

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Appendix

Plaintiff's Witness

1. Madan Thakuria
2. Pratap Bharali
3. Bhabesh Kalita
4. Dhaneswar Bezbaruah

Plaintiff's Exhibits

1. Exhibit 1 - Agreement of sale dated 02.11.16
2. Exhibit 2 - Copy of Jamabandi of NK Patta no. 44 of village Sanekusi
3. Exhibit 3 - Pleader's notice dated 12.06.18
4. Exhibit 4 - Pleader's notice dated 15.02.19

Defendant's witness and Exhibits

Nil

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