

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT /CASE

DISTRICT :SONITPUR

IN THE COURT OF CIVIL JUDGE, SONITPUR : : AT TEZPUR

Present: Dr. C.Khanikar, AJS

16th day of December, 2022

Title Suit No. 14 of 2022

Sterling Central

A Partnership Firm,

Having Office at: 4 (A) Royal Arcade,
Ulubari, B. Barooha Road, Guwahati-7

Dist-Kamrup(M), Assam

Represented by its Parterner

Sri Pranay Agarwal

S/O Sri Jitendra Agarwal,

R/o – Garowanpatty

PO& PS –Tezpur

Mouza - Mahabhairab

Dist – Sonitpur, Assam

-- Plaintiff

-Vs.-

Md. Iesuf Ali

S/o Late Jabbal Hussain

R/o Dipota, Uhani Pathar

PO & PS: Tezpur

Mouza: Halleswar

Dist: Sonitpur, Assam

----- Defendant

On 16-11-2022 this suit/case coming on for final hearing in the present of:

Advocate for Plaintiff : Ms. M. Bothra

Advocate for Defendant : None

and having stood for consideration to this day the court delivered the following Judgment:

Title Suit No. 14 of 2022

J U D G M E N T

1. This is a suit for specific performance of contract for sale of land, delivery of vacant and khas possession with alternative relief/s of compensation and damages, cost of the suit and other reliefs.

2. Brief fact of the plaintiff's case as projected in the plaint is that the defendant is the owner of the land measuring 1 K 15 L covered by Dag No. 350, PP No. 160 and land measuring 6 B covered by Dag No. 428, PP No. 227 of Uhani Pathar village, Mouza-Halleswar, Sonitpur (hereinafter referred as suit land). On 08-12-2020, the defendant executed a deed of agreement for sale of the aforesaid suit lands in favour of the plaintiff for total consideration amount Rs. 9,60,000/-, by taking Rs. 5,00,000/- as advance money. It was agreed that the remaining amount of Rs. 4,60,000/- will be paid by the plaintiff at the time of the execution of the registered sale deed and that the defendant will obtain the necessary

permissions from the concerned authorities for selling the suit land to the plaintiff. Thereafter the plaintiff requested the defendant for several times including 15-07-2020 and 25-09-2021 to execute the sale deed, but the defendant failed to execute the same. On 24-12-2021 when the partner of the plaintiff through it's parter went to the house of the defendant, the plaintiff came to know that the defendant has not taken any steps to obtain necessary permissions to sale the suit land in favour of the plaintiff. The defendant has also told that he will not sale the suit land to the plaintiff, as he was getting higher price from some other person. Hence, the plaintiff has instituted the suit praying for specific performance of contract for sale of suit land, delivery of possession, with alternative relief of compensation of Rs. 5,00,000/- along with costs of the suit and other relieves.

Hence, the present suit is.

3. The suit is proceeded ex-parte against the defendant as the defendant did not appear in-spite of due service of summons upon him.

4. Upon the pleadings the following points have been taken as points for determination:-

i) Whether there is any valid agreement for sale of the suit land between the defendant and the plaintiff?

ii) *Whether the plaintiff paid Rs.5,00,000/- to the defendant as advance money towards the payment of total sale consideration of the suit land?*

iii) *Whether the plaintiff is ready to perform his part of the agreement but the defendant failed/neglected to perform his part?*

iv) *Whether the plaintiff is entitled to any decree or relief as prayed for?*

5. At the trial the plaintiff has adduced three witnesses and also placed reliance on some documents in support of the case which are marked as Exhibits.

6. At the end of the trial the plaintiff's side has adduced oral arguments in support of the case.

7. Heard the learned lawyer. I carefully scanned the entire evidence as well as documents on records in order to arrive at a just decision in the suit.

DISCUSSIONS, DECISIONS AND REASONS FOR DECISION

Point Nos. (i) & (ii):

(i) *Whether there is any valid agreement for sale of the suit land between the defendant and the plaintiff?*

(ii) *Whether the plaintiff paid Rs.5,00,000/- to the defendant as advance money towards the payment of total sale consideration of the suit land?*

8. For convenience of discussion and to avoid unnecessary repetition, these two issues are taken together for discussion.

9. In this case PW.1 Sri Pranay Agarwal is a partner of the plaintiff firm. He has re-iterated the facts stated in the plaint that she entered into an agreement for sale dated 08-12-2020 with the defendant for sale of the suit land at Rs. 9,60,000/-. Accordingly, he paid Rs. 5,00,000/- as advance money towards the total sale consideration. It was agreed that the defendant will obtain the necessary sale permissions from the concerned authorities and thereafter will execute the registered sale deed in favour of the plaintiff within 6 months from the date execution of the deed of agreement for sale dated 08-12-2020. In support of his plea he has executed the deed of agreement for sale dated 08-12-2020 as Ext.1. He has further stated that defendant Md. Iesuf Ali was the owner and possessor of the suit land. In support of that, he has exhibited the certified copies of Jamabandi of P.P Nos. 160 and 227 of Village: Uhani Pathar, Mouza: Halleswar, District: Sonitpur, as Ext.2 and Ext.3, which show the name of the defendant as the pattadar. Plaintiff side has also exhibited the evidences of PW.2 Sri Jasjeet Singh and PW.3 Sri Deepjyoti Ghosh, who are attesting witnesses of Ext.1 deed of agreement for sale. Like the plaintiff they also stated in their affidavital evidences that the defendant entered into an agreement for sale of the suit land with the plaintiff

dated 08-12-2020. The defendant agreed to sell the suit land in favour of the plaintiff for Rs. 9,60,000/- and on the day of the execution of the deed of agreement for sale, the plaintiff paid Rs. 5,00,000/- as advance money to the defendant. It was agreed that the remaining Rs. 4,60,000/- will be paid within 6 months from 08-12-2020. Thus, the plaintiff side by adducing the evidence of PW.1, PW.2 and PW.3 as well as the Ext.1 deed of agreement for sale, has, sufficiently proved that there is a valid agreement for sale of the suit land between the defendant and the plaintiff and the plaintiff paid Rs.9,60,000/-/- to the defendant as advance money towards the payment of total sale consideration of the suit land. The defendant side did not did not appear to rebut the plaintiff's evidence. Hence, in absence of any adverse evidence, I am of the opinion that **there is a valid agreement for sale of the suit land between the defendant and the plaintiff.**

10. It is also seen from the evidence of PW.1 as well as PW.2 and PW.3 that on 08-12-2020, the plaintiff paid Rs. 5,00,000/- as advance money towards the total sale consideration of Rs. 9,60,000/- to the defendant. The said fact is written in para-2 of the Ext.1 deed of agreement for sale dated 08-12-2020. The said Ext.1 was signed by the defendant, his signatures are exhibited by PW.1, who is the plaintiff and PW.2 Sri Jasjeet Singh and PW.3 Sri Deepjoti Ghosh, who are attesting witnesses to Ext.1. Thus, it appears that the plaintiff side has also proved by

adducing affidavital evidences as well as documentary evidences that the plaintiff has paid Rs. 5,00,000/- as advance sale consideration towards the total sale consideration of the suit land of Rs. 9,60,000/- to the defendant. Plaintiff's evidence to that effect is not rebutted by the defendant side or no adverse evidence is found. Hence, I am of the opinion that the plaintiff has also proved that **the plaintiff paid Rs.5,00,000/-/- to the defendant as advance money towards the payment of total sale consideration of the suit land.**

Hence, **point Nos. (i) and (ii) are decided affirmative.**

Point No. (iii) : *Whether the plaintiff is ready to perform his part of the agreement but the defendant failed/neglected to perform his part?*

11. According to PW.1, the defendant promised that he would obtain the necessary sale permissions from the concerned authorities and thereafter will execute the registered sale deed in favour of the plaintiff within 6 months from the date of execution of the deed of agreement for sale of the suit land dated 08-12-2020. But after execution of the deed of agreement for sale, the plaintiff met the defendant on several occasions and requested to execute the registered sale deed in his favour. The plaintiff requested the defendant to obtain necessary permissions and also offered to receive the balance sale consideration amount. But in every time the

defendant failed to do so by citing different reasons and sought further time. But the defendant neither obtained the necessary sale permissions nor executed the sale deed. On 15-07-2021 and 25-09-2021, the PW.1 went to the house of the defendant and requested him to obtain the necessary sale permissions and to execute the registered sale deed. However on 15-07-2021, the defendant told the PW.1 that he was unable to obtain requisite sale permissions due to covid-19 lockdown. On 25-09-2021 when the PW.1 visited the defendant, the defendant ensured that he will obtain the necessary permissions soon. On 24-12-2021, in fear of some misdeeds by the defendant, the PW.1 went to the house of the defendant to enquire about the progress of land sale permissions and for the first time he came to know and was shocked to learn that the defendant had betrayed trust as he had done nothing to obtain sale permissions in favour of the plaintiff from the concerned authorities and instead, showed his inability to execute the registered sale deed in favour of the plaintiff as the defendant is getting higher amount from some other person and categorically told the PW.1 that he would not sell the land to the plaintiff firm. That the agreement for sale dated 08-12-2020 is a concluded agreement and hence the defendant will bound to sell the suit land to the plaintiff firm by accepting the balance consideration of Rs. 4,00,000/-. The plaintiff is always ready to pay the balance consideration for Rs. 4,00,000/-. But the defendant is neglecting to perform his

part of the contract to obtain the necessary sale permissions and to execute the registered sale deed.

12. In support of his plea, PW.1 has exhibited the Ext.1 deed of agreement for sale. In that Ext.1 the present defendant shows as the seller and the plaintiff was shows as the purchaser. In paragraph-4 of the said Ext.1, it is written that the seller, i.e, the present defendant will obtain the necessary permissions for sale from the concerned authorities. In para.5, it is written that the parties will complete the sale transaction and will execute the absolute sale deed within 6 months from 08-12-2020. Thus, it is seen that it was agreed by the parties in writing that the defendant will obtain the necessary sale permissions from the concerned authorities and will execute the registered sale deed in favour of the plaintiff by accepting the balance consideration amount, i.e, Rs. 4,60,000/-. PW.2 Sri Jasjeet Singh and PW.3 Sri Deepjyoti Ghosh have also stated that it was agreed by the parties that the defendant will obtain the necessary permissions and will execute registered sale deed in favour of the plaintiff by accepting the balance consideration amount, i.e, Rs. 4,60,000/-. But in spite of requests by the plaintiff on several occasions the defendant neglected to perform his part, i.e, neglected to obtain the necessary sale permissions and to execute the registered sale deed. Both PW.2 and PW.3 are further deposed that on 24-12-2021, the defendant directly refused to sell the suit land to the plaintiff or to execute the registered sale deed in favour of

the plaintiff as the defendant was getting higher price for the suit land from other person. Thus, the plaintiff side by adducing the evidence of PW.1, PW.2 and PW.3 as well as by exhibiting the Ext.1 the deed of agreement for sale has proved that the defendant has to obtain the necessary sale permissions and to execute the registered sale deed in favour of the plaintiff by accepting the balance consideration. But in spite of repeated requests by the plaintiff, the defendant neglected and failed and finally refused to perform his part. On the other hand, the plaintiff is always ready to perform his part of contract, i.e, to pay the balance consideration amount of Rs. 4,60,000/- to the defendant. Hence, it is successfully proved that **the plaintiff is ready to perform it's part of the agreement but the defendant failed/neglected to perform his part.**

Hence, **Point No. (iii) is decided affirmative.**

Point No. (iv) : *Whether the plaintiff is entitled to any decree or relief as prayed for?*

13. From the discussions of Point Nos.(i), (ii) and (iii), it is found that there is a valid agreement for sale of the suit land between the plaintiff and defendant and the plaintiff paid Rs.5,00,000/- to the defendant as advance money towards sale consideration of the suit land. The plaintiff is ready to perform it's part of the agreement but the defendant failed/neglected to perform his part. As such, I am of the opinion that the plaintiff is entitled to the

decree of specific performance by execution of the sale deed in respect of the suit land by the defendant in favour of the plaintiff. As a consequential relief, the plaintiff is entitled to the delivery of khas possession of the suit land along with costs of the suit.

ORDER

14. The suit is **decreed ex-parte with costs. The plaintiff is entitled to the decree of execution of the registered sale deed in respect to the suit land. The deed will be executed by the defendant in favour of the plaintiff on payment of the balance amount of Rs.4,60,000/-.** The plaintiff is also entitled to **recover khas possession of the suit land.**

15. Let prepare the decree.

16. Let copy of this Judgment be furnished to the parties subject to payment of costs.

Given under my hand and the seal of this Court on this 16th day of December, 2022.

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

Dictated and corrected by me.

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

APPENDIX

Plaintiff's witnesses:

PW-1: Sri Pranay Agarwal, plaintiff

PW-2: Sri Jasjeet Singh

PW-3: Sri Deepjyoti Ghosh

Defendant's witnesses:

None

Exhibits of the Plaintiff:

Ext.1 : Original agreement for sale dated 08-12-2020

Ext.2 : Certified computerized copy of Jamabandi of Dag No. 350PP No.160, vill- Uhani Pathar, Mouza- Halleswar

Ext.3 : Certified computerized copy of Jamabandi of Dag No. 428PP No.227, vill- Uhani Pathar, Mouza- Halleswar

Ext.4 : Certified computerized copy of Registration of Firm

Exhibits of the defendant :

Nil

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur