

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

4th day of June, 2022

Title Suit No. 13 of 2020

Sri Rajendra Sharma

S/O Sri Surendra Sharma

Village – Gotonga

PO & PS- Tezpur

Mouza - Halleswar

Dist – Sonitpur, Assam

-- Plaintiff

-Vs.-

(1) Sri Tankeswar Das @ Tankeswar Keot

(2) Sri Phonidhar Das @ Phonidhar Keot

Both sons of Late Bonai Keot

(3) Sri Munindra Keot

(4) Sri Dilip Keot

Both sons of Late Jagyuram Keot

(5) Smt. Binu Keot

Wife of Sri Suren Keot

(6) Sri Rupam Keot

(7) Sri Dipam Keot

(8) Sri Bharat Keot

Sons of Late Suren Keot

(9) Smt. Jayanti Keot

Wife of Sri Tarun Keot

(10) Sri Sunil Koet

Son of Sri Tarun Keot

(11) Smt. Sonamai Koet

Wife of Sri Kamal Keot

(12) Sri Prakash Koet

Son of Sri Kamal Keot

----- Defendants

On 23-05-2022 this suit/case coming on for final hearing in the present of:

Mr. D. Bose Advocate for Plaintiff

None Advocate for Defendants

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

Title Suit No. 13 of 2020

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, compensation and damages with alternative relief/s and mutation.

2. Brief fact of the plaintiff's case as projected in the plaint is that the defendants are the owners and possessors of the land measuring 2 B 1 K covered by Dag No.208, PP No. 130 of Udmari Borjhargaon village, Mouza – Halleswar, Sonitpur, Assam (referred as 'suit land' hereinafter). On 06-11-2019, the defendants executed a deed of agreement for sale of the same 2 B 1 K land to the plaintiff @

Rs.8 Lakhs. At the time of execution of the said deed, Rs.7,50,000/- was paid by the plaintiff to the defendants as advance money towards the payment of total sale consideration of Rs.8 Lakhs, in presence of witnesses. It was agreed that the balance amount of Rs.50,000/- will be paid by the plaintiff at the time registration of the sale deed. The defendants promised to obtain the necessary permission from the concerned authorities for sale of the land. However, even on several requests including request on 21-01-2020 by the plaintiff to execute the sale deed and to accept the balance amount, the defendants failed to perform their part of the agreement. On 10-03-2020, the plaintiff again visited the defendants and came to know that the defendants have not taken any steps to obtain necessary sale permission as the defendants were getting higher price for the said land from some other persons. It is stated that the plaintiff is ready to perform his part of the agreement by paying the balance amount but the defendants failed / neglected to perform their part. Therefore, the plaintiff prayed for a decree of specific performance of contract by execution of the sale deed in favour of the plaintiff, delivery of khas possessions of the suit land, compensation and damages as alternative relief along with cost of the suit and other reliefs.

Hence, the present suit is.

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

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 defendants and the plaintiff?

ii) Whether the plaintiff paid Rs.7,50,000/- to the defendants 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 defendants failed/neglected to perform their part?

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

5. At the trial the plaintiff has adduced four 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 No (i): Whether there is any valid agreement for sale of the suit land between the defendants and the plaintiff?

8. In the plaint, it is stated that the defendants are the owners and possessors of the suit land. The defendants agreed to sale the suit land to the plaintiff at Rs.8 Lakhs. Accordingly, on 06-11-2019 the defendants executed a Deed of Agreement for Sale in favour of the plaintiff by taking Rs.7,50,000/- as advance money towards the payment of sale consideration. The plaintiff side by adducing evidence of PW-4 Sri Zeherul Rahman, Lat Mandal, Udmari Borjhargaon, as official witness, has shown that the defendants are the owners of the suit land. PW-4 has exhibited the Jamabandi of the concerned land as Ext.2 and Ext.2(1). He has deposed that in Ext.2 and Ext.2(1), the names of the 12 defendants are mutated against the land measuring 2 B 1 K covered by Dag No.208 of PP No.130 of Udmari, Borjhargaon, Mouza-Halleswar. The plaintiff as PW-1 as well as PW-2 and PW-3 have also stated in their affidavital evidence that defendants are owners and possessors of the suit land.

9. The plaintiff as PW-1 as well as the witnesses PW-2 and PW-3 have exhibited the agreement dated 06-11-2019 as Ext.1 and also exhibited the signatures of the defendants from Ext.1(1) to Ext.1(48). The signature of the plaintiff in the said agreement is exhibited as Ext.1(51). The signatures

of the witnesses namely, Sri Jasjit Singh and Sri Shiva Nath as Ext.1(50) and Ext.1(49).

10. Thus, it is seen that the plaintiff side has adduced the primary evidence, the Agreement for Sale as Ext.1. The two attesting witnesses as PW-2 and PW-3 have proved the signatures of plaintiff and the defendants in the said Ext.1.

11. Ext.1 is an unregistered Deed of Agreement for Sale. Now, comes the question of admissibility of an unregistered Deed of Agreement for Sale. Section 49 of the Registration Act, 1908 states that :

“49.Effect of non-registration of documents required to be registered.- No document required by section 17 [or by any provision of the Transfer of Property Act,1882 (4 of 1882)], to be registered shall –

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), 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, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

12. Apart from that, Hon’ble Supreme Court in ***K.B. Saha and Sons Private Limited –vs- Development Consultant Limited : MNU/SC/7679/2008 : (2008) 8 SCC 564***, has delineated the principle that a document is

required to be registered, but if unregistered, can still be admitted as evidence of a contract in suit for specific performance. It is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the Registration Act, 1908 and shall not have any effect for the purposes of Section 53 (A) of the Transfer of Property Act, 1882.

13. Thus, it is clear from the law laid down by Sec. 49 of the Registration Act, 1908 as well as the decision of the Hon'ble Supreme Court, passed in ***K.B. Saha and Sons Private Limited –vs- Development Consultant Limited*** that, even where the sale agreement is not registered, the document can be received as evidence for considering the relief of specific performance and the inadmissibility will confine itself only to the protection sought for u/s 53-A of the Transfer of Property Act. Thus, present Deed for Agreement for Sale which is exhibited by the plaintiff as Ext.1, is though an unregistered Agreement for Sale, it can be acted upon as an evidence for deciding the relief of specific performance.

14. In view of the observations made in the foregoing paragraphs, I am of the opinion that the defendants are the owners of the suit land, Ext.1 document is proved by the plaintiff side and this is a valid agreement for the purpose of this suit of specific performance. As such, I hold that, this is a valid Agreement for Sale of the suit land between the defendants and the plaintiff.

Hence, point No. (i) is decided affirmative.

Point No. (ii) :Whether the plaintiff paid Rs.7,50000/- to the defendants as advance money towards the payment of total sale consideration of the suit land Rs.8 Lakhs?

15. In the plaint, the plaintiff has stated that he has paid an advance money of Rs.7,50,000/- to the defendants as advance money towards the payment of sale consideration of the suit land. The plaintiff as PW-1 as well as the witnesses PW-2 and PW-3 have reiterated the same in their affidavital evidences. In support of his plea, the plaintiff has exhibited the Deed of Agreement for Sale as Ext.1 wherein it is mentioned that the purchaser has paid an amount of Rs.7,50,000/- as advance money. The receipt of that sum was hereby acknowledged by the seller in Ext.1. Ext.1 was signed by the 12 defendants as well as by the plaintiff. The 2 attesting witnesses of Ext.1 namely Sri Shiva Nath and Sri Jasjit Singh appeared as PW-2 and PW-3 and filed their affidavital evidence. In their evidences they have proved the signatures of the defendants. Thus, it is seen that Ext.1 is proved which is a proof of the fact that the plaintiff has paid Rs.7,50,000/- to the defendants as advance money towards the payment of sale consideration of the suit land i.e., Rs.8 Lakhs.

Hence, Point No. (ii) is decided affirmative.

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

16. In the plaint, it is stated that as per the agreement the balance amount of Rs.50,000/- will be paid by the plaintiff at the time of registration of the sale deed. The defendants promised to obtain the necessary permissions from the concerned authorities, for sale of the suit land. But even on several requests, including the request on 21-01-2020, by the plaintiff to execute the sale deed and to accept the balance amount, the defendants failed/neglected to perform their part of the agreement. Thereafter, on 10-03-2020 when the plaintiff again visited the defendants, he came to know for the first time that the defendants have not taken any steps to obtain the necessary sale permissions as the defendants were getting higher price for the suit land from some other persons. The plaintiff as PW-1 has stated the same facts in his affidavital evidence. PW-2 and PW-3 have stated those facts and averred that those facts are within their knowledge. PW-3 Sri Jasjit Singh has further stated that on 21-01-2020 he had also accompanied the plaintiff when the plaintiff went to the house of the defendants and requested the defendants to execute the sale deed by accepting the balance amount of Rs.50,000/-. These facts have shown that the plaintiff is willing and ready to pay the balance amount and to purchase the suit land. But the defendants have failed/neglected to obtain necessary sale

permission and to execute the registered sale deed in favour of the plaintiff. As such, in absence of any adverse evidence, I hold that the plaintiff is ready to perform his part of agreement but the defendants failed/neglected to perform their part.

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

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

17. 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 defendants and the plaintiff paid Rs.7,50,000/- to the defendants as advance money towards sale consideration of the suit land. The plaintiff is ready to perform his part of the agreement but the defendants failed/neglected to perform their 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 defendants in favour of the plaintiff, delivery of khas possession of the suit land along with cost of the suit. The cost of registration will be borne by the plaintiff.

ORDER

18. 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 defendants in favour of the plaintiff on payment of the

balance amount of Rs.50,000/-. In case of non-execution by the defendants, the plaintiff will be entitled to get it executed as per Order XXI r.34 of CPC. The plaintiff is also entitled to recover khas possession of the suit land.

19. Let copies of this Judgment be furnished to the parties subject to payment of costs.

21. Let prepare the decree.

Given under my hand and the seal of this Court on this 4th day of June, 2022.

(C.Khanikar)
Civil Judge, Sonitpur.

A P P E N D I X

Plaintiff's witnesses:

- PW-1: Sri Rajendra Sharma, plaintiff
PW-2: Sri Shiva Nath
PW-3: Sri Jasjit Singh
PW-3: Md. Zeherul Rahman (official witness)

Defendant's witnesses: None

Exhibits of the Plaintiff.

- Ext.1 : Original agreement for sale dated 06-11-2019
Ext.2 : Citified computerized copy of Jamabandi of PP
No.130, vill- Udmari Borjhar, Mouza- Halleswar

Exhibits of the defendants :Nil

(C. Khanikar)
Civil Judge, Sonitpur