

IN THE COURT OF THE SENIOR CIVIL JUDGE BANPUR

PRESENT:-

Sri Satya Ranjan Pradhan,
Senior Civil Judge, Banpur.Civil Suit No.75/2014
144/2011Smt. Pratima Paikraya, aged about 43 years,
W/o Sri Benudhar Paikaray.
Household duty, Resident of Karadi, Po: Rahanabeli,
P.S:Banpur,Dist:Khurda ... Plaintiff.

Versus

Smt. Sabita Champatiray, aged about 38 years,
W/o Sri Saranadhara Champatiray, House hold duty,
Resident of Gotapalli, Po: Kulei, P.S:Banpur, Dist:Khurda ... Defendant.Counsel for the plaintiffs ... Sri J.M.Pattnaik, Advocate,
and associates.

Counsel for the defendant ... Sri S.K.Das ,Advocate and associates.

Date of Argument – 24.06.2014

Date of Judgment – 08.07.2014

J U D G M E N T .

This is a suit for specific performance of contract.

2. The case of the plaintiff as per the plaint is that, she herself as well as the defendant jointly had purchased a property under Khata No.630/5 Plot No.1235 and 1234 measuring an area of Ac.0.068 decimals and 0.019 decimals respectively in Mouza Barkul vide registered Sale deed No.950/1998. After the said purchase the plaintiff was possessing the eastern side of the suit land where as the defendant was possessing the western side. On 14.11.2014 the defendant entered into an agreement with the plaintiff to sale the suit land (half of the total land towards western side) for a consideration amount of Rs.62,000/-. On that day itself it was agreed between the parties that three months there to the defendant will execute a registered

sale deed in favour of the plaintiff and the plaintiff will pay the rest amount of Rs.2000/- to her. on 6.2.2011 the plaintiff approached the defendants to execute the registered sale deed by 14.02.2011 but the defendant showed her inability due to some urgent work and promised to execute the sale deed on 15.04.2011. When on 15.04.2011 the plaintiff approached the defendant to execute the sale deed and to take back the rest amount of Rs.2000/- the defendant did not agree to it. So she filed this suit praying to direct the defendant to execute the sale deed in respect of the suit property in her favour with the cost of the suit.

3. Being summoned the defendant appeared and filed her written statement denying the claims of the plaintiff. However she admitted to have purchased the suit property along with the plaintiff from its original owner through a registered sale deed in the year 1998 and were possessing the suit plot jointly and the same stands recorded in their name. Subsequently in order to avoid future complicity both of them amicably partitioned the suit plot among themselves in east - west direction. As per the amicable partition the plaintiff got the eastern half of the suit plot and the defendant got the western half. Thereafter the plaintiff constructed her dwelling house over the eastern side of the plot as per mutual partition but the share of the defendant in the western side was lying vacant till 11.04.2011. On that day defendant sold the said property to one Amulya Das who happens to be their sister in law (wife of brother) through a registered sale deed bearing No.11101100867 for a consideration of Rs.20,900/-. After purchase of the suit property the said Amulya Das constructed house over it and is residing till date. So it is claimed by the defendant that it is not believable story that when a property can be sold for a sum of Rs.62,000/- she will sale it for mere Rupees 20,000/-. That apart she totally denied the alleged fact of entering into any agreement with the plaintiff. In addition to that she raised a point of non-joinder of necessary party such as Amulya Das to the present suit as a ground for dismissal of the suit.

4. Basing upon the rival pleadings of the parties the following issues were framed.

I S S U E S

- 1) Whether the suit is maintainable?
 - 2) Whether the suit is defective for non-joinder of necessary party?
 - 3) Whether the defendant had executed an agreement for sale on 14.11.2010 in favour of the plaintiff?
 - 4) Whether the plaintiff is entitled to get a decree of specific performance of contract?
 - 5) What other relief the plaintiff is entitled to?
5. In order to substantiate her case the plaintiff had examined three witnesses including herself as P.W.1 and proved certain documents as Exts.1, 2, Ext.3 series & 4. On the other hand the defendant had examined none.

F I N D I N G S.

Issue Nos 3 & 4.

6. These being the most important issues are taken up first for the sake of convenience.

The main point for determination in this case is whether the defendant had executed an agreement for sale on 14.11.2010 for sale of the suit property to the plaintiff and whether the plaintiff is entitled for a decree of specific relief of contract. To substantiate her claim the plaintiff had examined herself as P.W.1. During her examination in chief she reiterate the facts which had earlier been mentioned in the plaint by saying that she as well as the defendant had purchased a land measuring an area Ac.0.068 decimals in Plot No.1235 and Ac.0.019 decimals in Plot No.1234 under Khata No. 630/05 vide R.S.D No.950/1998 and both of them are the recorded tenants of the said property. So far as filing of the present suit is concerned it was stated by the

plaintiff that on 14.11.2010 the defendant entered into an agreement with her for sale of the suit land which is a part of joint land purchased by then for a consideration amount of Rs.62,000/-. Out of the consideration of Rs.62,000/- on that day itself i.e. on 14.11.2010 the defendants took Rs. 60,000/- as advanced and it was agreed between them within three months from 14.11.2010 the defendant will execute a sale deed in favour of the plaintiff and the plaintiff will pay the rest amount to her. On 06.02.2011 the plaintiff herself approached the defendant to execute the sale deed as per the contract made on 14.11.2010 within the stipulated period of time that means 14.02.,2011 but the defendant showing some reason plead to execute the sale deed on 15.04.2011. Again on 15.04.2011 when the plaintiff approached the defendant to take the balance amount and execute the sale deed the defendant denied to execute the same. Hence she was forced to file the present suit to direct the defendants to execute the sale deed. In support of her claim the plaintiff had produced the registered sale deed bearing No.950 dated 22.05.1998 vide which she and the defendant had purchased the entire land from one Ranka Mohanty. The said sale deed was marked as Ext.1. she also filed the ROR which shows their joint ownership along with the rent receipts which are marked as Ext.2 and Ext.3 series. Most importantly she had produced the said agreement for sale purported to have been executed by the defendant. Apart from the plaintiff two other witnesses were also examined on her behalf namely Manoj Kumar Mahapatra and Prasanta Das as P.Ws 2 and 3. P.W.2 is a witness to the said deed where as P.W.3 is the scribe. Both these witnesses while being examined on behalf of the plaintiff stated that on 14.11.2010 the defendant had executed an agreement for sale in favour of the plaintiff for a consideration of Rs.62,000/-. Out of the said amount she (defendant) received Rs.60,000/- on that day itself. After the said document was prepared, it was readover and explained to both the parties. After going through the said documents, the defendant had put her signature on it along with other these two witnesses and one other witness namely Manjula Mishra. The said document as mentioned earlier was marked as Ext.4 whereas the signatures

of P.Ws 2 and 3 were marked as Exts.4/a and 4/b. All these three witnesses were cross examined at length by the counsel for the defendant but it could not be disproved by the defendant that no such document was executed as claimed by the plaintiff. It was specific plea of the defendant that she has not entered into any agreement for sale of the suit land with the plaintiff rather she had sold it to one Amulya Das vide registered sale deed No. 11101100867 for a consideration of Rs.20,000/-. After going through the statements of the plaintiff the other witnesses to the deed such as P.Ws 2 and 3 along with the documents itself marked as Ext.4 it seems that the defendant had executed an agreement for sale of the suit land in favour of the plaintiff. As revealed from the sale deed marked as Ext.1, the ROR Ext.2, the entire property under Khata No.630/5 in Plot No.1234 and 1235 for an area of Ac.0.019 and Ac.0.068 decimals were jointly purchased by the plaintiff and defendants. It was claimed by the plaintiff and admitted by the defendant. It is further an admitted fact that both the property were possessing the suit property on mutual partition. As per their arrangement the plaintiff was occupying half of the suit property from the eastern side whereas the defendant was possessing half of the property from the western side. The claim of the plaintiff the agreement was entered into by the defendant for sale of her share of half of the total land which she was possessing on the western side. There was no dispute regarding the said possession of the suit property and its extent. The controversy lies on the fact that whether the defendant had executed the said agreement for sale and if yes whether the plaintiff is entitled for the decree as prayed by her or not. As discussed earlier it was found out that the defendant had executed an agreement for sale now question comes whether that agreement is valid and binding upon the parties or not, as it is not a registered instrument. Section 17 of the Registration Acts-1908 provides the list of documents which are compulsorily registrable. So far as instrument relating to an agreement for sale is concerned the same is required to be registrable only when it comes under the purview of Sub -section (1A) of the said section. That apart the same is also required to be registered if possession has been or is

handed over to the purported purchaser in consequence to the said agreement to sale. (As required U/s 17 (1)f inserted by vide Orissa Amendment Act of 2002. Here in this suit only agreement for sale was executed as discussed earlier but the possession thereof was not handed over to the plaintiff. Similarly the aforesaid agreement does not come under the purview of section 53(A) of the T.P.Act. So the said agreement executed by the defendant is not compulsorily registerable U/s 17 (i) of the Act. It is settled law that a writing which confers upon a person write which will come into existence after fulfillment of certain conditions does not require U/s 17(1) of the Act. As because the present agreement for sale does not create, declare, assign, limit or extinguish any right, title or interest whether vested or contingent over the suit property it does not require to be registered U/s 17(1)(b)of the said Act. Now it is to be seen whether the plaintiff is entitled for a decree as prayed by her or not. As a requirement of the said agreement it is to be seen whether the plaintiff had performed her duty as per the condition of agreement or not. As claimed by the plaintiff she had paid a sum of Rs.60,000/- out of the total consideration of amount of Rs.62,000/- as advance. The witnesses who were examined on behalf of the plaintiff also disclosed the same. In addition to that the plaintiff has also stated that during the said period of three months she had approached the defendant to execute the said sale deed that means to perform the duty of the defendant as she was ready to perform her duty by paying the balance amount. Although the defendant denied the same but nothing was elicited from the mouth of the plaintiff or such witnesses which could have proved that these witnesses are telling false hood. On the other hand the defendant had come up with new facts that she had sold the suit property to the wife of her brother vide R.S.D No. 11101100868 dated 11.04.2011. Although it was pleaded in her W.S but no evidence was led by her side to substantiate the same. It is a settled principle of law that "pleading is no evidence". The defendant had to prove her own case by adducing evidence . In the absence of the same it can not be said that 3rd party interest had been created upon the suit land. It was specifically questioned to of the

plaintiff that whether she knows that the suit property was sold to her brother's wife or not. To which she denied. The said witness is also not made a party to the suit. Only basing upon the pleading of defendant it can not be said that the 3rd party interested has already been over the suit property and as such plaintiff is entitled to get the relief as claimed in para-a & b of the prayer portion of the plaint..

Issue No.2

In this issue to be answered as to whether the suit is defective for non-joinder of necessary party. This issue was formulated as the defendant has mentioned in para-3 of the W.S that as because she has sold the suit property to Amulya Das, she is a necessary party to the suit. As the plaintiff has not made her as a party the suit is defective for non-joinder of Amulya Das as party. While answering about the alleged sale of land as claimed by the defendant in the foregoing issues it was already mentioned that it was upon the defendant to substantiate her claim by adducing evidence but she has not discharged her onus . Similarly at the time of filing of W.S she did not file the copy of the said sale deed. Considering the aforesaid fact, I am of the opinion that the issue as claimed by the defendant is not defective for non-joinder of Amulya Das as necessary party.

Issue Nos 1 & 4

So far as the maintainability of the suit is concerned no specific reason was assigned by the defendant in the W.S as to why the suit is not maintainable. Similarly it was upon the defendant to prove this issue by adducing evidence but no evidence was led from the side of the defendant. So I find no point as to why the suit is not maintainable.

So far as other relief is concerned the plaintiff is not entitled any other relief except the relief as claimed in para-a & b of the prayer portion of the plaint.

O R D E R.

The suit be and the same is decreed on contest against the defendant but in the facts and circumstances of the suit without any cost.

The plaintiff is directed to pay the rest amount of Rs.2000/- to the defendant and after receipt of the amount the defendant is directed to execute the sale deed in favour of the plaintiff within two months hence. If the defendant denied to execute the sale deed the plaintiff is at liberty to approach this court to get the deed executed as prayed for through the process of the court by depositing Rs.2000/-.

Advocate's fee is at the contested scale.

Senior Civil Judge, Banpur

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 8th day of July, 2014.

Senior Civil Judge, Banpur.

List of witness examined on behalf of the Plaintiff :-

P.W.1 Smt. Pratima Paikaray
P.W.2 Manoj Kumar Mahapatra
P.W.3 Prasanta Das

List of witness examined on behalf of defendants :-

Nil

List of documents admitted into evidence by the Plaintiff :-

Ext.1 Registered sale deed Vide No.950 dated 22.05.1998.
Ext.1/a Signature of P.W.1 on Ext.1.
Ext.2 ROR in Khata No.630/2005 of Mauza Barkul.
Ext.3 to 3 (e) Rent receipts.
Ext.4 Un-registered agreement.
Ext.4/a Signature of P.W.2 on Ext.4.
Ext.4/b Signature of P.W.3 on Ext.4.

List of documents admitted into evidence by defendants :

Nil.

Senior Civil Judge, Banpur.

