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(2006) 02 JH CK 0009

Jharkhand High Court

Case No: S.A. No. 416 of 2003

Kanta Ram		APPELLANT
	Vs	
Sukhdeo Narayan and Others		RESPONDENT

Date of Decision: Feb. 8, 2006

Citation: AIR 2006 Jhar 53 : (2006) 2 JLJR 146 : (2006) 2 JCR 85

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: V. Shivnath, R. Shankar, B. Kumar and S. Topno, for the Appellant; H.C. Prasad, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.
This second appeal has been preferred against the judgment of affirmance passed by the learned Additional Judicial Commissioner, Ranchi in Title Appeal No. 20/2001 affirming the judgment and decree of the learned trial Court passed in Title Suit No. 140/91.

2. The plaintiff filed the said suit claiming a decree for specific performance. The plaintiffs case is that the land measuring 3.30 acres of plot No. 1449, 1450 and 1455 appertaining to Khata No. 106 of village Kokar, P.S. Sadar, District, Ranchi belong to the defendants and in the month of January, 1985 the defendants approached the plaintiff requesting him to purchase the said land. The plaintiff on their request agreed to purchase the same for a consideration amount of Rs. 50.000/-, The parties thereafter entered into an agreement of sale on 17.1.1985. The plaintiff also paid Rs. 18.600/- as an advance towards the said consideration amount. The defendants further took Rs. 2000/- at the time of need and then the wile of defendant (Pardeep Narayan) took Rs. 10.000/-, Thereafter the plaintiff approached the defendants and

requested them to execute and register the sale deed and transfer the said land after accepting the remaining consideration amount but the defendants refused to execute the sale deed and accept the balance consideration amount.

3. The defendants appeared and contested the suit by filing written statement. The defendants, inter alia, challenged the maintainability of the suit. The defendants flatly denied any such agreement as well as payment of any amount towards the alleged consideration amount. It was also stated that the agreement was dated 17.1.1985 whereas the suit was instituted in the year 1991 and as such it was hopelessly barred by limitation. It was also specifically sated that the alleged money receipts were forged and fabricated. On the pleadings of the parties several issues were framed by the Court below. The parties led their evidences, oral and documentary and the learned trial Court, after thorough scrutiny and consideration of the facts, materials and evidences on record, came to the finding that the alleged deed of agreement produced by the plaintiff is forged and fabricated document and the claim of the petitioner''s possession was not proved. The trial Court further held that the suit is bad for non-joinder of parties and is barred by -limitation. The trial Court thus dismissed the suit. The plaintiff then filed Title appeal in the Court of Judicial Commissioner, Ranch being Title Appeal No. 20/2001. The said appeal was finally heard and decided by the 8th Additional Judicial Commissioner, Ranchi, who by the impugned judgment and decree, dismissed the appeal, upholding the findings of the learned trial Court. Learned lower appellate Court also discussed and considered the facts, evidences and materials on record and concurred with the finding that the alleged document of agreement is forged and fabricated and as, the plaintiff failed to prove his possession.

4. Mr. V. Shivnath, learned Senior counsel appearing on behalf of the appellant, submitted that learned lower appellate Court has committed an error in coming to the conclusion as also failed to ascertain who is entitled to possession of the land. Learned counsel urged that the defendants had not even made any statement disputing the petitioner''s claim of possession and as such there should have been a finding of the Courts below on possession and in absence thereof the judgments and decrees of the Courts below are vitiated.

5. After hearing the counsel and on perusal of the judgments of the Courts below, I find that the plaintiff had made out a positive case of existence of an agreement to sell the property in question in his favour and has also claimed and he was put in possession of the land in the part performance of the contract. Learned trial Court, after thorough consideration, came to the finding that the plaintiffs alleged document of agreement is forged and fabricated and that he failed to prove his possession over the land in question. Learned lower appellate Court, after due discussion and consideration, has also concurred with the said findings of the learned trial Court and in that view of the matter, I find no substance in the submission of learned counsel for the appellant. Since learned Court below have

concurrently found that the alleged agreement is forged and fabricated and the appellant failed to prove his possession, no substantial question of law arises in this appeal as canvassed by learned counsel for the appellant. I, therefore, find no merit in this appeal, which is, accordingly, dismissed.