

TITLE APPEAL NO:13 OF 2015
APPELLANT: SHRI SABED ALI Vs
RESPONDENT: SHRI DINESH CH ROY & ANR

Assam Schedule VII, Form No.13(2)

HIGH COURT FORM NO.(J)2

HEADING OF JUDGMENT OF APPEAL/ CASE

DISTRICT : DHUBRI.

In the Court of the Civil Judge, Dhubri

Present : Yusuf Azaz, AJS.

Civil Judge, Dhubri.

TITLE APPEAL No: 13/ 2015

Friday, the 27th January, 2017

1) SHRI SABED ALI, S/O LT SAMAY UDDIN

VILL- UCHITA, P.S GOLAKGANJ

DHUBRI, ASSAM

..... APPELLANT (s).

- versus-

1) SHRI DINESH CHANDRA ROY

2) SHRI JITEN ROY

BOTH S/O LT LAHKI KANTA ROY

VILL- UCHITA, P.S- GOLAKGANJ

DHUBRI, ASSAM

.....RESPONDENT

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This suit coming on this day (or having been heard on) 17/12/2017
presence of:

SHRI A.K FAZLUL HOQUE, Advocate..... for the appellant(s).

SHRI H.M DAS Advocatefor the respondent.

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

JUDGMENT

1. This first appeal has been preferred by the defendant/appellant on being dissatisfied with the judgment & decree dated 28/1/2015 passed by the learned Munsiff No.2, Dhubri in Title Suit No:56/ 2010 whereby the learned trial court decreed the suit on contest with cost.
2. Upon admission of the appeal for hearing, the notices were issued to the respondents and the original case record of Title Suit no: 56/ 2010 was called for and received. The respondents appeared and contested the appeal.
3. In order to decide the appeal, let me narrate, in brief, the facts leading to this appeal:
4. The plaintiffs/ respondents had instituted the suit alleging therein that the defendant/ appellant, Shri Sabed Ali was the owner of a plot of land measuring about 1 Bigha 3 Katha 2 Lessas covered by Dag no: 605 of Khatian no:99 situated at village- Uchita (more particularly described in the schedule of the plaint and hereinafter referred to as the suit land) and he agreed to sell this land to the plaintiffs and entered into a

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written agreement to this effect. The plaintiffs pleaded that the total sale consideration of the suit land was fixed at Rs. 30,000/- out of which the plaintiffs paid Rs. 10,000/- as advance on 8/7/1998 and it was agreed that the remaining balance amount would be paid at the time of the registration of the sale deed. The plaintiffs pleaded that in pursuance to the aforesaid contract for sale, the possession of the suit land was delivered to the plaintiffs and since then the plaintiffs are in possession of the suit land. The plaintiffs further pleaded that the defendant again received Rs. 2000/- as advance on 29/9/2000 and as such they paid Rs.12,000/- in total as advance. The plaintiff thereafter requested the defendants on several occasions to obtain the sale permission from the concerned revenue authorities and thereafter to register the formal sale deed, but the defendant neglected the same. The plaintiffs continuously asked the defendant to register the formal sale deed after obtaining the requisite sale permission from October, 2000 to August, 2008, but the defendant avoided on some pretext and thereafter on 3/4/2009, the defendant refused to execute the sale deed; hence this suit praying for the decree of specific performance of the contract for sale. The plaintiffs further alleged that they had paid the remaining balance amount of Rs.18,000/- in two installments but the defendant did not give them receipt of the same; as such he is ready and willing to pay the aforesaid amount again if the defendant disputes the same. The plaintiffs have alleged that they were/ are ready and willing to perform their part of the contract.

5. The defendant/ appellant appeared and contested the suit by filing written statement. The defendant/ appellant contended that the suit is

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not maintainable. The defendant admitted that he had entered into an agreement dated 8/7/1998 to sell the suit land to the plaintiffs and also admitted that he received Rs.10,000/- as advance on the date of the agreement, but he denied having delivered the possession of the suit land to the plaintiffs. The defendant contended that he never delivered the possession of the suit land to the plaintiffs and that the suit land is still in his possession. The defendant contended that he intended to sell the suit land to meet the expenses of the marriage of his daughter, but after the aforesaid agreement, the plaintiffs failed to take steps for obtaining the necessary sale permission from the revenue authorities and also did not pay the remaining balance amount to the defendant; as such the defendant mortgaged his another plot of land to meet the expenses of the marriage of his daughter. The defendant contended that in view of the fact that the plaintiffs neglected to perform their part of the contract and as because the purpose for which he intended to sell the suit land was not met, the agreement of sale stood cancelled and thus the plaintiffs are not entitled to the specific performance of the said contract; hence prayed for dismissal of the suit. The defendant further pleaded that the suit is barred by limitation.

6. Upon the pleadings of the parties, the learned trial court framed the following issues:

(1) Is this suit maintainable?

(2) Whether there is a cause of action for this suit?

(3) Whether the defendant entered into an agreement for sale of the suit land with the plaintiff on 8/7/98 for a total

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consideration of Rs. 30,000/- and whether the defendant received Rs. 10,000/- as part payment towards the total sale consideration from the plaintiff and whether the suit land was delivered to the plaintiff as alleged?

(4) Whether the plaintiff is ready and willing to perform his part of the alleged contract?

(5) Whether the plaintiff is entitled to a decree for specific performance of contract against the defendant?

(6) Whether the plaintiff is entitled to the reliefs as prayed for?

Additional Issue:

1A) Whether the suit is barred by limitation?

7. After hearing both sides, the learned trial court vide the impugned judgment dated 28/1/2015 decreed the suit. On being aggrieved by and dissatisfied with the impugned judgment, the defendant/appellant preferred the present appeal, amongst others, on the following grounds:

(i) That the learned lower trial Court has erred in law and facts in deciding the suit;

(ii) That the court below failed to appreciate the evidence on record in its proper perspective;

(iii) That the learned trial Court ought to have held that the suit is barred by limitation;

(iv) That the learned trial Court ought to have held that the plaintiffs were not ready and willing to perform their part of the contract;

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(v) That the learned trial Court ought to have held that the plaintiffs are not entitled to specific performance of the contract;

(vi) That the learned lower trial court ought to have decreed the suit.

DISCUSSION, DECISION & REASONS FOR THE DECISION

8. I have perused the evidence and materials available in the case record. I have heard the arguments. Now, let me examine the evidence and other materials available in the case record to decide the case at hand.

POINTS FOR DETERMINATION:

Point for determination no:1: Whether the learned trial Court had rightly decided the issue no:3,4, 5 and 1A wherein it held plaintiffs entered into a legally enforceable contract to purchase the suit land and that they are entitled to the specific performance of the contract for sale?

9. The learned counsel for the defendant/ appellant, Shri A.K Fazlul Hoque had contended that the plaintiffs avoided and neglected to perform their part of the contract as such the learned trial Court had erred in holding that the plaintiffs are entitled to the specific performance of the contract. The learned counsel for the appellant had further contended that the defendant intended to sell the suit land so that he could meet the expenses of marriage of his daughter, but the said marriage is already done and the defendant had to mortgage his another plot of land for the said purpose; as such the requirement of selling the land is

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absent; hence the plaintiffs are not entitled to specific performance of the contract.

10. The learned counsel for the plaintiffs/ respondents had contended that the learned trial Court had rightly decided the issues in this suit as such the same are not liable to be interfered with.

11. I have perused the impugned judgment and the case record. Let me now discuss the materials on record and try to arrive at a definite finding in respect of the above issues.

12. At the outset I would like to state that it is an admitted fact that the suit land originally belongs to the defendant and it is also an admitted fact that the defendant entered into the agreement dated 8/7/1998 with the plaintiffs to sell the suit land. It is also an admitted fact that the total sale consideration for the suit land was fixed at Rs. 30,000/- and out of the aforesaid amount, the defendant received Rs.10,000/- as advance. It is seen from the above that the only points of controversy is as to whether the plaintiffs paid the entire balance sale consideration or paid only Rs.10,000/- as alleged; and as to whether the possession of the suit land was delivered to the plaintiffs or not. It is further in controversy as which of the parties to the contract neglected to perform their part of the contract and whether the plaintiffs were ready and willing to perform their part of the contract.

13. The plaintiffs examined Shri Dinesh Ch Roy (PW1) as witness in support of their case and he had specifically deposed that the plaintiffs entered

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into an agreement dated 8/7/1998 to purchase the suit land. The plaintiff, Shri Dinesh Ch Roy (PW1) had also produced the said agreement and the same is marked as exhibit 1. The execution of the exhibit 1 is not in dispute. In fact the defendant specifically admitted in his written agreement that he had executed the exhibit 1 and that he entered into an agreement with the plaintiffs to sell the suit land for Rs.30,000/- and out of the aforesaid amount he had received Rs.10,000/- as advance. In view of the above discussions it is held that the plaintiffs have sufficiently proved that they had entered into a legally enforceable contract with the defendant to purchase the suit land for Rs.30,000/-.

14. The learned counsel for the appellant/ defendant had contended that the PW1, Shri Dinesh Ch Roy had specifically admitted in his cross examination that he could not identify the signature of the defendant and his own signatures upon the exhibit 1; as such it cannot be held that the exhibit 1 is proved. The above contention of the defendant/ appellant is not sustainable because it is an admitted fact that the defendant entered into an agreement with the plaintiffs to sell the suit land for Rs.30,000/- as such the facts which are admitted is not required to be proved. Moreover the PW1 had specifically stated that he cannot read the exhibit 1 which shows that the PW1 is illiterate; as such not much reliance could be placed upon the statement of the PW1 wherein he had stated that he could not identify the signatures upon the exhibit 1.

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15. In view of the specific admission made by the defendant in his written statement that he had entered into the written agreement dated 8/7/1998 (exhibit 1) to sell the suit land to the plaintiffs, it is held that the learned trial Court had rightly held that the defendant had executed the exhibit 1 and he had rightly held that the defendant entered into an agreement to sell the suit land to the plaintiffs for Rs.30,000/- out of which he received Rs. 10,000/- as advance.
16. I have perused the exhibit 1 and it appears that both the plaintiffs and the defendant agreed therein that the balance sale consideration would be paid at the time of registration of the formal sale deed after obtaining the necessary sale permission from the concerned authorities. The perusal of the exhibit 1 reveals that no specific time period was fixed therein for performance of the said contract, i.e for payment of the balance sale consideration and for registration of the sale deed, but the only condition which was agreed to by both the parties was that both the parties would assist each other in obtaining the necessary sale permission from the concerned authorities and after obtaining the sale permission, the balance sale consideration would be paid and thereafter the sale deed would be registered after fixing a convenient date by the parties. In the instant case at hand, it is an admitted fact that no sale permission was obtained; as such the cause of action for specific performance of the aforesaid contract would arise only from the date of refusal to perform the same. The PW1 had specifically deposed that the defendant refused to perform his part of the contract on 3/4/2009; hence they instituted this suit. The PW1 was not at all cross examined by the defendant in this regard and there is nothing on record to doubt

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or disbelieve the above statement of the PW1; as such it is held that the performance of this contract was refused by the defendant on 3/4/2009; hence the cause of action for this suit arose from 3/4/2009.

17. The learned counsel for the appellant had contended that the period of limitation of a suit for specific performance of contract is three years; as such this suit is barred by limitation. The above contention of the appellant/ defendant is not sustainable because it is specifically provided under Article 54 of the Limitation Act, 1963 that in case there is no specific time limited for performance of the contract, then the cause of action would accrue from the date of knowledge of refusal to perform the said contract. In the instant case at hand, it is already held above that no specific date of performance of the contract was fixed as such the cause of action would arise from 3/4/2009, i.e the date of refusal. The learned trial Court had rightly discussed the law in this regard and rightly held that the cause of action would arise in the instant case from 3/4/2009 and not from the date of the agreement, i.e 8/7/1998.
18. Moreover, time is not the essence of the instant contract for sale; as such it cannot be held that the date of cause of action arose on and from the date of execution of the exhibit 1. It would further be pertinent to mention herein that the defendant did not adduce evidence in support of his case and there is absolutely no material on record to show that the defendant intended to sell the suit land to arrange for the expenses of his daughter's marriage; as such it is held that the defendant had failed to prove that time was the essence of this contract. The exhibit 1 does not contain any condition or statement to the effect

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that the defendant intended to sell the suit land to arrange for the marriage of his daughter. The defendant had also failed to examine himself without any reasonable cause as such adverse inference is drawn against the case set up by the defendant and it is held that the defendant had failed to prove he intended to sell the suit land for his daughter's marriage.

19. In addition to the above, if the defendant really wanted to sell the suit land to meet the expenses of the marriage of his daughter, then the exhibit 1 would not have been so open about the time frame for the performance of the contract and would not have stated that as and when necessary sale permission is obtained, the balance sale consideration would be paid, but the exhibit 1 would have mentioned a specific time frame within which the permission is to be obtained.

20. The defendant had further pleaded that he had to mortgage another plot of land to meet the expenses of his daughter's marriage, but the defendant had failed to bring on record any material to show that he had other plots of land which was mortgaged; as such it is held that the defendant had failed to prove that time was the essence of the contract and that he intended to sell the suit land to meet the expenses of marriage of his daughter.

21. The PW1 had specifically deposed that the plaintiffs were ready and willing to perform their part of the contract and that the defendant neglected to perform his part of the contract. There is no material on record to show that the plaintiffs were not ready and willing to perform

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their part of the contract, but on the contrary there is enough material to show that the defendant neglected to perform his part of the contract, because land sale permissions is required to be obtained by making an application before the revenue authorities by the seller, i.e the defendant in this case, but there is absolutely no material on record to show that the defendant had at any point of time applied for obtaining land sale permission.

22. The perusal of the impugned judgment reveals that the learned trial Court had held that the plaintiffs failed to prove that they had paid balance sale consideration vide exhibit 2 and on two other different occasions. The plaintiffs/ respondents had not challenged the finding of the learned trial Court in this regard and the appellant/ defendant had also not challenged the finding of the learned trial Court in this regard. From the perusal of materials on record, it appears that there is no material to show that the plaintiffs made payment of the balance sale consideration; as such it is held that the learned trial Court had rightly held that the plaintiffs had paid only Rs.10,000/- to the defendant.

23. The plaintiffs have specifically pleaded that they are ready and willing to pay the entire balance sale consideration if it is held that the payments made by them after the execution of the exhibit 1 is denied by the defendant; as such it is held that the plaintiffs were/ are ready and willing to perform their part of the contract.

24. The PW1, Shri Dinesh Ch Roy (plaintiff) and the independent witnesses examined by the plaintiffs namely, Shri Dinesh Roy (PW2) and

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Shri Ramesh Roy (PW3) have specifically deposed that the plaintiffs are in possession of the suit land since the date of execution of the exhibit 1. The abovenamed witnesses were cross examined but there is absolutely no material on record to doubt or disbelieve them; as such it is held that the possession of the suit land was delivered to the plaintiffs. Further, the defendant had failed to examine himself or examine any other witness in his support to show that the possession of the suit land was never delivered to the plaintiffs and that the defendant is still in possession of the suit land; as such it is held that the learned trial Court had rightly held that the plaintiffs are in possession of the suit land.

25. The learned counsel for the appellant had further contended that the price of the suit land had grown exponentially during this period; as such the specific performance of the aforesaid contract cannot be granted. The above contention of the appellant is not sustainable because adequacy or inadequacy of consideration is not a ground available to any of the parties for avoiding the contract. Moreover, there is absolutely no material on record to show that the price of the suit land has increased exponentially. Further, the plaintiffs are in possession of the suit land; as such there is no question of undue hardship to the defendant/ appellant.

26. In view of the discussions made above it is held that the learned trial Court had rightly decided the issue no:3,4,5 and 1A and rightly held that the plaintiffs are entitled to the specific performance of the contract for sale and that the plaintiffs have paid Rs.10,000/- as advance and as

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such the balance sale consideration of Rs.20,000/- is still required to be paid.

27. DECISION: The decision of the learned trial Court in the issue no:3,4,5 and 1A are affirmed.

28. I have perused the decision of the learned trial Court in the issue no:1 and 2 and it appears to me that the learned trial Court had rightly decided the above issues; as such the decision of the learned trial Court in the above issues are affirmed.

29. In view of the above discussions, and more particularly the decisions reached in the issue no:3,4,5 and 1A it is held that the learned trial Court had rightly decided the issue no:6 and rightly held that the plaintiffs are entitled to the relief of specific performance of the contract for sale (Exhibit 1).

ORDER

30. In view of the above discussions, the appeal is dismissed and the impugned judgment and decree passed in Title Suit no:56/ 2010 by the learned Munsiff No:2, Dhubri is hereby affirmed, however the decree is slightly modified and it is directed that the plaintiffs/ respondents shall pay the balance sale consideration of Rs.20,000/- (twenty thousand) to the defendant/ appellant within 3 months from today and thereafter the defendant/ appellant shall execute the formal registered sale deed.

31. Prepare decree accordingly.

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32. The appeal is dismissed on contest with cost.

33. Send back the LCR alongwith a copy of the judgment to the learned trial Court.

Given under my hand and the seal of this Court on this the 27th day of January, 2017 at Dhubri.

Yusuf Azaz,
Civil Judge, Dhubri

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.