IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.20 of 2011

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1. Urmila Devi Jain (expunged vide order dated 10.08.2022)

2. Smt. Madhu Jain, Wife of Shri Arun Kumar Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle- Arrah, District- Bhojpur.

3.1. Sarojani Devi Jain W/o Late Krishna Kr. Jain Permanent Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

3.2. Kamal Kumar Jain S/o Late Krishna Kumar Jain Permanent Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

3.3. Kaushal Kumar Jain S/o Late Krishna Kr. Jain Permanent Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

3.4. Mina Agarwal D/o Late Krishna Kr. Jain, W/o Santosh Kr. Agarwal R/o- 498/ Nayibasth Nita Nagar Police Station Kidganj, Allahabad Pin- 211033 (U.P.), Permanent Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

3.5. Anju Agarwal D/o Late Krishna Kr. Jain, W/o Krishna Kr. Agarwal R/o 57/48, Ahamad Ganj, Opposite to Ifrin Hospital, Allahabad Pin- 211003 (U.P.) Permanent Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

4.1. Madhu Devi Jain W/o Late Rishav Kumar Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

4.2. Ajay Kumar Jain S/o Late Rishav Kr. Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

4.3. Amit Kumar Jain S/o Late Rishav Kr. Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

4.4. Nikil Kumar Jain S/o Late Rishav Kr. Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

5. Arun Kumar Jain, Son of Late Harkhen Kumar Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle- Arrah, District- Bhojpur.

6. Akhil Kumar Jain, Son of Late Harkhen Kumar Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle- Arrah, District- Bhojpur.

7.1. Namita Jain W/o Late Rajesh Kumar Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

7.2. Rohit Kumar Jain S/o Late Rajesh Kumar Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

7.3. Sonali Sah D/o Late Rajesh Kr. Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

7.4. Mausam Jain D/o Late Rajesh Kr. Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

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7.5. Nishi Jain D/o Late Rajesh Kr. Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

8. Deepak Kumar Jain, Son of Late Harkhen Kumar Jain Resident of Mohalla-Mahajan Toli No.-1, P.S.- Arrah Town, Circle- Arrah, District- Bhojpur.

9. Bipul Kumar Jain, Son of Late Raj Kumar Jain Resident of Mohalla-Mahajan Toli No.-1, P.S.- Arrah Town, Circle- Arrah, District- Bhojpur.

10.1. Anita Jain W/o Late Anil Kumar Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

10.2. Anurag Jain S/o Late Anil Kumar Jain Resident of Mohalla- Mahajan Toli No.-1, P.S.- Arrah Town, Circle Office- Arrah, District- Bhojpur.

11. Sunil Kumar Jain, Son of Late Raj Kumar Jain Resident of Mohalla-Mahajan Toli No.-1, P.S.- Arrah Town, Circle- Arrah, District- Bhojpur.

... ... Appellant/s

Versus

1. Ashok Kumar Son of Manilal Gupta Resident of Mohalla- Mahajan Toli No.-2, P.S.- Arrah (Town), Circle Office- Arrah, District- Bhojpur.

2. Arun Kumar, Son of Manilal Gupta Resident of Mohalla- Mahajan Toli No.-2, P.S.- Arrah (Town), Circle Office- Arrah, District- Bhojpur.

3. Manoj Kumar, Son of Manilal Gupta Resident of Mohalla- Mahajan Toli No.-2, P.S.- Arrah (Town), Circle Office- Arrah, District- Bhojpur.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Kamal Nayan Chaubey, Sr. Advocate
		Mr. Sachchida Nand Singh, Advocate
For the Respondent/s	:	Mr. Jitendra Kumar Pandey, Advocate
		Mr. Ranjan Kumar Dubey, Advocate
		Mr. Kumar Gaurav, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

Date : 05-01-2024

Heard Mr. Kamal Nayan Choubey, learned senior counsel for the appellants and Mr. Ranjan Kumar Dubey, learned counsel for the respondents.

2. The instant appeal has been preferred against the judgment and decree dated 28.12.2010 passed by learned 7th Sub

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Judge, Ararah in Title Suit No. 353 of 2007, whereby plaint was rejected under Order 7 Rule 11 of Code of Civil Procedure.

3. The plaintiff-appellants filed Title Suit No. 353 of 2007 for a decree of specific performance of contract on the basis of an agreement for sale dated 15.04.2000 executed by defendant no. 1, namely, Ashok Kumar, defendant no. 2, namely, Arun Kumar and defendant no. 3, namely, Manoj Kumar, all sons of Manilal Gupta in favour of plaintiffs. The plaintiffs sought relief for a decree of a specific performance of contract in respect of the suit property as described in Schedule- Ka of the plaint in favour of the plaintiff and against the defendants, directing the defendants to jointly perform the part of their statutory obligation after receiving the remaining amount of consideration from the plaintiffs and to execute the sale deed in favour of the plaintiffs, failing which the sale deed be executed in favour of the plaintiffs through the process of court.

4. The case of the plaintiff, in short, is that the property in suit originally belonged to one Shambhu Ram. He had no issue, as such, he, on 04.12.1974, executed a registered Will of his property in favour of defendant nos. 1 to 3. Defendant nos. 1 to 3 at the time of registration of Will were minors and as such, the said Will was executed in favour of defendant nos. 1 to 3 under the guardianship of their mother, namely, Ram Dulari Devi. After the death of Shambhu Ram, a probate case no. 5 of 1988 was filed before the learned

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District Judge, Bhojpur at Araah. On protest the said probate case was converted into Title Suit No. 7 of 1990. It is further contended that during the pendency of the probate case bearing Title Suit No. 7 of 1990, all the three defendants executed an agreement on 15.04.2000 for sale for the property in dispute for a total consideration of 21 Lakhs and received 6 lakhs and 51 thousands as Baybeyana (earnest money) with a condition that the properties in dispute along with other properties for a probate case (Title Suit No. 7 of 1990) is going on in Civil Court, Ara in which issues had been settled and the same will be disposed of very soon, and after grant of probate, first party (defendant nos. 1 to 3) will execute the sale deed within three months from date of grant of probate and in case of failure to do so by the first party, the second party will get it registered through process of court.

5. It is further contended that first party by way of his part performance of contract gave possession to the second party over a shop having width of 10 and ½ feet and length 13 feet 4 inch, and in the said shop, the second party had started business and till date he is continuing in possession, and Rs. 14,49,000/- remained as balance amount of the contract for sale which was to be paid at the time of registration of sale deed. It is further pleaded that out of rest Rs. 14,49,000/-, the first party had received two lakhs on 05.02.2007 and as such, only Rs. 12,49,000/- was to be paid by the plaintiff-

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appellants to the defendants-respondents at the time of execution of the sale deed. It is further case of the plaintiff that due to dilly dallying tactics of defendants inordinate delay was caused in grant of probate.

6. The plaintiffs sent advocate notice to the defendants for executing the sale deed in terms of agreement for sale dated 15.04.2000, but the defendants did not heed upon the said notice. Therefore, the suit was filed.

7. On the other hand, the learned counsel for the respondents submits that there was an unregistered agreement to sale on 14.05.2000. It is submitted that agreement to sale was executed with a condition that sale deed will be executed within three months from the date of grant of probate case (Titie Suit No. 7 of 1990). However, the said probate case was dismissed for want of prosecution vide order dated 18.08.2016. The moment the respondent came to know about the dismissal of the said probate case, immediately filed M.A. No. 11 of 2016 on 01.10.2016 for restoration of probate case (T.S. No. 7 of 1990) which is pending for its final disposal. It is admitted case of the parties that the present suit was filed before disposal of the probate case, therefore, the suit is premature. The learned counsel for the respondents further submits that the said agreement cannot be enforced unless terms mentioned in the agreement occurs.

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8. On the basis of rival contentions of the parties, the following points arise for consideration:-

(i) Whether agreement in question is contingent?

(ii) Whether enforcement of contracts contingent on an event not happened?

(iii) Whether the plaintiffs have valid cause of action for the suit?

9. On perusal of the contents of the agreement to sale, it is apparent that there is clear assertion that final sale deed will be executed only after disposal of probate case (Title Suit No. 7 of 1990). It is also admitted case of the parties that the said restoration of probate case (T.S. No. 7 of 1990) is still pending before the lower court and the suit was filed before disposal or grant of probate in favour of defendant nos. 1 to 3. Therefore, the cause of action would not arise for filing of the suit.

10. Unless that contingency was fulfilled, the contract was not capable of enforcement as stated in Section 31 of the Indian Contract Act. The parties entering into an agreement to sale is clearly dependant on appropriate decisions being taken by the civil court in probate case (Title Suit No. 7 of 1990). The agreement to sale was not a conclusive contract. The performance of it was certainly contingent upon such decision being available in favour of the defendants. Therefore, plaintiffs have no cause of action for the suit

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before any judgment in Probate case is passed in favour of the defendants.

11. In these circumstances, I do not find as to how the agreement to sale would become enforceable in law as Section 32 of the Indian Contract Act clearly provides that contingent contract to do or not to do anything, if an uncertain future happens, can be enforced by law only when that the event has happened.

12. I do not find that there is any perversity in such finding as recorded by the learned trial court. Assailing of the findings of the learned trial court, the plaint being hit by provisions of Section 31 and 32 of the Contract Act, would not carry forward the case of the appellants as, in any case, the plaint deserved to be outrightly rejected.

13. As a result of the above discussion, I find no merit in the instant appeal. The appeal is, accordingly, dismissed.

(Khatim Reza, J)

premchand/-

AFR/NAFR	NAFR
CAV DATE	21-08-2023
Uploading Date	06-01-2024
Transmission Date	N/A

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