

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.31 of 2023

In
CIVIL MISCELLANEOUS JURISDICTION No.770 of 2018

-
-
1. Musmat Shanti Devi Widow of Ramchandra Ojha, Resident of Village- Dogra, P.O.- Bihiya Chaurasta, P.S.- Bihiya, District- Bhojpur.
 2. Manoj Pandey Son of Kanhaiya Lal Pandey, Resident of village- Bharasara, P.S.- Jagdishpur, District- Bhojpur.

... .. Petitioners

Versus

1. Lallu Ram Son of Ganga Ram, Resident of Village- Doghra, Chamar Tola, P.O.- Bihiya Chaurasta, District- Bhojpur.
2. Hari Shankar Tiwari Son of Late Ram Pravesh Tiwari, Resident of Village- Kawalpatti, P.S.- Behia, District- Bhojpur.
3. Mumtaj Ali Son of Anwar Ansari, Resident of Mohalla- Raja Bazar, Behia, P.S.- Behia, District- Bhojpur.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Awadhesh Prasad Sinha, Advocate
For the O.Ps.	:	Mr. Deepak Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 24-11-2023

Heard learned advocates for the parties.

2. This Civil Revision has been filed against the order dated 05.12.2017 passed in Title Suit No.15 of 2016 by learned Sub-Judge, Jagdishpur, Bhojpur by which petition filed under Order 7 Rule 11 of the C.P.C. has been rejected.



3. Petitioners herein are defendant nos.1 and 2 in the Title Suit No.15 of 2016 filed by opposite party no.1 (plaintiff) for a relief for specific performance of contract with other reliefs on the basis of deed of contract for sale/Mahadanama dated 11.05.2014 on Non-Judicial stamp paper. It is stated that petitioner/defendant no.1 Shanti Devi has taken Rs.37 lacs and executed affidavit of receipt dated 05.11.2014 before Notary Public on which petitioner/defendant no.2 Manoj Pandey is a witness and given possession on the said land with assurance to execute registered sale deed. The petitioners came to know that defendant no.1 got permission from Consolidation Officer in this regard then she told that she has sold the land to defendant no.2 Manoj Pandey. The said amount has not been returned by the defendant no.1 nor executed the sale deed, hence the plaintiff filed the said suit. Petitioners/defendant nos.1 and 2 filed joint written statement challenging the suit on various grounds, denied the claim of the plaintiff and stated that the said deed of contract/Mahadanama are false and fabricated and not executed by petitioner/defendant no.1 and she never accepted any amount from the plaintiff and no claim shall be made on the basis of an unregistered contract for sale. The petitioners filed a petition under Order 7 Rule 11(a) and (d) of the C.P.C. on



25.06.2016 for rejection of the plaint in view of Section 17 (1A) of the Registration Act, 1908 which provides mandatory registration of document containing contract to transfer of immovable property for consideration. Accordingly, suit based on such unregistered agreement to sell is liable to be rejected under Order 7 Rule 11 C.P.C. and in such circumstances no cause of action arose for filing the suit. The said application has been dismissed by the learned trial court vide the impugned order.

4. Learned counsel for the petitioners has submitted that the impugned order is illegal, improper and against the mandatory provisions of law of sub section (1A) of Section 17 of the Registration Act, 1908 and is liable to be set aside.

5. He has further submitted that the alleged deed of contract for sale (Mahadanama) and alleged affidavit of receipt of money by petitioner no.1 and witnessed by petitioner no.2 are false and fabricated and no claim can be made on the basis of an unregistered contract for sale and the suit for specific performance based on it is liable to be rejected under Order 7 Rule 11 (a) and (d) of the C.P.C. as no cause of action arose for filing this suit which is frivolous and complete abuse of the process of law. In support of his contention he referred and



relied on the judgment of this Court in **Sanjay Kumar Singh Vs. The State of Bihar & Ors.** reported in **2009 (4) P.L.J.R. 674** and judgment dated 23.09.2022 of Hon'ble Supreme Court in **Balram Singh Vs. Kelo Devi** reported in **2022 SCC OnLine SC 1283**.

6. In **Sanjay Kumar Singh Vs. The State of Bihar & Ors.** (supra) this Court held that under Section 17 of the Registration Act, 1908 requirement of registration of document containing contract to transfer immovable property for consideration is mandatory, if they have been executed after commencement of The Registration and Other Related Laws (Amendment) Act, 2001. If such document is not registered on or after commencement, it shall have no effect for the purposes of Section 53 A of the Transfer of Property Act, 1882.

7. The Hon'ble Supreme Court vide judgment dated 23.09.2022 in **Balram Singh Vs. Kelo Devi 2022 SCC OnLine SC 1283** observed, considering the fact of that case, that the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simplicitor for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for



collateral purpose. However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance.

8. On the other hand, learned counsel for the opposite parties has submitted that the learned trial court has rightly rejected the petition of the petitioner vide the impugned order which requires no interference by this Court as there is no jurisdictional error or illegality in the impugned order. He has further submitted that after going through the averments made in the plaint, it is clear that plaint sets out requisite material facts that disclose a cause of action and gives rise to triable issues. He has further submitted that petitioner no.1 has taken Rs.37 lacs as consideration amount but thereafter not executed the sale deed nor returned the said amount due to which the plaintiff was forced to file the suit which is maintainable. Lastly, he has submitted that even the unregistered document affecting immovable property may be received as evidence of the contract in suit for specific performance.

9. Learned counsel for other party submits that the observation of Hon'ble Supreme Court in **Balram Singh Vs. Kelo Devi** (supra) was made in the facts of that case in which



the plaintiff had filed suit for permanent injunction without filing suit for specific performance and the Hon'ble Court had considered the judgment in Second Appeal not with respect to rejection of plaint under Order 7 Rule 11 C.P.C. He has further submitted that in **Sanjay Kumar Singh Vs. The State of Bihar & Ors.** (supra), this Court has clarified that the unregistered documents have no effect for the purposes of protection sought under Section 53A of the Transfer of Property Act.

10. The Hon'ble Supreme Court with regard to the scope of Order VII Rule 11 C.P.C. in the judgment in **Dahiben Vs. Arvindbhai Kalyanji Bhanusali and Ors, (2020) 7 SCC 366** made the following observations:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

*23.4. In **Azhar Hussain v. Rajiv Gandhi, 1986 Supp. SCC 315** this Court held that the whole*



purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p.324, para 12)

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

23.6. *Under Order 7 Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint [**Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512**], read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

23.9. *In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint [**Sopan Sukhdeo Sable Vs. Charity Commr. (2004) 3 SCC 137**] on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.*

23.11. *The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with*



the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr., (2004) 9 SCC 512) which reads as: (SCC p.562, para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. *In Hardesh Ores (P.) Ltd. v. Hede & Co. (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh Vs. Dukh Haran Nath Singh, AIR 1962 SC 941].*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.*

23.14. *The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled*



by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi ,1986 Supp SCC 315].

23.15. *The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint."*

11. Accordingly, the Court must determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

12. The Hon'ble Supreme Court in judgment dated 31.10.2023 in **Kum. Geetha Vs. Nanjundaswamy & Ors.** reported in **2023 SCC OnLine SC 1407** reiterated the aforesaid principle and observed in para 7 that in simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the C.P.C. must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.

13. In **K.B. Saha and Sons Pvt. Limited Vs. Development Consultant Limited (2008) 8 SCC 564** the Hon'ble Supreme Court held that a document is required to be registered, but if unregistered, can still be admitted in evidence



of a contract in a suit for specific performance.

14. When protection is sought for under Section 53-A, law expects that the sale agreement can be acted upon only if it is registered. The question whether agreement to sell (Mahadnama) can be acted upon when the same being unregistered document has been answered by the Hon'ble Supreme Court in **Ameer Minhaj Vs. Dierdre Elizabeth (wright) Issar and Others** reported in **(2018) 7 SCC 639**. The relevant portions are extracted hereunder:

“9. In other words, the core issue to be answered in the present appeal is whether the suit agreement dated 9th July 2003, on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17(1A) of the 1908 Act came into force with effect from 24th September, 2001. Whereas, the suit agreement was executed subsequently on 9th July, 2003.

Section 17 (1A) of the 1908 Act reads thus:

“17. Documents of which registration is compulsory (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:

XXX XXX XXX

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after



the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

XXX XXX XXX”

*10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53A of the 1882 Act. The issue, in our opinion, is no more res integra. In **S. Kaladevi Vs. V.R. Somasundaram and Ors., AIR 2010 SC 1654** this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.*

11 Section 49 of the 1908 Act reads thus:

*“49. **Effect of nonregistration 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. In the reported decision, this Court has adverted to the principles delineated in **K.B. Saha and Sons Private Limited Vs. Development Consultant Limited, (2008) 8 SCC 564** and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment that the sale agreement dated 9th July, 2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the Trial Court after the parties adduce oral and documentary evidence.”*

15. It is clear from the above 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 under Section 53-A of the Transfer of Property Act.

16. The Hon'ble Supreme Court in **R. Hemlata Vs.**

Kashthuri 2023 SCC OnLine 381 observed as under:

“12. At this stage, it is required to be noted that the proviso to Section 49 came to be inserted vide Act no.21 of 1929 and thereafter, Section 17 (1A) came to be inserted by Act No.48 of 2001 with effect from 24.09.2001 by which the documents containing contracts to transfer or consideration any immovable property for the purpose of Section 53 of the Transfer of Property Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then there shall have no effect for the purposes of said Section 53A. So, the exception to the proviso to Section 49 is provided under Section 17(1A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1A) shall be applicable.

13. Under the circumstances, as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act 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 or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17 (1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that unregistered document in question namely unregistered agreement to sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49.”



17. In the present case, if the statements in the plaint are taken to be true, it cannot be said that it does not disclose a cause of action and the plaint shall be rejected. This is a matter of trial, the result of which would depend upon the evidence adduced by the plaintiff. At this stage, the Court is not concerned with the correctness of the averments, except to state that the plaintiff has to discharge the burden of proving his case. Insofar as the application under Order VII Rule 11 of C.P.C. is concerned, the court will proceed only that far, to examine whether the plaint discloses a cause of action and no further. The learned trial court has rejected the application under Order VII Rule 11 C.P.C. considering the facts and circumstances of the case.

18. The genuineness, validity and binding nature of document will have to be adjudicated at the appropriate stage after the parties adduce oral and documentary evidence.

19. In view of the aforesaid facts and circumstances and the law discussed above, this Court does not find any valid ground for interference in the impugned order of the trial court. This Civil Revision is devoid of merit and is liable to be dismissed.

20. This Civil Revision is, accordingly, dismissed.



21. The trial Court shall adjudicate the suit on its own merits in accordance with law and uninfluenced by the observation made in this judgment.

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	AFR
CAV DATE	13.10.2023
Uploading Date	24.11.2023
Transmission Date	

