

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.5 of 1999

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SRI SHANKAR LAL AGRAWAL	 Appellant/s
Versus	

SMT.NIRUPAMA DAS Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Praween Kr.Jaipuriyar, Advocate
For the Respondent/s	:	Mr. Sabita Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT

Date : 16-12-2025

Heard learned counsel for the plaintiff/appellant. No one appears from the side of the defendant/respondent to argue this case.

2. Plaintiff/appellant has filed this appeal for setting aside the judgment and decree dated 24.11.1998 and 01.12.1998 respectively (hereinafter to be referred as the impugned judgment and decree) passed by the District Judge, Katihar in Title Appeal No. 08 of 1996 wherein and whereunder the learned first appellate court set aside the judgment and decree dated 14.02.1996 and 29.02.1996 respectively passed by Sub-Judge 1st, Katihar in Title Suit No. 25 of 1989.

Submission on behalf of the plaintiff/appellant

3. Learned counsel for the plaintiff/appellant has submitted that the judgment and decree passed by the learned appellate court is against the materials on the record of the case.



Learned first appellate court has erred in law in misconstruing the material documentary exhibits, such as, *baynama*, *labadibaynama* etc. and oral evidence. The impugned judgment is based on a misreading of material evidences and on non-consideration of the important material documents and evidences. There is an apparent admitted documentary evidence *baynama* (Ext-2) as well as consistent unrebutted oral evidence on record upon which the trial court has relied to show that the defendant/respondent has received advance of Rs.25,000/- from the plaintiff/appellant. The *baynama* was executed for selling the house situated in outskirts of Katihar town. There was a clear finding of the trial court as well as it is the finding of the first appellate court that the defendant/respondent has received the amount of Rs.25,000/- from the plaintiff/appellant and in lieu thereof given the original document of *labadinama* of suit property to the plaintiff/appellant and has also put the signature on the *baynama*; Exts-A, A/1 and A/2 by the defendant/respondent and his son.

4. That the learned first appellate court has erred in appreciating the facts as well as a wrong application of law has been made. There has been serious misreading of the appellant's/plaintiff's evidence on record by learned appellate court. It has further been submitted by the learned counsel for the appellant that the requirement of the law in a case of suit of specific



performance of contract, admittedly shows that the plaintiff/appellant was always ready and willing and is still ready and willing to perform his part of the contract i.e. to pay the balance consideration money to the defendant/respondent to get the proper sale deeds of the suit property executed. The learned first appellate court has first disbelieved the story of the defendant/respondent that he has returned Rs.12,000/- on different dates to the plaintiff/appellant out of Rs.25,000/- advance taken by the defendant/respondent and accordingly directed the defendant/respondent to pay back Rs.25,000/- with interest @12 % per annum within 45 days from the date of the order. As such, it has been prayed to set aside the impugned judgment and decree passed by the first appellate court.

5. Plaintiff/appellant had filed the Title Suit No. 25 of 1989 in the court of 1st Sub-Judge, Katihar for the specific performance of contract. The plaintiff's/appellant's case in brief is that the defendant/respondent was in need of money for his business. He approached the plaintiff/appellant and proposed to sell the suit land measuring 4 kattha 10 dhurs and 14 dhurkis bearing plot no. 13, khata no. 100 situated at mauza Bangana within Katihar town Ward no. 19 within Katihar municipality, District-Katihar along with pucca double storeyed building standing thereon. The plaintiff/appellant agreed to purchase the schedule property at



payment of consideration money of Rs.50,000/- in pursuance of the said contract between the parties the defendant/respondent executed a deed of agreement on 07.08.1988 receiving an earnest money of Rs.25,000/- in cash out of the total consideration of Rs.50,000/- from the plaintiff/appellant.

6. The defendant/respondent executed an agreement on non-judicial stamp in favour of the plaintiff/appellant stipulating therein that the defendant/respondent will execute proper sale deed over the said schedule property by 07.08.1988 after receiving the balance consideration money of Rs.25,000/-. The defendant/respondent on executing the said agreement made over the original *labadinama* deed no. 11715 dated 17.08.1970 to the plaintiff/appellant. The son of the defendant/respondent namely, Amrit Kumar Das signed on the said agreement as a witness to the agreement and the deed. The clause was also mentioned in his paper while executing the proper sale deed by the said date, i.e. 07.08.1988, the plaintiff/appellant will have the right to get the sale deed executed on depositing the balance consideration money of Rs.25,000/- in favour of the defendant/respondent in the court. It was also stipulated that if the plaintiff/appellant did not get the sale deed executed by the said date, the earnest money paid to the defendant/respondent will be forfeited. The plaintiff/appellant always remained willing and is still ready and willing to pay the



balance consideration money to get the sale deed executed by the defendant in respect of the schedule property.

7. The plaintiff/appellant made request to the defendant/respondent several times for getting the sale deed executed on receipt of balance consideration money of Rs.25,000/- but the defendant/respondent on one pretext or the other avoided receiving the balance consideration money and executing a sale deed as per the agreement. Rather, the defendant/respondent sent advocate's notice to the plaintiff/appellant alleging therein that the defendant/respondent has received the amount of Rs.25,000/- as a loan from the plaintiff/appellant for purchasing a truck at the interest of 12% per annum and in security the document of schedule property was read over to the plaintiff/appellant. It is further alleged that the defendant/respondent put the signature on three non-judicial stamp papers on the promise of the plaintiff/appellant to return back the aforesaid document after receiving back the loan amount along with the interest thereon. The plaintiff/appellant handed over the cheque of Rs.25,000/- to the defendant/respondent.

8. It is further alleged that the defendant/respondent and his son paid Rs.12,000/- to the plaintiff/appellant and they approached the plaintiff/appellant to receive the balance amount of Rs.16,000/- to get back the original sale deed and the blank non-judicial stamp containing their signature but the plaintiff/appellant



did not return the said document rather made out a case of agreement for sale of schedule property in the said blank non-judicial stamp paper. The plaintiff/appellant in reply to the notice of the defendant/respondent, sent an advocate's notice to the defendant/respondent mentioning therein that the defendant/respondent has made out his aforesaid case falsely and the plaintiff/appellant specifically mentioned in the notice that the defendant/respondent has executed the agreement deed dated 07.05.1988 stipulating therein to execute proper sale deed of the schedule property by 07.09.1989 after receiving the balance consideration money of Rs.25,000/- and the defendant/respondent and his son scribed in the agreement that they received Rs.25,000/- in cash as *bayananama*. The plaintiff/appellant in the said notice also informed the defendant-respondent that the plaintiff/appellant was always ready and willing and is still ready and willing to pay the balance consideration money of Rs.25,000/- to the defendant/respondent and to get the sale deed executed in receipt of the schedule property. The plaintiff/appellant again sent notice through advocates on 06.09.1989 to the defendant/respondent intimating him that the plaintiff/respondent is willing to pay balance consideration money of Rs.25,000/- and to get the proper sale deed executed by 07.09.1989 and will be physically present at Katihar Registration office on 06.09.1989 with money for the execution of



sale deeds but the defendant/respondent did not appear at the registry office on 06.09.1989 or 07.09.1989 to receive the balance consideration money or to execute the sale deed as per agreement. As the defendant/respondent did not appear and receive the balance consideration money, the plaintiff/appellant has filed this suit for specific performance of contract against the defendant-respondent.

9. The case of the defendant/respondent is that the plaintiff/appellant has brought a false fact before this Court having the sinister motive to get the property of the defendant/respondent on a low price. The case of the defendant/respondent is that the defendant/respondent in order to purchase a second hand truck approached the plaintiff/appellant and his brother to advance a sum of Rs.25,000/- on interest at the rate of 12% per annum. The plaintiff/appellant obtained the signature of the defendant/respondent and his son on three blank sheets non-judicial stamp papers and took the original deed from him as security for the payment of the said loan. The defendant/respondent has denied the execution of any agreement as alleged by the plaintiff/appellant for selling the suit property in favour of the plaintiff/appellant on consideration amount of Rs.50,000/-. It is alleged that the suit land is valuable and thus it is apparently absurd to have entered into an agreement for sale of suit land only for the value of Rs.50,000/-. The *bayanama* is forged and fabricated. The defendant/respondent



on taking advance loan of Rs.25,000/- from the plaintiff/appellant refunded Rs.12,000/- on different dates @ Rs.1,000/- per month as fixed by the plaintiff/appellant, however, no receipt of the said payment was granted to the defendant/respondent. When the defendant/respondent offered him to pay remaining dues in the month of July, 1989 and requested him to return the blank sheet of three non-judicial stamp papers, the plaintiff/appellant avoided to do show on some pretext or other and thus the defendant/respondent and his son smelling foul play narrated the fact to their advocate, Md. Ghulam Sahid who sent notice to this effect to the plaintiff/appellant and his brother Sri Niwas Agrawal mentioning the facts.

Findings of the learned trial court

10. The trial court framed six issues to decide the case wherein issue nos. 4 and 5 are pertinent which are as follows :-

(i) Issue no.4:- Was there any contract of sale in respect of the suit property and whether the deed of agreement was legal and valid?

(ii) Issue no.5:- Whether the plaintiff was always ready and is still ready and willing to perform his part of contract?

11. The learned trial court after discussing all the evidences on record, oral and documentary of both the parties came to the conclusion that admittedly the agreement for sale bears the



signature and thumb impression of the defendant/respondent who on said agreement has scribed the fact of receiving the amount of Rs.25,000/- as *baynama*, as such, trial court held that the defendant/respondent has entered into an agreement of sale of the schedule property with the plaintiff/appellant on 07.05.1988 which is valid, legal and the trial court further found and held that the plaintiff/appellant was always and is still ready to perform his part of the contract and accordingly the trial court held that plaintiff/appellant is entitled to the relief claimed by him. As such, the suit was decreed and the plaintiff/appellant was allowed to deposit the balance consideration money in the court within three months from the date of the decree and to get the sale deed executed in respect of the schedule property by the defendant/respondent. Failure on the part of the defendant/respondent to execute the sale deed, after depositing of balance consideration money of Rs.25,000/- , the sale deed will be executed by the Saristerdar of the civil court.

Findings of the first appellate court

12. The learned appellate court while upholding the finding of the trial court upon the receipt of advance of Rs.25,000/- by the defendant/respondent to plaintiff/appellant on 07.05.1988 and also upholding in token of the advance money and the defendant/respondent has put his signature and LTI on the stamp



papers and also handed over the original *labadinama* document of the schedule property to the plaintiff/appellant, disagreed with the finding of the trial court for decreeing the suit of specific performance and set aside the judgment and decree of trial court on the ground that the agreement appears to him unreasonable because of the low consideration amount of the schedule property. According to appellate court it would not be equitable to grant the relief of specific performance of the contract to the plaintiff/appellant as granted by the learned trial court and as such judgment and decree of learned trial court was set aside by allowing the appeal of the defendant/respondent and the first appellate court held that defendant/respondent will pay back Rs.25,000/- with interest @ 12% per annum thereon within 45 days from the date of the order.

13. Learned counsel for the plaintiff/appellant has raised following questions on law :-

(i) whether the learned appellate court below erred in considering the material admitted evidence on record i.e. Ext-2 of advance of Rs.25,000/- by defendant/respondent from plaintiff/appellant?

(ii) whether the learned appellate court could ignore the basis and settle the principle of law that any document (Ext-2 and 7) filed in the trial court duly prove in the court of law could be



discarded or disbelieved even without any prima-facie proof of forgery or fraud?

(iii) whether the learned trial court could ignore the oral testimony of important witnesses, such as handwriting/LTI expert i.e. PW-5 who has clearly stated in his deposition that the signature and LTI on the agreement (baynama) is of the defendant which is also admitted by the defendant himself?

(iv) whether the learned first appellate court is justified in ignoring the settled principles of mandatory provisions of the act of specific performance of contract. Plaintiff's readiness and willingness in performing his part of contract to pay balance amount of consideration money to the defendant in a suit for specific performance of contract especially upon non-denial of these facts by the defendant?

(v) whether first appellate court is justified in reversing the findings of the learned trial court in receiving the advance amount through legal and valid agreement deed and the finding of the learned trial court regarding readiness and willingness to pay balance consideration money to the defendant?

(vi) whether the appellate court is justified in holding that the consideration money of schedule property as a low price without any evidence of record to show the valuation of the adjoining land of the suit made?



(vii) whether the appellate court is justified in reversing the judgment and decree of the trial court specially in view of the admitted false story of defendant signing on three blank stamp papers which is actually on one stamp paper and other two signature on demi papers (Ext-2).

(viii) whether the learned first appellate court is justified in holding the rise in price of the suit land during the pendency of the suit and thereby denying the relief to the plaintiff?

14. In the trial court, plaintiff/appellant has examined altogether 7 witnesses in support of his claim. They are given in tabular form hereunder :-

PW-1	Kameshwar Prasad Yadav
PW-2	Uma Charan Singh
PW-3	Mohan Lal
PW-4	Upendra Sharma
PW-5	Saiyad Iqbal Taiyad Hassan Raza
PW-6	Shankar Lal Agrawal
PW-7	Manoj Kumar Joshi

15. Apart from this, plaintiff/appellant has also adduced documentary evidence which is given hereunder for ready reference:-

Ext-1	Signature of Nimay Chand Das and Upendra Sharma on bayannama dated 07.05.1988.
Ext-2	Signature of the witnesses on this bayannama



Ext-3	Notice dated 02.08.1989
Ext-4	Postal receipt
Ext-3A	Carbon copy of the notice
Ext-4A	Postal receipt
Ext-5	Acknowledgment receipt
Ext-6	Signature of Upendra Sharma
Ext-7	Handwriting and fingerprint expert
Ext-8	Negative of signature of Nimay Chand Das
Ext-8A to 8D	Negative and positive of the witnesses
Ext-9 to 9D	Signatures of the witnesses

16. As against this, the defendant/respondent has examined altogether 7 witnesses. They are given in tabular form hereunder :-

DW-1	Md. Mumtaz Ahmad @ Nafees
DW-2	Badri Mian
DW-3	Basant Kumar Karmkaar
DW-4	Laxmi Narayan Mehta
DW-5	Nimaychandra Das
DW-6	Pradeep Kumar Das
DW-7	Bhola Prasad Chaudhary

17. Apart from this defendant/respondent have also adduced documentary evidence i.e. Ext-A to Ext-A/2 which are the three signatures of Nimaychandra Das on agreement.



18. Learned counsel for the plaintiff/appellant has relied on **AIR 1983 SC 114** where the Hon'ble Apex Court has held as under :-

“In an appeal against a trial Court decree, when the appellate Court considers an issue turning on oral evidence it must bear in mind that it does not enjoy the advantage which the trial Court had in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate Court should permit the findings of fact rendered by the trial Court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial Court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies.”

19. Learned counsel for the plaintiff/appellant has further relied on **(2001) 3 SCC 179** where the Hon'ble Apex Court has held as under :-

A. Civil Procedure Code, 1908 - Ss. 100 and 96- First and second appeals- Improper functioning of first appellate court may give rise to substantial question of law- Judgment of first appellate court, held, must display conscious application of mind and record findings supported by reasons on all issues and contentions -Where a doubt arises as to whether first appellate court has carried out its functions correctly, such doubt itself may give rise to a substantial question of law- Where in a suit for declaration of title, recovery of possession and permanent injunction, the trial court had decreed the suit, expressly holding that the defendant had produced no documentary evidence in support of his plea of adverse possession and that the oral evidence adduced by him was conflicting in nature and not reliable, the first appellate court was not within jurisdiction in simply reversing the trial court findings on possession and dispossession and adverse possession without recording findings



and reasons- Held, High Court ought to have granted plaintiff-appellant an opportunity to formulate a substantial question of law or done so itself - Supreme Court itself formulating the following question: "Whether on the pleadings and the material brought on record by the defendant, the first appellate court was right in holding that the case of adverse possession was made out by the defendant and the suit filed by the plaintiff was liable to be dismissed as barred by time under Article 65 of the Limitation Act, 1963, more so when such finding was arrived at in reversal of the findings of the trial court?"

20. Learned counsel for the plaintiff/appellant has further relied on **(1996) 10 SCC 51** where the plaintiff has given his deposition before the trial court and has stated as under :-

“ I issued heirs of notice to Janabai to execute the sale deed. I was ready to pay remaining amount and act as per agreement. The defendants did not execute the sale deed as per notice. They replied my notice (Exh. 50). As defendants are not willing to execute the sale deed I have filed this suit. I am ready to pay remaining amount immediately. I am ready to pay costs as per agreement.”

Respondent No. 1, also in his deposition before the court, has stated:-

"It is true that plaintiff was ready for sale-deed, but I was not ready."

In view of the aforesaid statements of the appellant and respondent No. 1 as well as the averments contained in paragraphs 6 to 10 of the plaint, it must be held that the appellant has not only averred, but has also proved that he was ready and willing to perform his part of the contract under the agreement for sale. The appellant court and the High Court were, therefore, in error in holding that the appellant failed to comply with the requirements of Section 16(c) of the Specific Relief Act and the appellant must be held entitled to a decree for specific performance of the contract in the suit filed by him.



21. Learned counsel for the plaintiff/appellant has further relied on **AIR 2000 SC 2408** wherein the Hon'ble Apex Court has held that the language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must have averred that he has performed or has always been and is willing to perform his part of the contract. So the compliance of readiness and willingness has to be in spirit and substance and not in letter and form.

22. Learned counsel for the plaintiff/appellant has further relied on **AIR 1997 PATNA 67** where the Hon'ble Single Judge of this Court has held in Paragraph '21' as under :-

21. Reverting to the next point whether the lower appellate Court has rendered the judgment consistent with the provisions of Order 41, Rule 31 of the Code. In a judgment of reversal the finding recoded and the inference drawn and the reasons assigned by the trial Court must have been reversed by the lower appellate Court but the same was not done. In view of the mandatory provision of Order 41, Rule 31 of the Code whenever the judgment of the lower appellate Court was a judgment of reversal it was the primary duty of the appellate Court while reversing the findings of the trial Court to consider the reasons given by the trial Court and those reasons must also be reversed. But the same was not done. The finding of the lower appellate Court is not binding on the Second Appellate Court. This itself is a substantial question of law to set aside the decree of the lower appellate Court (See S. V. R. Mudaliar v. Mrs. Rajabu F. Buhari, AIR 1995 SC 1607)

23. Learned counsel for the plaintiff/appellant has further relied on **1995 SCC (4) 15 : AIR 1995 SC 1607 : 1995 (4)**



SCC 15 wherein the Hon'ble Supreme Court has held in Paragraph '15' as under :-

15. There is no need to pursue the legal principle, as we have no doubt in our mind that before reversing a finding of fact, the appellate court has to bear in mind the reasons ascribed by the trial court. This view of ours finds support from what was stated by the Privy Council in *Rani Hemant Kumari v. Maharaja Jagadhindra Nath*, 10 CWN 630, wherein, while regarding the appellate judgment of the High court of Judicature at Fort William as "careful and bale", it was stated that it did not "come to close quarters with the judgment which it reviews, and indeed never discussed or even alludes to the reasoning of the Subordinate Judge."

24. Learned counsel for the plaintiff/appellant has further relied on **AIR 1996 PATNA 156** wherein the Hon'ble Single Judge of this Court has held in Paragraph '12' as under :-

12. The judgment of the lower appellate Court being a judgment of reversal was not consistent with the provisions of Order 41, Rule 31 of the Code. No reasons have been assigned nor points have been formulated nor discussions have been made with reference to evidence relied upon by trial Court. Such judgments need not be upheld in Second Appeal. Unless the four elements for the validity of gift are proved to be present, the gift could not be held to be valid.

25. Learned counsel for the plaintiff/appellant has further relied on **AIR 1992 KERALA 49** wherein the Hon'ble Judge in Paragraphs 17 and 26 has held as under :-

17. I have already held that there is no evidence to show that the consideration showed in Ext.-A1 is inadequate. Even Assuming that it is on the low side that cannot be a reason to decline the relief of specific performance. Explanation 1 of



Section 20 of the Specific Relief Act reads as follows :

“Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of Clause (a) or hardship within the meaning of Clause (b).”

26. Explanation 1 of Sub-Section (2) specifically states that mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an Unfair advantage Within the meaning of Clause

(a) or hardship within the meaning of Clause

(b) Explanation 2 says that the question whether the performance of a contract would involve hardship on the defendant within the meaning of Clause (b) shall, except in cases where the hardship has resulted from any act of plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

26. Learned first appellate court has held that “it is paramount importance in a case of specific performance of contract that the plaintiff must aver specifically the fact of his readiness and willingness to perform his part of his contract.” In the present case the plaintiff-appellant either in his evidence or in the plaint has nowhere stated that on such and such date he approached the defendant to receive the balance money and executed the sale deed prior to the notice on the defendant Nimaychandra Das dated 29.07.1988 (Ext.-3B).

27. In this regard, learned counsel for the plaintiff-appellant has submitted that the Hon’ble Apex Court in the case of **Motilal Jain vs. Smt. Ramdasi Devi and Ors.** reported in AIR



2000 SC 2408 the Hon'ble Apex Court has quoted the judgment of three judges Bench of the Hon'ble Court in the case of **Syed Dastagirs** case reported in **(1999) 6 SCC 337** where the following observations were made :-

“In construing a plea in any pleading the Court must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of ones case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed, Unless a statute specifically requires a plea to be in a particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of readiness and willingness has to be in spirit and substance and not in letter and form. It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is subject matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale.”



28. Learned first appellate court has held that in the plaint there is no such averment with date that he ever went to give the balance money of Rs.25,000/- to Nimaychandra Das but has admitted that in plaint in Paragraph '5' it has been averred by the plaintiff/appellant that he was always ready and willing and still ready to pay the consideration money and get the sale deed executed. Now coming back to the plaint of this case, in Paragraph '5' of the plaint, it is the specific case of the plaintiff/appellant that he was always ready and willing and he is still ready and willing to pay the balance consideration money and get the proper sale deed executed by the defendant in respect of the aforesaid land which is the subject matter of this case. In Paragraph '6' the plaintiff/appellant has further averred that the plaintiff/appellant several times requested the defendant/respondent to receive the balance consideration money of Rs.25,000/- to execute the proper sale deed for the suit property in his favour but the defendant/respondent went on avoiding on some false pretext. Paragraph '5' is answered in Paragraph '10' of the W.S. where defendant has stated that averments made in Paragraph '5' of the plaint are all false and the same has dishonestly been made for the purpose of this suit.



29. As far as evidence in this regard is concerned, plaintiff/appellant has been examined as PW-6 in the trial court. Regarding readiness and willingness this witness has stated that he went to the defendant/respondent with the rest of the consideration many a times and requested her to execute the sale deed but the defendant/respondent did not receive the rest of the consideration amount and kept avoiding. He has specifically stated that he was always ready to pay the rest of the consideration amount of Rs.25,000/- and is willing. The plaintiff/appellant was cross-examined on this point also and on cross-examination, in Paragraph '5' he has stated that he himself has gone to the defendant/respondent with Rs.25,000/-, 2-3 times and he was carrying the cash with him. He does not remember to which currency he was carrying. The cash was taken from the house itself. So, on the point of readiness and willingness there is pleading and evidence as well. In view of Section 16(c) of the Specific Relief Act and the finding of the first appellate court that the plaintiff/appellant has nowhere stated that on such and such date he approached the defendant/respondent to receive the balance money and execute the sale deed is against the facts and circumstances of this case and this finding is also against the law



as the plaintiff/appellant is not required to prove that on which dates he has gone with the cash to the defendant/respondent.

30. Considering the above facts and circumstances, the finding of the first appellate court regarding readiness and willingness is erroneous and beyond materials on record.

31. Learned first appellate court has held in Paragraphs '15' and '16' of the judgment as under :-

15. On comparison of the evidence of witness P.W. 1, 2 and 4 there appear lot of contradictions in respect of time, talk, presence of witnesses and details of Durgasthaan P.W.-1 says that it was written between 07:30 to 08:30 A.M. He further changed the version that it was written at 09:00 A.M. P.W.-4 says that it was written between 10:30 to 11:30 A.M. P.W.-4A says that after writing Baina deed it was given to Nimai Chand Das which is not the case of either party. The writing and signature of Nimai Chand Das on 3 pages of Ext-2 are bigger in shape than the endorsement alleged to have been made by him just below his signature on Page No.1. The signature of Kameshwar Prasad in different ink than the heading like witness and different time of execution indicate that the deed endorsement thereon and signature of the witnesses were not completed at one time and one sitting rather it was done at different times and sittings.

16. From the naked eye the alleged endorsement just below the signature of the appellant defendant on Page No.1 of Ext.-2 appears of different person than signature Ext.A. The expert (P.W.-5) says that the signature and writings marked by him is done by one and the same person vide Ext.7. I even compared the admitted signature of Nimai Chand Das on Ext.2 and his deposition D.W.-5 with that of his endorsement on Ext.-2 in token of receiving money for Baina where there is difference of letter ma, Ra, da, na, ya, sa besides the digit 5 in respect of date and It come to the conclusion that the endorsement just below the signature of Nimai Chand Das as regards receiving money is Rs.25,000/- by way of Baina (Advance) is not in his pen.



32. On the basis of above findings learned first appellate court has come to the conclusion that the agreement for sale i.e. *bayananama* that is Ext-A. is a document which cannot be termed as an agreement for sale. The learned first appellate court has held that DW-5 has stated that his endorsement of Ext-2 in token of receiving money for advance where there is difference of letters, besides digit '5', I come to the conclusion that the endorsement just below the signature of Nimaychandra Das regarding receiving money of Rs.25,000/- by way of *bayananama* is not in his pen. In this regard, I would like to discuss the evidence of P.W.-5 who is a handwriting and fingerprint expert. This witness has stated that he has examined the disputed and admitted signature and LTI and has stated that the LTI is of same person. He has further stated that he has detailed the reasons of the matching in his report. He has further submitted that the original and disputed signature of the defendant/respondent has also been compared by him and it is of the same person. He has also stated that he has also compared specimen writings and signature with disputed and admitted and has found that both are of same person. It is worth mentioning that this witness was not cross-examined by the defendant/respondent and from the side of defendant no expert was examined. Despite the report of the expert the learned first appellate court has



observed that from naked eye the endorsement does not appear to be of defendant-Nimaychandra Das and has disbelieved the execution of the deed on the basis that there is difference in the evidence of the witnesses regarding time and execution of the deed and the difference is only of certain minutes and hours. Once the signature and endorsement is proved by an expert there was no occasion for the learned first appellate court to disbelieve it only on the basis of its personal satisfaction, being an observation by naked eye. As against this, the expert has examined the handwriting endorsement and LTI in a scientific manner. There is no dispute between the parties on the fact that defendant/respondent has taken Rs.25,000/- from the plaintiff. The case of the plaintiff/appellant is that this was an advance payment, which was handed over at the time of execution of the agreement for sale.

33. The case of the defendant/respondent is that he has taken a loan for purchasing truck and has handed over the *labadinama* as a mortgage which was afterwards manufactured by plaintiff/appellant in agreement for sale. It is also pertaining to note here that the defendant/respondent is not illiterate and even his son has also put his signature on the Ext-A. So, in these facts and circumstances, the personal satisfaction of the learned first



appellate court is not based on materials rather his personal satisfaction is only based on his naked eye observation which he could not avoid considering the materials available on the record.

34. In view of the discussion I am of the view that the observations of the learned first appellate court that Ext-A is not an agreement for sale is erroneous.

35. Third point which has been raised at this stage is that the learned trial court has made an observation that the story of the defendant/respondent that they have returned Rs.12,000/- out of the total advance money has not been proved and the learned first appellate court has concluded that return of Rs.12,000/- by the defendant/respondent to the plaintiff/appellant is false and has held that the plaintiff/appellant is entitled to get back Rs.25,000/-.

36. Learned trial court has disbelieved the case of the defendant/respondent on the ground that the consideration amount of the Ext.-A is not sufficient. It is the case of the defendant/respondent that the consideration amount of the disputed property is more than Rs.50,000/- but in W.S. they have not made out any case as to what is actually the price of the property and defendant/respondent has simply stated that the plaintiff/appellant is having sinister motive to grab the property of



the defendant/respondent on a low price but has not disclosed the actual price and no document has been brought on record to prove the price of the disputed property i.e. under Ext.A. So, on this point that the consideration on disputed property is insufficient, the pleading and evidence of the defendant/respondent are not clear. The defendant/respondent has not been able to establish his case as to what was the price of the disputed property at the time of execution of Ext-A, so the satisfaction of the learned first appellate court that the consideration amount is low or insufficient is also the personal satisfaction of the learned first appellate court. There is no material on the record to support this satisfaction of the learned first appellate court. As such, this observation of the learned first appellate court is erroneous.

37. Learned counsel for the plaintiff/appellant in this case has raised mainly these three issues which has been discussed above and it has been submitted that the learned first appellate court has not considered the materials and law on these issues and the findings of the first appellate court are not based on materials on record rather it is based on mere assumptions. While deciding these issues learned first appellate court has not considered the law on the point and also the evidence of the parties. It was not within the jurisdiction of the learned first appellate court to hold



that the appellant was not ready and willing to perform his part of the contract and that the Ext-A agreement for sale is not an agreement for sale deed despite the evidence of expert (PW-5). Ultimately the issue regarding insufficiency of consideration as the defendant has only stated in his W.S. that the price of the disputed property is very high but he has not disclosed as to actually what is the price of the disputed premises and no evidence on this point was adduced.

38. In this regard Explanation-II of Section 25 of the Indian Contract Act, 1872 is worth mentioning which I am reproducing for a ready reference :-

Explanation 2.- An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

39. In this case, the case of the defendant/respondent is that the consideration was inadequate but he has not made out any case as to what was the adequate consideration and no document with regard to the adjacent land has been brought on record nor any oral evidence on this point has been adduced.



40. Considering the above facts and circumstances of the case, I am of the view that the judgment and decree passed by the learned first appellate court is perverse and is fit to be set aside.

41. As such, the impugned judgment and decree passed by the learned first appellate court is hereby set aside and in result this appeal is allowed and the defendant/respondent is directed to execute the sale deed within a period of two months on receipt of this judgment in the trial court, after receiving the rest of the consideration amount i.e. Rs.25,000/- from the plaintiff/appellant failing which the executing court shall execute a sale deed in favour of the plaintiff/appellant with respect to the disputed property at the cost of the defendant/respondent.

42. Considering the period of pendency of this appeal, no order as to costs is passed. Parties to bear their own cost.

(Ashok Kumar Pandey, J)

durgesh/-

AFR/NAFR	NAFR
CAV DATE	03.11.2025
Uploading Date	16.12.2025
Transmission Date	N.A.

