

In the Court of Principal District Judge, Begusarai
Title Appeal No. 09 of 2024
Reg. No. 09 of 2024
(Arising out of T.S. No. 60/2022)

In the matter of :

Mina Devi, W/o Ram Bilas Singh, R/o vill. Mirjapur Chand Ward No. 16, P.S. Barauni, Pergana-Malki, S.D., S.R. & District-Begusarai

.....Plaintiff/Appellant.

Vrs.

Rubi Devi, W/o Late Sudhir Kumar Singh, D/o Late Laxmi Narayan Singh, R/o Bihat Tola Jagir, Ward No. 20, Near Bari Pokhar, P.S. Barauni, Pergana-Malki, S.D., S.R. & District-Begusarai

.....Defendant/Respondent.

Appearances

Ld. Counsel for the Appellant : Sri Girish Kumar Sinha, Ld. Adv.

Ld. Counsel for the Respondent : Ex-parte.

Present: Rishi Kant
Principal District Judge, Begusarai

Date of Judgment :- 22-06-2026

JUDGMENT

1. This appeal is directed against the judgment and decree dated 24.01.2024 and 02-02-2024 respectively passed by the learned Civil Judge (Senior Division)-I, Begusarai in Title Suit No. 60 of 2022, whereby the suit of the plaintiff was dismissed on the grounds that the plaintiff failed to file the original copy of the reply of legal notice of defendant.

2. The case of the appellant/plaintiff, in brief, is that the husband of the plaintiff is a prosperous agriculturist possessing substantial agricultural lands. The defendant, Rubi Devi, is related to Samho village as her parental village (Naihar), and the plaintiff is also connected with the same village. Consequently, both parties were well acquainted with each other. According to the plaintiff, the defendant, accompanied by her relative Saurav Kumar Singh, approached her and requested a loan of Rs.30,00,000/- (Rupees Thirty Lakhs) for the marriage of her daughter. It was allegedly represented by the defendant that, in consideration of the said amount, she would transfer her land and the building standing thereon situated at Ulao, fully described in Schedule-I of the plaint. The plaintiff informed the defendant that such a substantial amount could be advanced only in consideration of the aforesaid land and building. It was further stated that the amount would be arranged and paid in instalments, as it was to be managed from agricultural income, sale of produce and other available resources. The defendant allegedly agreed to the said arrangement and assured the plaintiff that she would abide by the agreed terms. Thereafter, the plaintiff claims to have arranged the entire sum of Rs.30,00,000/- from various sources, including sale of agricultural produce, livestock, bank loans and borrowings from relatives, and paid the said amount to the defendant.

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Upon payment of the entire amount, the plaintiff requested the defendant to execute a registered sale deed in respect of the aforesaid property. The defendant, however, expressed her unwillingness to execute an immediate sale deed and instead proposed to execute an agreement whereby she would either repay the amount by 31.01.2022 or, in default thereof, execute a registered sale deed in favour of the plaintiff. The plaintiff has further pleaded that, having no documentary proof of the payments allegedly made to the defendant, she had no option but to accept the arrangement proposed by the defendant. Accordingly, on 22.02.2021, the defendant is said to have executed a Mahadanama/Agreement relating to the Schedule-I property, undertaking to execute a sale deed in the event of failure to repay the amount of Rs.30,00,000/- within the stipulated period. It is further alleged that the defendant herself got the agreement typed and made a handwritten endorsement thereon stating that she had executed the Mahadanama and had received Rs.30,00,000/- in cash from the plaintiff. The plaintiff has further stated that prior to expiry of the stipulated period, she approached the defendant and requested her either to repay the amount or to execute the sale deed in terms of the agreement. However, the defendant allegedly failed to do either. Consequently, the plaintiff caused a legal notice dated 22.01.2022 to be issued through her advocate. According to the plaintiff, the defendant sent a reply dated 31.01.2022 through her advocate wherein she denied execution of the Mahadanama and asserted that she had received only Rs.3,00,000/- and that her signatures had been obtained on several stamp papers of Rs.100/- denomination. The plaintiff claims that upon receiving the said reply, she realised that the defendant was unwilling to honour the alleged agreement and intended to deny the transaction altogether. It is her case that she has always been ready and willing to perform her part of the contract and, since the entire consideration amount had already been paid, the defendant was under a legal obligation to execute the registered sale deed. It is further pleaded that in the event of refusal by the defendant to execute the sale deed, she is liable to refund the sum of Rs.30,00,000/- together with interest at the rate of 12% per annum from the date of the agreement.

3. In support of her case, the plaintiff examined seven witnesses, namely **PW-1 Shambhu Paswan @ Lukhar Paswan, PW-2 Yogendra Pandit, PW-3 Ansari Khatoon, PW-4 Mina Devi, PW-5 Ram Vilas Singh, PW-6 Ravindra Sahni and PW-7 Dilip Jha.**

4. The plaintiff also adduced documentary evidence and brought on record **Ext.-1**, the original unregistered agreement/Mahadanama dated 22.02.2021; **Ext.-1/A**, the signature

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of Yogendra Pandit appearing on the said document; and **Ext.-2**, the copy of the legal notice dated 22.01.2022.

5. The defendant did not appear before the learned trial court despite service of notice. Accordingly, after taking all necessary steps, the suit proceeded ex parte against her.

6. Upon consideration of the oral and documentary evidence adduced on behalf of the plaintiff, the learned trial court dismissed the suit by the impugned judgment and decree.

7. Assailing the judgment of the learned trial court, learned counsel for the appellant has contended that the court below committed serious errors of fact and law in dismissing the suit. It has been argued that the learned trial court failed to properly appreciate the evidence adduced by the plaintiff regarding due execution of the Mahadanama. It is further submitted that the document was authenticated by a Notary Public and that the learned court below erred in holding that the document did not contain the signatures of the parties to the contract. Learned counsel has also contended that the court below failed to consider the plaintiff's readiness and willingness to perform her part of the contract, which constitutes a material requirement in a suit for specific performance. It has further been argued that the findings recorded by the learned trial court are based on conjectures and surmises, are contrary to the evidence available on record and suffer from misappreciation of both oral and documentary evidence. According to the appellant, the impugned judgment is perverse, arbitrary and unsustainable in law and, therefore, deserves to be set aside.

8. Notice of the appeal was duly served upon the respondent. However, despite valid service, the respondent failed to appear. Consequently, by order dated 06.09.2024, the appeal proceeded ex parte against the respondent.

9. From a perusal of the impugned judgment, the pleadings of the parties, the oral evidence adduced before the learned trial court and the documentary materials available on record, it appears that the dispute essentially revolves around the alleged Mahadanama dated 22.02.2021. According to the plaintiff, the said document was executed by the defendant after receiving Rs.30,00,000/- in cash and created an obligation upon her either to repay the amount by 31.01.2022 or, in default thereof, to execute a registered sale deed in respect of the property described in Schedule-I of the plaint.

10. The plaintiff seeks enforcement of the said alleged agreement by way of a decree for specific performance directing the defendant to execute a registered sale deed in her favour. In the alternative, she seeks recovery of Rs.30,00,000/- together with interest.

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11. The learned trial court, upon consideration of the evidence available on record, dismissed the suit holding, inter alia, that the plaintiff had failed to establish due execution of the alleged agreement and had also failed to satisfactorily prove the transaction relied upon by her. Aggrieved by the said judgment and decree, the present appeal has been preferred.

12. The defendant, despite service of notice, did not contest the suit and the case proceeded ex parte. However, the learned trial court dismissed the suit mainly on the ground that the plaintiff failed to produce the original reply notice allegedly sent by the defendant in response to the legal notice dated 22.01.2022 and further doubted the validity of the agreement relied upon by the plaintiff.

13. In view of the rival contentions and the materials available on record, the following points arise for determination in the present appeal:

(i) Whether the plaintiff has proved due execution of the agreement dated 22.02.2021?

(ii) Whether the plaintiff has established payment of consideration amount of Rs. 30,00,000/- to the defendant?

(iii) Whether the plaintiff has proved his readiness and willingness to perform his part of the contract?

(iv) Whether the learned trial court properly appreciated the oral and documentary evidence available on record?

(v) Whether the judgment and decree passed by the learned trial court require interference by this appellate court?

FINDING

14. I have carefully gone through the pleadings of the parties, the oral and documentary evidence available on the record, the impugned judgment and decree passed by the learned trial court and the submissions advanced on behalf of the learned counsel appearing on behalf of the appellant. I have also perused the Lower Court Record with due care and caution. From the order-sheet of the appeal, I find that despite valid service of notice, the respondent failed to appear and contest the appeal. Consequently, the appeal has proceeded ex parte against the respondent. However, merely because the respondent has chosen not to appear before this Court, the same does not absolve the appellant from proving her case in accordance with law. Therefore, this Court is required to independently scrutinize the entire evidence available on the record and arrive at its own conclusion regarding the legality and correctness of the judgment under challenge.

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15. At this juncture, before entering into the merits of the controversy involved in the present appeal, I would like to refer the settled principle governing ex parte proceedings. It is now well settled that even where a defendant does not appear and contest the proceeding, the plaintiff is not entitled to a decree as a matter of course. The burden of proving the foundational facts constituting the cause of action always remains upon the plaintiff. The Court is required to satisfy itself that the evidence adduced by the plaintiff is sufficient to establish the claim. It is equally settled that an ex parte decree cannot be granted merely on account of absence of defence. The plaintiff must succeed on the strength of her own evidence and not on the weakness of the defence. Therefore, even in the absence of contest by the respondent, this Court is under a legal obligation to carefully scrutinize the pleadings and evidence and ascertain whether the claim of the plaintiff stands proved in accordance with law.

16. I have gone through the plaint and on careful consideration of the same, I find that the plaintiff has instituted the suit seeking a decree for specific performance of contract on the basis of an alleged Mahadanama dated 22.02.2021 (**Ext.-1**), said to have been executed by the defendant after receiving a sum of Rs.30,00,000/- from the plaintiff. In the alternative, the plaintiff has prayed for recovery of the said amount together with interest. From the pleadings of the plaintiff, it appears that the entire foundation of the suit rests upon the alleged Mahadanama (**Ext.-1**). The plaintiff claims that the defendant acknowledged receipt of Rs.30,00,000/- and undertook either to repay the said amount or, in default thereof, to transfer the suit property in favour of the plaintiff. Therefore, the existence, validity and enforceability of Ext.-1 assume central importance in the present appeal. If Ext.-1 fails, the very foundation of the plaintiff's claim would collapse.

17. Since the entire claim of the plaintiff is founded upon Ext.-1, therefore, before considering any other aspect of the matter, I think it proper to first examine the nature, contents and evidentiary value of Ext.-1. It is only after arriving at a finding regarding the execution and authenticity of Ext.-1 that the Court can proceed to examine the remaining questions relating to payment of consideration, readiness and willingness and entitlement to relief. Therefore, the first and foremost issue requiring determination is whether Ext.-1 has been duly executed and authenticated by the defendant in the manner known to law.

18. At this juncture, I would like to refer Ext.-1 and on careful consideration of the same, I find that the document purports to be a Mahadanama executed by the defendant in favour of the plaintiff. The plaintiff's case is that after receiving Rs.30,00,000/-, the

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defendant agreed either to repay the amount or, in default thereof, to transfer the suit property in favour of the plaintiff. I further find that the plaintiff has placed considerable reliance upon a handwritten recital appearing on the document which allegedly records that the defendant received the aforesaid amount and executed the Mahadanama. According to the plaintiff, this recital constitutes acknowledgment of liability by the defendant. Therefore, the evidentiary value of the said recital also requires close examination.

19. However, upon careful scrutiny of Ext.-1, I find that the document suffers from a significant infirmity. The document does not bear any admitted signature of the defendant. I further find that no thumb impression, left thumb impression, right thumb impression or any other identifiable mark attributable to the defendant appears on the document. Although certain signatures appear upon the document as witnesses, no signature attributable to the defendant is available from which execution can be readily inferred. The document also does not disclose any endorsement indicating that the contents were read over and explained to the executant. Thus, the very mode of execution of the document becomes doubtful from the face of the document itself.

20. Therefore, at this juncture, I would like to refer the settled principle relating to proof of documents. It is well settled that mere production and exhibition of a document does not amount to proof of its execution. A document may be marked as an exhibit for the purpose of identification, but before any right can be founded thereon, the party relying upon it must prove that it was executed, signed, admitted or otherwise authenticated by the person sought to be bound thereby. Unless execution is proved in accordance with law, no legal consequence can flow from the document. The Court cannot presume execution merely because a document exists on the record. The law requires proof of execution and not mere proof of existence.

21. When I consider Ext.-1 in the light of the aforesaid settled principle, I find that the burden squarely lies upon the plaintiff to establish that the defendant executed, adopted or authenticated the said document. In a case where the document itself does not bear any admitted signature or thumb impression of the executant, the burden becomes even more stringent. Therefore, I would now proceed to examine the oral evidence adduced by the plaintiff to ascertain whether such burden has been discharged.

22. I have gone through the deposition of P.W.1 and on careful consideration of the same, I find that although he has stated that the Mahadanama was prepared in his presence, he admits that he is not a signatory to the document. I further find that he has

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admitted that he has no knowledge regarding the Khata number, Plot number and other particulars of the suit property. His evidence does not disclose the precise manner in which the defendant allegedly executed the document. He has not identified any signature, thumb impression or writing appearing on Ext.-1 as that of the defendant. He has also not stated that he actually saw the defendant writing the recital appearing on the document. Therefore, in my considered opinion, the evidence of P.W.1 does not materially advance the plaintiff's case regarding execution of Ext.-1. At best, his evidence establishes his presence at the relevant time, but it falls short of proving the actual execution and authentication of the document by the defendant.

23. At this juncture, I would like to consider the evidence of P.W.2. I have gone through his deposition and on careful consideration of the same, I find that he claims to be one of the marginal witnesses to the alleged Mahadanama. According to him, after payment of a sum of Rs.30,00,000/-, the defendant executed the Mahadanama in favour of the plaintiff. However, a careful reading of his entire testimony reveals that although he has repeatedly asserted that the document was executed by the defendant, he has failed to disclose the foundational facts constituting such execution. He has not identified any signature, thumb impression, mark or writing appearing on Ext.-1 as that of the defendant. He has not stated the particular place on the document where the defendant allegedly signed or authenticated it. He has also not stated whether the contents of the document were read over and explained to the defendant before its alleged execution. Thus, while the witness has spoken about the ultimate conclusion, namely execution of the document, he has failed to prove the facts from which such conclusion can legally be drawn.

24. I further find that in paragraph 16 of his deposition, in answer to a Court question, P.W.2 admitted that he does not know how to read or write. This admission assumes considerable significance in the facts and circumstances of the present case. When a witness admits that he is unable to read or write, it becomes necessary for him to explain how he identified the alleged signature, writing or act of execution attributed to the executant. However, no such explanation is forthcoming from his evidence. He has neither stated that he was acquainted with the handwriting of the defendant nor has he stated that he actually saw the defendant writing the disputed recital appearing on Ext.-1. He has also not disclosed the basis on which he came to know that the document had been duly executed by the defendant. Therefore, in my considered opinion, the evidence of P.W.2 does not furnish satisfactory proof regarding execution of Ext.-1.

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25. Similarly, when I consider the evidence of P.W.3, I find that she has also supported the plaintiff's case regarding execution of the Mahadanama. She has stated that the defendant executed the document and that she signed the same as a witness. However, upon careful scrutiny of her deposition, I find that she too has failed to identify any signature, thumb impression, mark or writing appearing on Ext.-1 as that of the defendant. She has not specified the manner in which the defendant allegedly executed the document. She has not stated whether the defendant signed the document, affixed any thumb impression thereon or otherwise authenticated the same. Thus, like P.W.2, her testimony also remains largely conclusory in nature.

26. I further find that in paragraph 12 of her deposition, P.W.3 admitted that she does not know how to read or write. This admission assumes significance while appreciating her testimony regarding execution of Ext.-1. I further find that in paragraph 13 of her deposition, in answer to a Court question, she stated that apart from herself, Lukhar Paswan, son of Hridev Pandit and Sekhar had also signed the Mahadanama as witnesses. However, upon careful scrutiny of Ext.-1, I find that the document does not bear the signatures of the aforesaid persons in the manner stated by the witness. Neither the signature of Lukhar Paswan nor that of the son of Hriday Pandit or Sikhar is found appearing on Ext.-1 as stated by P.W.3. The document, therefore, does not support her version on this material aspect. This discrepancy is not a minor inconsistency but goes to the root of the matter because the witness claims personal knowledge regarding the execution and attestation of the document. Consequently, her testimony becomes doubtful to that extent and requires cautious scrutiny.

27. Therefore, when I consider the evidence of P.W.3 in its entirety, I find that apart from making a bald assertion that the Mahadanama was executed, she has failed to disclose the foundational facts constituting such execution. She has not identified any signature, thumb impression, mark or writing appearing on Ext.-1 as that of the defendant. She has not stated that she actually saw the defendant writing the handwritten recital appearing on the document. She has also not stated that she was acquainted with the handwriting of the defendant so as to identify the disputed writing. Further, the discrepancy noticed in paragraph 13 of her deposition regarding the persons who allegedly signed the document as witnesses materially affects the reliability of her evidence. Thus, her testimony remains largely conclusory in nature and does not furnish satisfactory proof of the due execution or authentication of Ext.-1 by the defendant.

28. Therefore, when I consider the evidence of P.W.2 and P.W.3 together, I find that neither witness has stated that they actually saw the defendant writing the disputed

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recital appearing on Ext.-1. Neither witness has identified the handwriting as that of the defendant. Neither witness has deposed that the disputed writing was made in their presence. Neither witness has stated that they were acquainted with the handwriting of the defendant. They have also failed to disclose the circumstances under which they concluded that the document had been executed by the defendant. Consequently, their evidence falls short of the standard required to establish execution of the document in accordance with law.

29. At this juncture, I would like to refer the settled principle relating to proof of handwriting. It is well settled that where reliance is placed upon a writing attributed to a particular person, the party relying upon such writing must establish its authorship in accordance with law. Such proof may be furnished by examining a person acquainted with the handwriting of the writer, by expert evidence, by admission of the writer himself or by comparison with admitted writings. The law does not permit the Court to presume authorship merely because a writing appears on a document. Before any legal consequence can flow from such writing, it must first be shown that the writing is attributable to the person sought to be bound thereby.

30. I have gone through the entire record and on careful consideration of the same, I find that no admitted handwriting, signature or thumb impression of the defendant has been brought on record. No handwriting expert has been examined. No witness acquainted with the handwriting of the defendant has been examined. No admitted writing of the defendant has been produced for comparison. No application appears to have been filed seeking comparison of the disputed writing under Section 73 of the Indian Evidence Act. Consequently, there is absolutely no legally admissible material available on the record connecting the disputed writing appearing on Ext.-1 with the defendant.

31. Therefore, in my considered opinion, the authorship of the disputed writing appearing on Ext.-1 remains wholly unproved. The mere presence of a handwritten recital on a document does not establish that it was written by the defendant or written under her authority. In absence of any evidence proving authorship, the Court cannot presume that the disputed writing was made by the defendant merely because the plaintiff asserts so. The law requires proof and not conjecture.

32. At this juncture, I would also like to refer the settled principle that proof of attestation is not synonymous with proof of execution. A witness may prove his own signature appearing on a document as an attesting witness, but such proof does not automatically establish that the executant signed, adopted or authenticated the

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document. The act of attestation and the act of execution are two distinct concepts. The signature of a witness proves only the fact that the witness signed the document. It does not by itself prove that the executant also signed or adopted the same. Therefore, before any right can be claimed on the basis of a document, the act of execution by the executant must first be independently established.

33. Therefore, even if it is accepted for the sake of argument that P.W.2 and P.W.3 signed the document as witnesses, such evidence by itself does not establish that the defendant executed, adopted or authenticated Ext.-1. At best, the witnesses have proved their own presence and their own signatures. However, the crucial requirement of proving execution by the defendant still remains unfulfilled. Consequently, the evidence of P.W.2 and P.W.3 does not remove the serious doubt surrounding the due execution of Ext.-1 and the plaintiff cannot derive any legal advantage there from.

34. At this juncture, I would like to consider the evidence regarding payment of consideration. According to the plaintiff, a sum of Rs.30,00,000/- was advanced to the defendant and the alleged Mahadanama (Ext.-1) was executed in connection therewith. The plaintiff has pleaded that the said amount was arranged through sale of agricultural produce, sale of cattle, livestock, bank loans and borrowings from relatives and was paid to the defendant on different occasions. Since payment of consideration constitutes the very foundation of the plaintiff's claim, it becomes necessary to carefully examine whether the factum of payment of the alleged amount stands established by reliable, cogent and convincing evidence available on the record.

35. I have gone through the evidence available on the record and on careful consideration of the same, I find that no bank statement, withdrawal slip, passbook entry, loan document, receipt, acknowledgment, account book or any other documentary evidence has been produced to establish either the source or payment of the alleged amount of Rs.30,00,000/-. I further find that the plaintiff has specifically pleaded that the amount was arranged through sale of agricultural produce, sale of cattle livestock, bank loans and borrowings from relatives. The oral witnesses examined on behalf of the plaintiff have also broadly supported this version. However, despite such specific pleadings and oral assertions, not a single document has been brought on the record to substantiate any of the aforesaid sources. No document relating to sale of agricultural produce has been produced. No document regarding sale of livestock has been produced. No loan document, sanction letter, repayment schedule, mortgage document or bank record has been brought on record. Likewise, none of the relatives or other persons from whom money was allegedly borrowed has been examined before the

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Court. Therefore, the sources from which such a substantial amount was allegedly arranged remain wholly unsupported by any independent or documentary evidence.

36. I further find that the oral evidence adduced by the plaintiff also suffers from material deficiencies, omissions and inconsistencies. P.W.1, in answer to a Court question recorded in paragraph 14 of his deposition, admitted that he did not remember the date on which the money was allegedly paid to the defendant. This admission assumes considerable significance because the witness seeks to support a transaction involving a very substantial amount of Rs.30,00,000/-. Ordinarily, a person having personal knowledge of such a substantial financial transaction would be expected to remember at least the approximate period or circumstances under which the payment was made. I further find that P.W.3, in answer to a Court question recorded in paragraph 11 of her deposition, stated that she was present at the time when the money was given and that a document was prepared in connection with such transaction. However, no such document evidencing payment of money has been brought on record. If any such document had in fact been prepared contemporaneously with the transaction, the same would have constituted an important piece of evidence supporting the plaintiff's case. The absence of such document, therefore, assumes significance. I further find that P.W.5, who is the husband of the plaintiff, admitted in paragraph 10 of his deposition that at the time of execution of the Mahadanama itself an amount of Rs.30,00,000/- was paid to the defendant. This statement is not in consonance with the case of the plaintiff as pleaded in the plaint, wherein it has been stated that the amount was advanced on different dates. The other witnesses have also stated that the money was paid on different occasions. Thus, there exists a material inconsistency regarding the timing, manner and mode of payment of the alleged consideration amount. Further, although the witnesses have stated that the plaintiff arranged the money by selling cattle, agricultural produce and by borrowing from different persons, none of the purchasers, lenders or any independent person connected with such transactions has been examined. Consequently, neither the source nor the actual payment of the alleged consideration amount stands proved by satisfactory, reliable and independent evidence.

37. At this juncture, I would like to refer the settled principle relating to proof of consideration. It is well settled that consideration forms the foundation of every enforceable contract and where a party asserts payment of a substantial amount, the burden lies upon such party to establish not only the factum of payment but also the source, manner and circumstances under which such payment was made. It is equally well settled that though civil cases are decided on the principle of preponderance of

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probabilities, the Court must nevertheless be satisfied that the existence of the asserted fact is more probable than its non-existence. Where a transaction involves a substantial amount and forms the very basis of the suit, absence of contemporaneous records, supporting documents and independent corroboration becomes a relevant circumstance while appreciating the evidence. Mere oral assertions, unsupported by reliable material, may not always be sufficient to discharge the burden cast upon the party asserting payment.

38. When the evidence available on the record is appreciated in the light of the aforesaid settled principles, I further find that neither the plaint nor the oral evidence discloses with certainty the dates, places and manner in which the alleged payments were made. The evidence remains uncertain as to whether the amount was paid in one lump sum or in several installments. The witnesses have also failed to consistently disclose who remained present at the relevant time and under what circumstances the payments were made. These omissions are not insignificant. Rather, they go to the root of the plaintiff's case because payment of consideration constitutes the very foundation of the alleged transaction. Therefore, in the absence of satisfactory documentary support, independent corroboration and consistent oral evidence, the Court finds it unsafe to record a finding that the plaintiff has successfully established payment of the alleged consideration amount of Rs.30,00,000/-.

39. Therefore, upon cumulative appreciation of the oral and documentary evidence relating to payment of consideration, this Court finds that the plaintiff has failed to establish by reliable and convincing evidence either the source or the actual advancement of the alleged amount of Rs.30,00,000/- to the defendant. The evidence adduced on this aspect suffers from material omissions, inconsistencies and lack of independent corroboration. Consequently, the factum of payment, which forms one of the foundational pillars of the plaintiff's case, remains unproved.

40. Another circumstance which creates serious doubt regarding the plaintiff's case is the non-production of the reply notice allegedly sent by the defendant in response to the legal notice issued on behalf of the plaintiff. According to the averments made in the plaint itself, the defendant had sent a reply notice through her advocate. The plaintiff has sought to rely upon the existence and contents of the said reply notice as a circumstance supporting her case. However, despite placing reliance upon the said document, neither the original reply notice nor any legally admissible secondary evidence thereof was brought on record before the learned trial court.

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41. From the materials available on the record, it further appears that the existence of the alleged reply notice was well within the knowledge of the plaintiff throughout the pendency of the suit. The plaintiff had specifically referred to the said reply notice in the plaint and sought to derive support from its contents. Significantly, in the petition filed during the pendency of the present appeal under Order XLI Rule 27 of the Code of Civil Procedure, the appellant herself has admitted that a photocopy of the said reply notice had already been filed before the learned trial court. Despite having such photocopy available, no attempt was made to prove the same in accordance with law. Neither any application was filed seeking permission to adduce secondary evidence nor was any foundation laid for reception of such evidence by establishing loss, destruction, non-availability or any other legally recognized contingency contemplated under the Indian Evidence Act. Consequently, the alleged contents of the reply notice never became part of the legally admissible evidence on record.

42. During the pendency of the present appeal, the appellant has filed a petition under Order XLI Rule 27 CPC seeking permission to bring the aforesaid reply notice on record by way of additional evidence. The principal contention advanced is that the said document contains material facts relevant for adjudication of the controversy involved in the appeal and therefore deserves to be received as additional evidence.

43. At this stage, it would be appropriate to notice the settled principles governing the reception of additional evidence at the appellate stage. The law relating to Order XLI Rule 27 CPC is no longer res integra. It is well settled that an appeal is ordinarily required to be decided on the basis of the evidence which was available before the court of first instance. The provision does not confer an unrestricted right upon a litigant to produce fresh evidence merely because the judgment has gone against him. The power to admit additional evidence is exceptional in nature and can be exercised only in circumstances specifically contemplated under the statute.

44. The Hon'ble Supreme Court in **Union of India v. Ibrahim Uddin, (2012) 8 SCC 148**, has authoritatively held that additional evidence cannot be permitted to fill up omissions, patch up weak points, remove deficiencies or cure lacunae left by a party during trial. It has further been held that the party seeking to adduce additional evidence must establish that despite exercise of due diligence such evidence was not within its knowledge or could not be produced before the trial court. Similar principles have been reiterated in **State of Rajasthan v. T.N. Sahani, (2001) 10 SCC 619**, wherein it was observed that Order XLI Rule 27 CPC is not intended to provide a second opportunity to

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a litigant who failed to produce available evidence at the proper stage of the proceedings.

45. Applying the aforesaid principles to the facts of the present case, this Court finds that the appellant has failed to satisfy any of the statutory requirements contemplated under Order XLI Rule 27 CPC. The existence of the alleged reply notice was admittedly within the knowledge of the plaintiff from the very inception of the suit. Not only was the document referred to in the plaint itself, but the plaintiff also sought to rely upon its contents in support of her case. Furthermore, the appellant has herself admitted that a photocopy of the said reply notice had already been filed before the learned trial court. Therefore, the document cannot be said to be a subsequently discovered piece of evidence nor can it be said that the same was unavailable despite due diligence.

46. The record further discloses that although the plaintiff had ample opportunity to prove the said document during trial, no attempt whatsoever was made to do so. Neither the original document was produced nor was any application filed seeking permission to adduce secondary evidence in accordance with law. No explanation has been furnished as to why such steps were not taken before the learned trial court. The omission, therefore, cannot be attributed to lack of opportunity but is clearly attributable to the plaintiff's own failure to avail the opportunity available during trial.

47. This Court is therefore of the considered opinion that permitting the appellant to introduce the said document at the appellate stage would amount to allowing her to improve her case and fill up deficiencies left in the evidence adduced before the trial court. Such a course is clearly impermissible under the scheme of Order XLI Rule 27 CPC. The appellate jurisdiction is not intended to afford a litigant a fresh opportunity to reconstruct a case which remained inadequately proved before the court of first instance.

48. There is yet another aspect of the matter. Even assuming for the sake of argument that the alleged reply notice contains an admission regarding receipt of Rs.3,00,000/- by the defendant, such admission by itself would not establish the due execution of **Ext.-1** Mahadanama dated 22.02.2021, which constitutes the very foundation of the present suit. The principal issue involved in the appeal is whether the alleged Mahadanama was duly executed and whether it constitutes a valid and enforceable contract. The alleged reply notice, even if accepted on its face value, does not cure the fundamental defects already noticed in Ext.-1, namely the absence of any satisfactorily proved signature, thumb impression or other legally recognizable mode of authentication attributable to

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the defendant. Consequently, the proposed evidence cannot be said to be necessary for enabling this Court to pronounce judgment effectively.

49. For the reasons discussed hereinabove, this Court is satisfied that the appellant has failed to establish any ground warranting reception of additional evidence under Order XLI Rule 27 CPC. The application appears to be an attempt to fill up the lacunae left in the plaintiff's case before the learned trial court. Accordingly, the petition filed under Order XLI Rule 27 CPC is devoid of merit and is hereby rejected.

50. Thus, when the evidence adduced by the plaintiff is appreciated as a whole, this Court finds that the plaintiff has failed to establish the essential ingredients of her claim. The execution of Ext.-1 remains unproved; the disputed writing appearing thereon has not been connected with the defendant by any legally admissible evidence; the payment of the alleged consideration amount has not been satisfactorily established; and the best available evidence relied upon by the plaintiff has not been proved in accordance with law. The cumulative effect of these deficiencies creates serious doubt regarding the genuineness and enforceability of the alleged Mahadanama dated 22.02.2021.

51. At this juncture, I would also like to refer the settled principles governing suits for specific performance. It is well settled that specific performance is an equitable and discretionary relief. Before granting such relief, the Court must be satisfied regarding the existence of a valid, lawful and enforceable contract. Although civil cases are decided on the principle of preponderance of probabilities, the evidence must nevertheless satisfy the Court that the existence of the asserted facts is more probable than their non-existence. Suspicion, conjecture or assumption, however strong, cannot substitute legal proof.

52. Applying the aforesaid principles to the facts of the present case, this Court finds and holds that the plaintiff has failed to establish due execution of Ext.-1 Mahadanama dated 22.02.2021 and has further failed to prove advancement of the alleged consideration amount of Rs.30,00,000/-.

53. Since the existence of a valid and enforceable agreement constitutes the very foundation of the suit, failure to prove execution of Ext.-1 strikes at the root of the plaintiff's claim. Consequently, the plaintiff is not entitled to a decree for specific performance of contract. Likewise, in absence of satisfactory proof regarding advancement of the alleged amount, the alternative relief for recovery thereof also cannot be granted.

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54. Upon re-appraisal of the entire evidence and upon careful consideration of the impugned judgment and decree, this Court finds that the learned trial court has properly appreciated the oral and documentary evidence available on the record and has rightly arrived at the conclusion that the plaintiff failed to establish her claim.

55. Upon independent re-appraisal of the entire evidence and materials available on the record, this Court finds no illegality, perversity, misappreciation of evidence or jurisdictional error in the judgment and decree passed by the learned trial court warranting interference in exercise of appellate jurisdiction.

56. Accordingly, all the points for determination are answered against the appellant and in favour of the respondent.

Accordingly, it is hereby

ORDER

In view of the discussions, findings and reasons recorded hereinabove, this Court finds no merit in the present appeal. Consequently, the appeal stands dismissed on contest against the respondent. The judgment and decree dated 24.01.2024 and 02-02-2024 respectively passed by the learned Civil Judge (Senior Division)-I, Begusarai in Title Suit No. 60 of 2022 are hereby affirmed. In the facts and circumstances of the case, there shall be no order as to costs. Let the decree be prepared accordingly.

Let the Lower Court Records be transmitted forthwith along with a copy of this judgment.

Dictated, corrected, sealed, signed and pronounced by me in open Court today.

Sd/-
(Rishi Kant)
Principal District Judge,
Begusarai
22.06.2026

Sd/-
(Rishi Kant)
Principal District Judge,
Begusarai
22.06.2026

Date of Judgment/Order	22.06.2026
Date of Reserving Judgment/Order	N.A
Uploading Date	23.06.2026
Uploaded by	Karunesh Kumar