

**IN THE COURT OF MUNSIF, TEGHRA, BEGUSARAI,
BIHAR**

Title Suit No. 40/2015

In the matter of:

Ram Tanuk Rai

..... **Plaintiff**

Versus

Syed Mohsin Ahmad & Ors.

..... **Defendants**

Presided over by:-

**Shri Shailendra Kumar
Munsif, Teghra, Begusarai**

Present: Ld. Counsel for the Plaintiff: *Sh. Sanjeev Kamal, Adv.*
Ld. Counsel for the Defendants: *Sh. Ganesh Singh, Sh. Arun
Kr. Yadav & Sh. Vinod
Kumar, Advs.*

ORDER

Pending adjudication of the captioned title suit, an application dated 19.08.2024 under Order VII, Rule 11 of the Code of Civil Procedure, 1908 was filed on behalf of the Defendants, praying therein “to be pleased to allow the petition of the defendants and disposed off the case accordance with law.”

Ld. Counsel for the Defendants submits that the Plaintiff has filed the captioned suit for specific performance of contract against the Defendants. The Defendants have appeared and filed their written statement and denied the existence of any contract between the Plaintiff and the Defendants, thus denied all the allegations *in toto*.

It was further submitted that as per Sec. 53A of the Transfer of Property Act, 1882, certain ingredients are required to be satisfied in order to bring a suit under the specific performance of contract before the Civil Court, viz. (i) a contract to transfer immovable property, (ii) the contract must be for consideration, (iii) the contract must be in writing, signed by or on behalf of the transferor, (iv) possession be transferred or already in possession, and (v) the terms of the contract has been performed or is willing to perform.

Ld. Counsel for the Defendants also submits that the Plaintiff himself has asserted in para 5, 6, 15 and 19 of the plaint that there was no written contract between the Plaintiff and the Defendants.

Hence, in the circumstances, Ld. Counsel for the Defendants prays for dismissal of the instant suit.

Per contra, the Plaintiff preferred to file a rejoinder dated 04.10.2024, wherein, the Plaintiffs questioned the instant application on the point of maintainability.

Ld. Counsel for the Plaintiff raised that similar to the instant application have been filed earlier on two occasions i.e. 13.02.2023 and 28.05.2024, respectively, wherein, the former was dismissed as not pressed and the latter was rejected by the Court.

It was also submitted by the Ld. Counsel for the Plaintiff that the instant application has been filed at a very belated stage and is devoid of various provisions prescribed under Order VII of the Code of Civil Procedure, 1908.

Ld. Counsel for the Plaintiff further argues that it is a settled principle of law, under The Transfer of Property Act, 1882, that whenever part performance has been performed by the purchaser, the seller is duty bound to execute sale deed. So far delivery of possession is concerned, it can be delivered without registration of document.

It was further argued that a proceeding under Sec. 144 of the Code of Criminal Procedure, 1908 was tried by the S.D.M., *Teghra* vide Case No.299/19, wherein, on the report of police, the S.D.M., *Teghra* in his final order, observed that the Plaintiff maintains physical possession of the suit land since 1998. Thus, it is a proven fact that Plaintiff is in physical possession over the suit land since 1998.

Ld. Counsel for the Plaintiff argues that the Plaintiff is also entitled for the decree in the instant suit merely on the basis of continuous adverse possession, and to give effect an application dated 01.07.2024 for amendment of the plaint has been pending before this Court.

While addressing the issue of limitation, Ld. Counsel for the Plaintiff argues that Hon'ble Supreme Court of India has laid down in several cases that issue of limitation cannot be framed as preliminary issue and can be dealt with other issues with trial. Hence, in the circumstances, the instant application is liable to be rejected.

Heard Ld. Counsels for the Defendants and Plaintiffs at length. Perused the record. From perusal, it appears that for the purpose in hand, it is pertinent to refer Order VII, Rule 11 of the Code of Civil Procedure, 1908, which reads:

“11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite

stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

AND

Sec.53A of the Transfer of Property Act,1882, which reads as:-

“53A. Part performance.- Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that 2***, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

From the bare reading of the above provisions, it emerges that the legislature intends the Court to reject the plaint [the Defendants have placed their reliance on clause (d)] when a suit has been barred by any law. And under Sec.53A of the Transfer of Property Act, 1882 to bring a suit for part performance, the law requires the contract for consideration to transfer an immovable property to be in writing.

However, perusal of record (report of *serishtedar*) reveals that the instant suit has been filed for specific performance of contract, which is governed by the Specific Relief Act, 1963, which has been enacted to provide remedies to persons whose civil or contractual rights have been violated. The Plaintiff herein, as is apparent from the reading of the paras 15 & 20(A) of the plaint, too, intends to enforce his contractual rights, allegedly arising out of oral contract.

Now, whether oral contract, as alleged and proven to be true, casts contractual liability on the Defendants, has to be examined on the touchstone of Sec.10 of the Indian Contract Act, 1872, which reads:

“10. What agreements are contracts.— All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.”

A bare reading of the above provision suggests that contracting orally is not prohibited, *per se*, unless expressly prohibited by any law in force. Hence, it cannot be said that the instant suit attracts the provision of Order VII Rule 11 of the Code of Civil Procedure, 1908.

Therefore, with the findings and discussions, abovementioned, and also being guided by Hon'ble the Supreme Court of India, in the matter of **B. Santoshamma v. D. Sarla**, (2020) 19 SCC 80, wherein, the specific performance of contract pertaining to land has been analysed in comprehensive manner, this Court is not inclined to allow the instant application of the Defendants.

Accordingly, instant application and respective rejoinder are being disposed of.

Parties are directed to adduce evidences, as the matter is coming up for evidence, and complete the stage, preferably, within three months.

Put up on **07.07.2025**.

**Munsif
Teghra, Begusarai
20.06.2025**