

JUDGMENT IN MONEY SUIT NO. 3 OF 2021

NAGESHWAR PD. MANDAL
VERSUS
NANDAN YADAV & ANR.

DATE OF PRONOUNCEMENT

THIS 6th DAY OF JUNE, 2023

**COURT OF SH. SUMIT KUMAR SINGH
JO CODE-BR00856
CIVIL JUDGE (SD)-I, GOGRI, KHAGARIA
BJS, 27TH BATCH**

**IN THE COURT OF CIVIL JUDGE (SD)-I, GOGRI, KHAGARIA
BEFORE SH. SUMIT KUMAR SINGH
MONEY SUIT NO. 3 OF 2021
DATE OF DECISION 6th DAY OF JUNE, 2023
IN THE MATTER OF:
NAGESHWAR PD. MANDAL ...PLAINTIFF**

VERSUS

NANDAN YADAV & ANR. ...DEFENDANTS

PRESENT:

SH. ASHOK NARAYAN KARN, ADVOCATE FOR PLAINTIFF

**JUDGMENT
06.06.2023**

1. Present suit has been filed by the plaintiff for recovery of Rs. 11,00,000 with interest from the date of payment was made from the defendants.

2. Plaintiff's case is that the joint family of defendant fell in need of money. Hence, defendant no. 1 being karta and manager of the family decided to sale his property in khata no. 20 plot no. 29 area 2 katha. Plaintiff was offered to purchase the same which he had accepted. Thus, consideration of the sale was fixed at Rs. 24,50,000. It was assured by the defendant that his land is besides the road. Plaintiff accepted the offer and paid advance consideration of Rs. 11,00,000 on the date of execution of agreement for sale on 21.01.2021. After the contract was entered, plaintiff came to know that the land of defendants is not besides the road but there was a gap and there was another person's land in between. And the plaintiff was unable to use the land as intended without the same being besides the road. It was claimed by the plaintiff that the defendant had initially agreed to sale the land upto the road with a view to allure the plaintiff to enter in a contract without having intention to sale as expected.

Hence, the plaintiff asked the defendant no. 1 return the amount. Thus, on 24.06.2021 defendant no. 2 executed an agreement in which he agreed to refund the advance consideration paid by the plaintiff. However, the amount was never paid by the defendants. Hence, plaintiff had issued legal notice to the defendants on 30.09.2021. However, the defendants have paid no heed. Hence, the present suit has been filed.

3. Notice was issued to the defendants. Defendant no. 1 entered appearance on 29.04.2022. However, he had not filed his written statement. Defendant no. 2 was proceeded ex-parte vide order dated 14.11.2022. Matter was proceeded under Order 8 Rule 10 CPC against defendant no. 1 vide order dated 07.12.2022.
4. The main issue in this case is whether the plaintiff is entitled to recover the advance consideration paid to the defendants.
5. To prove the contentions plaintiff had produced oral and documentary evidence. Thus, plaintiff had examined Abhay Anand as PW-1, Permanand Sah as PW-2, Nageshwar Pd. Mandal as PW-3 and Jai Prakash Yadav as PW-4.

At the same time agreement for sale dated 21.01.2021 was marked as Ext. 1, compromise agreement dated 26.02.2021 was marked as Ext. 2, legal notice dated 30.09.2021 was marked as Ext. 3, signature of Jai Prakash yadav over Ext. 2 was marked as Ext. 4 and signature of Tribhuwan Kumar Advocate over legal notice dated 28.10.2021 was marked as Ext. 5.

6. It is the case of plaintiff that being karta of the joint family, defendant no. 1 had entered in an agreement for sale of the property. Plaintiff had then paid advance consideration of Rs. 11,00,000. Then the defendant had failed to sale the land as agreed earlier. Thus, the plaintiff had asked the defendant to refund the advance consideration. Hence, parties have executed Ext. 2 in which defendant no. 2 on direction of defendant no. 1 had agreed to refund the advance consideration to the plaintiff. Thus, there are two contracts before this Court. First contract was to sale the land and second was to refund the amount. First contract was entered by defendant no. 1 who had received the amount as karta of joint family. Second contract was entered by member of joint family to refund the amount. Thus, the legal consequences of second contract is to be determined by this Court.
7. It is further case of plaintiff that the defendant no. 2 had agreed to refund the advance consideration paid to defendant no. 1 with the implied authority of defendant no. 1. However, defendant no. 1 had entered in a contract with the plaintiff in the capacity of karta of the joint family. Thus, plaintiff is required to prove that defendant no. 2 was implidely or expressly authorized by defendant no. 1 to enter in a subsequent contract on behalf of joint family to refund the amount.
8. The position of karta has been well defined in various judgments of the Hon'ble Supreme Court as well as Hon'ble High Court.

Hence, the same need not be repeated. However, the question is whether during the lifetime of karta a junior member of Hindu Undivided Family can act for and on behalf of karta. The position of karta is *sui generis* (of its own kind) the relationship between him and members is not like principal or agent or like partners in a partnership firm. He is the head of the family and acts on behalf of other members. He stands fiduciary relationship with other members but he is not a trustee, nobody can question what he spent unless charges of misappropriation.

9. Karta has got right to enter in a contract only with a view that he is responsible to take all decisions for the welfare of the joint family. This is a serious authority given to karta with the consent of all the member of joint family. This responsibility is one of a kind which cannot be delegated by the karta himself on to any other member of the joint family.
10. This Court had perused Ext. 1 which is the agreement for sale dated 21.01.2021. Recital of the said document shows that defendant no. 1 had agreed to sale his own self acquired property to the plaintiff for a consideration. This Court had also perused Ext. 2 which is the second contract between the parties. The document was created between the plaintiff and defendant no. 1. Perusal of this document shows that defendant no. 1 had never signed the document. Instead defendant no. 2 had signed the document as witness but not in the capacity of agent of defendant no. 1. As such this document is not complete and the

defendant no. 1 cannot be held liable under this document. It is the case of plaintiff that when he had asked for refund of advance consideration, defendant no. 1 had instructed his son (defendant no. 2) to enter in the compromise agreement with plaintiff to refund the amount. However, the document so entered between the parties shows that the defendant no. 1 and plaintiff had entered in a contract which was attested as witness by the son of defendant no. 2 and the document was never executed by defendant no. 1. The cause of action of plaintiff is based on Ext. 2. In this document defendant no. 1 was party, but he had not signed the document. This shows that defendant no. 1 had never intended to execute the same, unless contrary is proved. There is nothing on record to make a contrary presumption. As such the story cause of action for the plaintiff itself fails. Consequently, the it is held and accordingly this Court

ORDERS

that the suit is hereby dismissed without cost.

Sumit Kumar Singh
Civil Judge (SD)-I, Gogri, Khagaria

Dated this 6th Day of June, 2023.

Certified that the Judgment was typed, corrected and pronounced in the open Court by me on this 6th Day of June, 2023.

Sumit Kumar Singh
Civil Judge (SD)-I, Gogri, Khagaria

Dated this 6th Day of June, 2023.

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APPENDIX OF EVIDENCE

ORAL EVIDENCE OF PLAINTIFF:

SR. No.	Particulars	PW No.
1.	Abhay Anand	1
2.	Permanand Sah	2
3.	Nageshwar Pd. Mandal	3
4.	Jai Prakash Yadav	4

ORAL EVIDENCE FOR DEFENDANTS: **NONE**

DOCUMENTS FOR PLAINTIFF:

SR. No.	Particulars	Exhibit
1.	Agreement for sale dated 21.01.2021	1
2.	Compromise agreement dated 26.02.2021	2
3.	Legal notice dated 30.09.2021	3
4.	Signature of Jai Prakash yadav over Ext. 2	4
5.	Signature of Tribhuwan Kumar Advocate over legal notice dated 28.10.2021	5

DOCUMENTS FOR DEFENDANTS: **NONE**

DOCUMENTS FOR COURT: **NIL**

Sumit Kumar Singh
Civil Judge (SD)-I, Gogri, Khagaria

Dated this 6th Day of June, 2023.

[FORMING PART OF JUDGMENT]

IN THE COURT OF CIVIL JUDGE (SD)-I, GOGRI, KHAGARIA
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PROCEEDINGS IN THE SUIT

Sr. No.	Particulars	Date
1.	Suit filed on	21.12.2021
2.	Admission of suit	31.03.2022
3.	Written statement of defendants	NONE
4.	Issues settled on	NONE
5.	Evidence of plaintiff	17.12.2022 to 18.04.2023
6.	Evidence of defendants	NONE
7.	Arguments	09.05.2023 TO 30.05.2023
8.	Judgment reserved on	30.05.2023
9.	Judgment pronounced	06.06.2023
10.	Total time taken for disposal of suit.	1 Year 5 Months 16 Days
11.	Result	Suit Dismissed

Sumit Kumar Singh
Civil Judge (SD)-I, Gogri, Khagaria

Dated this 6th Day of June,2023.

[FORMING PART OF JUDGMENT]