

HEADING OF DECISION IN APPELLATE JURISDICTION

DISTRICT – Madhubani (BIHAR)
IN THE COURT OF DISTRICT & ADDITIONAL SESSIONS JUDGE-III ,
Jhanjharpur, Madhubani

TITLE APPEAL No. 06/2023

(From the Judgment and Decree passed in T.S. No. 128/2015)

1. Md. Wakil Alam aged about 63 years S/o- Md. Khalik
R/o Mauza- Chanauraganj, P.S- Jhanjharpur Dist- Madhubani .

..... ***Appellant/Plaintiff***

VERSUS

1. Most. Manju Rani, aged about 53 years W/o- Late Yogendra Prasad
2. Chetan Kumar, aged about 35 years S/o- Late Yogendra Prasad
3. Smt. Sweta Devi, aged about 33 years D/o-Late Yogendra Prasad
4. Smt. Niki Devi, aged about 30 years D/o- Late Yogendra Prasad
All R/o Village- Laukahi, P.O.- Laukahi, P.S- Laukahi, Dist.- Madhubani

..... ***Respondents***

Appearance:-

For the Appellant : Sri Manoj Kumar Das, Ld. Advocate

For the Respondents: No one appeared (Ex parte)

JUDGMENT DATED THE 9th DAY OF April, 2026

PRESENT : ANIL KUMAR RAM
DISTRICT JUDGE – III
JHANJHARPUR

J U D G M E N T

1. The instant appeal has been emerged against the impugned judgment dated 04.01.2023 and decree sealed and signed on 10.01.2023 passed by Learned Sub-Judge-II, Jhanjharpur in Title Suit No. 128/2015, wherein suit was decreed.
2. The case of Appellant/Plaintiff in original suit in nut shell is that Defendant No. 2 Manju Rani is wife of defendant No. 1 Yogendra Prasad and that earlier the suit land was purchased in the name of defendant no. 2 by Defendant no. 1. Further, case is that Defendant No. 1 was director of the finance Company Ltd., Branch-Jhanjharpur and that Defendant No. 1 took Plaintiff into his

confidence to deposit money in his Company which Plaintiff did so. Further, it has been stated that Plaintiff deposited money from year 1993 to February, 1996 and the maturity period for said deposit was February 1996. Further, at the time of maturity defendant did not give the maturity amount to Plaintiff then Plaintiff also lodged a criminal case vide Jhanjharpur P.S Case No.-68/97 against Defendant No. 1 and others and during the period of criminal Case, Defendant approached Plaintiff and stated to sale suit land and the offer was accepted by Plaintiff at a consideration amount of Rs. 3,00,000/-. Further, Defendant no. 1 received the said consideration amount in front of Defendant no. 2 and gave possession of the same to Plaintiff on 10.02.2001. Further, it has been stated that Defendant no. 1 also executed a Yadast Bikrinama in favour of Plaintiff in front of Defendant no. 2 on 15.03.2001 in which it was stated that Defendant no. 1 would execute Kewala and for registration of agreement for the said land. Further, case of the Plaintiff is that despite request Defendant did not execute sale deed in favour of Plaintiff lastly on 27.06.2015, which is cause of action for the present suit.

3. The present Case was filed on 30.06.2015 and was admitted by the court on 16.07.2015 and after the case was admitted Summons were issued. Thereafter, defendants did not appear despite the fact that summons were issued through modes of Nazarat as well as Registered Post and through Newspaper advertisement and on 21.06.2016 Court directed to proceed Ex-Parte against all Defendants.
4. Now the only Question to be decided as to whether the Appellant/plaintiff is entitled of decree of specific performance of contract with respect to suit land and for passing direction to Defendant to execute Sale Deed in favour of Plaintiff of suit land within a stipulated time?
5. The Appellant/plaintiff has adduced as many as five oral witnesses namely (1) P.W.1- Md. Wakil Alam, (2) P.W.2- Md. Muslim, (3) P.W.3 -Sukan Yadav, (4) P.W.4- Ram Sundar Thakur and (5) P.W.5- Raj Kumar Bhandari. The Appellant/plaintiff has also filed and proved the following documents:- Ext.-1 is the agreement dated 15.03.2001 executed by original defendant no. 1 Yogendra Prasad. Ext. 2 is the sale deed dated 11.09.2000 executed in favour of defendant no. 2 by Yogendra Prasad, Shailendra Prasad and Manmohan Prasad sons of Kameshwar Prasad. It is pertinent to mention that the Vendor

no. 1 is another Yogendra Prasad who is son of Shree Narayan Prasad.

6. The learned counsel for Appellant/ Plaintiff has further submitted that after hearing, the suit has been dismissed by the learned Sub-judge-II, Jhanjharpur by a cryptic order dated 04.01.2023 and decree was prepared on 10.01.2023.
7. Being aggrieved with the aforementioned Judgment dated 04.01.2023 and decree dated 10.01.2023 passed by learned Sub-judge-II, Jhanjharpur in T.S. No. 128/2015, the appellants move this appeal on amongst the following grounds:-

GROUNDS

- (a) For that the Judgment and decree passed by the learned Sub-judge-II, Jhanjharpur is based on surmise and conjecture.
 - (b) For that the judgement and decree passed by the learned Sub- Judge-II, Jhanjharpur is bad in law and facts.
 - (c) For that the Judgment and decree passed by the learned Sub-Judge-II, Jhanjharpur is against the weight of evidence on record.
 - (d) For that the learned Sub-Judge-II, Jhanjharpur has misconstituted the law and fact involved in the suit.
 - (e) For that the court below has not properly considered the oral and documentary evidences involved in the suit.
 - (f) For that the Court below ought have held that Yogendra Prasad defendant no. 9 purchased the land in question in name of wife Manju Rani.
 - (g) For that the Court below ought have taken into account that Manju Rani was trustee of Yogendra Prasad.
 - (h) For that the Court below ought to have held that on the basis of exhibit-1 Appellant is entitled for the decree of specific performance of contract as claimed.
 - (i) For that the Court below has wrongly dismissed the suit.
 - (j) For that the Court below ought to have held that the plaintiff has proved his case and is entitled for the relief as claimed.
 - (k) For that the Court below ought to have decreed the suit with cost.
8. Heard and perused the complete record.

9. During course of argument advanced by the learned counsel appearing on behalf of the appellant has assailed that the impugned judgment and decree passed by the learned Court below erred both in law and fact and further submitted that the learned court below failed to appreciate the evidence on record in its true prospective and came to an erroneous finding resulting in passing the decree of dismissal in the title suit without going through the evidence produced on behalf of appellant/plaintiff. He has further submitted that learned trial court has not properly analysed the documents of appellant/Plaintiff and on the basis of aforesaid facts and circumstances the appellant/Plaintiff prayed to set aside the judgment and decree passed by the learned trial court.
10. I have carefully considered the contentions as submitted above by the learned counsel of the appellants. In such, in this appeal, the following points for determination arise:

(I) Whether the Appellant/plaintiff is entitled of decree of specific performance of contract with respect to suit land and for passing direction to Defendant to execute Sale Deed in favour of Plaintiff of suit land within a stipulated time?

(II) Whether the impugned judgment and decree suffers from any illegality requiring interference in this appeal?

FIN D I N G S

11. Point No.-I

For deciding the above issue the Appellant/plaintiff is bound to prove his case to the satisfaction of the court and his burden is not lightened merely because the defendants/Respondents are absent.

From perusal of the complete LCR including the evidence adduced by the parties for determination of this point no. I, it appears that in pleading along with the complete evidence adduced by the parties, I find that the Ld. Trial Court has dismissed the suit stating that the transaction relating to sale of suit land has taken place not between Plaintiff and Defendant no. 2 rather Plaintiff and Defendant no. 1 who was having no right to enter into any transaction for sale either oral or written for suit land. The learned trial court has further observed that defendant no. 2 is the real owner of suit land as proved by Exhibit 2 but she has nowhere been involved in any transaction for

sale of suit land as reflected by Exhibit 1 adduced from Plaintiff side.

On further perusal of Ext. 1, I find that Ext.-1 is the agreement dated 15.03.2001 executed by defendant no. 1 and Ext. 2 is the sale deed dated 11.09.2000 executed in favour of defendant no. 2 by Yogendra Prasad, Shailendra Prasad and Manmohan Prasad sons of Kameshwar Prasad. It is pertinent to mention that the vendor of Ext. 2 is another Yogendra Prasad and defendant no. 1 is another Yogendra Prasad who is son of Shree Narayan Prasad. Ext. 1 has nowhere been disbelieved by the learned Trial Court rather the learned Trial Court proceeded on the ground that Yogendra Prasad had no right to enter into any transaction with the Plaintiff/Appellant. This finding of the learned Trial Court is against the provisions of law. In this connection the learned counsel for appellant has referred the reported decision of Hon'ble Supreme Court reported in A.I.R. 1995 SCW 3306 in which the Hon'ble Apex Court in paragraph 7 and 8 of the reported decision has held that purchase of property by a person in the name of his wife or unmarried daughter is not prohibited and the husband has the right to purchase property in the name of his wife and he is entitled to enforce his right in the said property. It is worth while to mention that by way of abundant caution wife was also impleaded as party to the suit and had she got any objection against the transaction entered into by her husband, she could have appeared in the suit and contested the claim of the plaintiff but she neither appeared in the suit nor appeared in the appeal to claim Suit property as her personal property.

The learned counsel for appellant has also relied upon the decision of Hon'ble Allahabad High Court judgement reported in A.I.R. 2001 All page 366 and similar principle has been enumerated and in paragraph 30, 31 and 33 of the said decision the Hon'ble High Court has held that it is not unusual to purchase property in the name of wife and such property shall be considered as the property of the family. Similar view has been adopted by the Hon'ble Calcutta High Court in the reported decision of A.I.R. 2017 Cal Page 11 and paragraph 40 to 44 of the said decision is relevant for the purpose of this suit and thus all the aforesaid three decisions of the Hon'ble Supreme Court as well as Hon'ble Allahabad and Calcutta High Court fully support the case of appellant and the facts and circumstances of the instant case is similar to that of the aforesaid reported decisions. Thus, from the above discussions it is clear that the learned Trial Court misconstrued the provision of Benami Transaction Prohibition Act and had proceeded against the settled preposition of law as laid down by different Courts as discussed above.

Also from perusal of Ext. 1 it is clear that entire consideration amount has been received by the defendant no. 1 and due to his illness, he could not execute sale deed and that he had undertook to

execute sale deed after recovery from illness and lastly he has handed over possession to plaintiff appellant.

Further, Registration Act was amended on 24.09.2001 and sub-section 1A was inserted according to which when possession has been delivered then the agreement has to be registered. This amended provision is not retrospective, and the agreement Ext. 1 was executed and possession was delivered on 15.03.2001 i.e. before the introduction of Sub-Section 1A and therefore the old law will apply.

Thus the learned trial court has erred in dismissing the Title suit no.128/15 and hence learned trial court judgement passed in Title suit no. 128/15 is hereby set aside and Point no. I is decided in favour of Appellant/ Plaintiff with observation that the Appellant/plaintiff is entitled of decree of specific performance of contract with respect to suit land and for passing direction to Defendant to execute Sale Deed in favour of Plaintiff of suit land within a stipulated time.

12. Point No.-II

Whether the impugned judgment and decree suffers from any illegality requiring interference in this appeal?

Since point no. I is decided in favour of Appellant/Plaintiff hence I find that the judgment and decree passed by the learned trial court suffers from illegality and requires interference in this appeal and Point no. II is also decided in favour of Appellant.

ORDER

13. In the result, this court finds illegality in the impugned judgment and decree and hence the impugned judgment and decree passed by the learned Sub Judge II, Jhanjharpur in Title Suit No. 128/15 is hereby set aside and the present appeal stands allowed and decreed in favour of Appellant with direction to Respondents/Defendants to execute Sale Deed in favour of Plaintiff of suit land within thirty days from today and in case of failure to do so by Respondents/Appellants, the learned trial court will take proper and lawful step and proceed according to law to execute the sale deed in favour of appellant.

14. Office is directed to prepare the decree accordingly and send back the LCR of the Title suit no. 128/15 to the court of the learned Sub Judge II, Jhanjharpur with a copy of this court's judgment and decree and consign the case record of Title Appeal in District Record Room. Given under my hand and seal of the court on this 9th day of April, 2026.

Dictated and corrected by me

Anil Kumar Ram

District Judge, III
Jhanjharpur
dated: 09-04-2026

Anil Kumar Ram

District Judge, III

Jhanjharpur
dated: 09-04-2026