

GAHC010004252012



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/61/2012

MRIGEN DAS @ MALAKAR
S/O LATE BASANTA DAS, VILL. NIZ HAJO BHARALITOLA, P.O. and P.S.
HAJO, DIST. KAMRUP, ASSAM.

VERSUS

KUMUD CHANDRA DAS
S/O LATE UTTAM CHANDRA DAS, R/O VILL. NIZ HAJO SANTIPUR, P.O. and
P.S. HAJO, DIST. KAMRUP, ASSAM.

Advocate for the Petitioner : MR.P P DAS, MR.S K SAHARIA

Advocate for the Respondent : MRG C KALITA, MS J.BHARALI,MR. S
BAROOAH,MR.SHEELADITYA,

B E F O R E
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date on which judgment is reserved : **03.02.2026**

Date of pronouncement of judgment : **27.02.2026**

Whether the pronouncement is of the : N/A.
operative part of the judgment?

Whether the full judgment has been : Yes.
pronounced?

Judgment & Order

Heard Mr. S. Das, learned counsel for the appellant. Also heard Mr. S. Barooah, learned counsel for the respondent.

2. This is an appeal preferred under Section 100 of the Code of Civil Procedure, 1908 against the judgment dated 09.09.2010, passed by the learned Civil Judge No.3, Kamrup at Guwahati in Title Appeal No. 68/2008, whereby the judgment and decree dated 18.08.2008, passed by the learned Munsiff No. 1, Guwahati in Title Suit No. 303/2004, decreeing the suit of the plaintiff/respondent 6 was upheld.

3. This Court, after hearing the learned counsel for the appellants, admitted this appeal on the following substantial questions of law:-

“Whether the learned courts below are justified in decreeing the suit of the plaintiff for specific performance of the contract on the basis of Ext.1 agreement without the prove of the alleged signature of the defendant in the said agreement, when the defendant denied execution of such agreement?”

4. Mr. Das, the learned counsel for the appellant submitted that that the learned Trial Court as well as the learned Appellate Court did not consider the fact that there is no prove of the document, which was alleged to have been executed by the defendant/appellant. In spite of denial of signature, the plaintiff/respondent did not take any step to prove the signature of the defendant/appellant in the deed of agreement for sale. Further, it is submitted that the document which was exhibited, was the certified copy and it was also not proved as required under the Indian Evidence Act. In spite of refusal of the signature, the learned Trial Court as well as the learned Appellate Court had considered that the agreement for sale was duly proved by the plaintiff/respondent. Mr. Das, the learned counsel for the appellant further raised the issue that the agreement for sale in respect of the suit land cannot be executed by

the defendant/appellant, which was already in the possession of one Madhu Ram Boro, with the knowledge of the plaintiff/respondent. But in spite of the plea that said Madhu Ram Boro is in possession of the suit land, the learned Courts below did not give any finding to that regard. Mr. Das further submitted that the suit land comprising of land measuring 1 katha 3 lecha, out of 3 katha 10 lecha, covered by Dag No.811 and K.P. Patta No.316 of village Niz Hajo, Mouza Hajo of Kamrup District. But the defendant/appellant has brothers and sisters whose names are mentioned in the written statement filed by the respondent and hence, out of 3 katha 10 lecha land, the plaintiff/appellant cannot execute a sale agreement for 1 katha 3 lecha, over which he had no possession or he cannot claim 1 katha 3 lecha out of 3 katha 10 lecha of the entire land. Further he submitted that in spite of the knowledge that the defendant/appellant has brothers and sisters who also possess share in the suit land, they were not made parties in the suit and only the defendant/appellant was made party in the suit. Mr. Das further submitted that despite in para 19 of their written statement that there cannot be any agreement for sale for sale consideration of Rs.18,000/- only, as during that relevant period of time also, the market value of the suit land was more than Rs.1 lac per katha. Thus, the value or sale consideration cannot be fixed at Rs.18,000/- and in no occasion Rs.5,000/- can be considered as advance amount as claimed by the plaintiff/respondent. Further, from the evidence on record also it is seen that the PW.1 in his cross-evidence had admitted that he had the knowledge about the brothers and sisters of the defendant No.1. Further, there is no simple averment in the plaint regarding the readiness and willingness to perform his part of contract to make out a case for specific performance of contract. More so, no issue has been framed regarding the readiness and willingness of the party, while deciding the case by the learned Trial Court below. Mr. Das further submitted that at this juncture, if the defendant is to execute the deed, he would be in more inconvenient position, as at the time of agreement itself, the market value of the land was Rs.1 lac per katha and hence, in any circumstances Rs. 18,000/- cannot be the total sale consideration as claimed by the plaintiff. The defendant/plaintiff all along denied the execution of the sale agreement and more specifically he denied his signature on the sale agreement but without any proof of the signature, it has been held by the learned Trial Court below as well as the learned Appellate Court that the agreement for sale is proved by the plaintiff/respondent.

5. To substantiate the plea taken by the appellant, Mr. Das, the learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of ***U.N. Krishnamurthy (Since deceased) through Legal Representative vs. A.M. Krishnamurthy***, reported in ***(2023) 11 SCC 775***, wherein the Hon'ble Apex Court had expressed the view that in case of specific performance of contract, it is the duty of the plaintiff to discharge his part of readiness and willingness to perform the contract by adducing cogent evidence and it has also expressed the view that if the plaintiff failed to prove his readiness and willingness to perform his part of contract from the date of execution of the agreement, the relief of specific performance cannot be granted to the plaintiff. Basically he relied on para 46 & 47 of the said judgment, which read as under:

“46. In this case, the Respondent Plaintiff has failed to discharge his duty to prove his readiness as well as willingness to perform his part of the contract, by adducing cogent evidence. Acceptable evidence has not been placed on record to prove his readiness and willingness. Further, it is clear from the Respondent Plaintiff's balance sheet that he did not have sufficient funds to discharge his part of contract in March 2003. Making subsequent deposit of balance consideration after lapse of seven years would not establish the Respondent Plaintiff's readiness to discharge his part of contract. Reliance may be placed on [Umabai v. Nilkanth Dhondiba Chavan](#) (supra) where this Court speaking through Justice SB Sinha held that deposit of amount in court is not enough to arrive at conclusion that Plaintiff was ready and willing to perform his part of contract. Deposit in court would not establish Plaintiff's readiness and willingness within meaning of [section 16\(c\)](#) of Specific Relief Act. The relevant part of the judgment is reproduced below: -

“45. ...Deposit of any amount in the court at the appellate stage by the plaintiffs by itself would not establish their readiness and willingness to perform their part of the contract within the meaning of [Section 16\(c\)](#) of the Specific Relief Act...”

47. It is, therefore, patently clear that the Respondent Plaintiff has failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. This Court finds that the Respondent Plaintiff was not entitled to the relief of specific performance.”.

6. Mr. Das, the learned counsel also relied upon another decision of the Hon'ble Supreme Court in the case of ***V.S. Ramakrishnan vs. P.M. Muhammad Ali***, reported in ***(2022) SCC OnLine SC 1545***, wherein also had expressed the same view that the parties to produce evidence to prove the readiness and willingness to perform the contract.

7. To substantiate the plea of inconvenience on the part of the defendant, Mr. Das, the learned counsel also relied upon the decision of the Hon'ble Supreme Court in the case of

Annamalai vs. Vasanthi and others, reported in **(2025) SCC OnLine SC 2300**, wherein Section 20 of the Specific Relief Act is discussed in detail, which is quoted here-in-below for ready reference:-

“Section 20. Discretion as to decreeing specific performance. – (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2). The following are cases in which the court may properly exercise discretion not to decree specific performance:-

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under the circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1. - 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. - 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 the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

8. Accordingly, Mr. Das, the learned counsel for the appellant submitted that the substantial question of law which has been framed by this Court can be decided in favour of the defendant/appellant, wherein the agreement for sale was considered to be proved by the plaintiff/respondent in spite of the fact that the defendant/appellant had challenged the signature available in the sale agreement and also denied execution of any sale agreement, as stated above. Accordingly, he submitted that the present appeal may be allowed by setting

aside and quashing the order passed by the learned Trial Court as well as by the learned Appellate Court.

9. Mr. S. Barooah, learned counsel appearing for the respondent submitted that the present appeal has been filed against the concurrent finding of both the learned Trial Court as well as the learned Appellate Court. He further submitted that the defendant did not take any step to prove the signature in the sale agreement though it was disputed and denied by the defendant/appellant. All the witnesses who were examined by the plaintiff had categorically adduced their evidence that the agreement for sale was executed by the defendant/appellant and considering this aspect of the case, both the learned Trial Court below as well as the learned Appellate Court have arrived at a concurrent finding that the defendant/appellant had executed the sale agreement, wherein the sale consideration was Rs.18,000/- and out of which Rs.5,000/- was paid in advance by the plaintiff/respondent. Mr. Barooah, the learned counsel further submitted that though the issue of non-joinder of the parties has been raised by the appellant, but there is no specific averment made in the written statement as to why the suit is bad for non-joinder of necessary parties. A simple statement was made in the written statement without any specification in that regard. That apart, the issue of non-joinder of necessary party was also framed by the learned Trial Court below as issue No.3 and decided by the learned Trial Court. Mr. Barooah, the learned counsel further submitted that the learned Trial Court below had made a discussion in the judgment while discussing the issue No.4 and it is held by the learned Trial Court below that except simple denial of execution of the sale agreement, the defendant/appellant could not produce any evidence to that regard. On the other hand, the plaintiff/respondent had produced documents to prove the execution of sale agreement in favour of the plaintiff/respondent. It is rightly held by the learned Trial Court below that the registered document carries a presumption of genuineness of execution and the defendant had failed to disprove the execution of the sale agreement and hence, rightly observed that there was an agreement for sale between the parties, wherein the defendant/appellant had executed the sale agreement in favour of the plaintiff/respondent.

10. PW.2 was one of the witnesses who was also present at the time of execution of the sale agreement and he categorically stated in his cross-examination that he was present at

the time of execution of the sale agreement. More so, the scribe who was also examined by the plaintiff had deposed that he wrote the sale agreement as per the instruction received from the defendant/appellant. Mr. Barooah, the learned counsel for the respondent accordingly submitted that there cannot be any reason for making any interference in the judgment passed by the learned Trial Court below as well as by the learned Appellate Court while arriving at a concurrent finding.

11. Mr. Barooah, the learned counsel appearing for the respondent also raised the issue that the substantial question of law which has been formulated by the Court also cannot be considered as a substantial question of law. Rather, it is formulated only on the facts. He further submitted that the substantial question of law are the point which directly and substantially affects the right of the parties. To substantiate his plea, the learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in the case of ***Sir Chunilal V. Mehta and Sons Ltd. Vs. Century Spinning and Manufacturing Co. Ltd.***, reported in ***AIR 1962 SC 1314*** and basically relied on para 6 of the said judgment, which reads as under:

“6. We are in general agreement with the view taken by the Madras High Court and we think that while the view taken by the Bombay High Court is rather narrow the one taken by the former High Court of Nagpur is too wide. The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law”.

12. Hearing the submissions made by the learned counsel for both sides, it is seen that the only substantial question of law formulated by this Court is on the agreement for sale, wherein it is the allegation that the appellant/defendant that his signature was forged and he denied his signature on the said agreement for sale. It is the only document on the basis of which the plaintiff had instituted the suit for specific performance wherein it is claimed that the sale agreement was executed by the defendant/appellant for a total sale consideration of Rs.18,000/-, out of which Rs.5,000/- was paid in advance.

13. It is a fact that the defendant/appellant had denied his signature in the sale agreement and also denied the sale agreement executed in favour of the plaintiff/respondent. On the other hand, it is the claim of the plaintiff/respondent that the sale agreement was executed by the defendant/appellant for the sale of land measuring 1 katha 3 lecha and in pursuant to the sale agreement, wherein the defendant/ appellant obtained the sale permission from the concerned authority and to execute the sale deed. To prove the sale agreement i.e. the Ext.1, the plaintiff/respondent had adduced his evidence along with two other independent witnesses who claimed their presence at the time of execution of the sale agreement and the scribe also stated in his evidence that sale agreement was prepared as per the instruction of the defendant/appellant. More so, it is also seen that the sale agreement is a registered agreement which was executed in presence of the authority. Though, the defendant/appellant had denied his signature on the sale deed but he could not produce any evidence to substantiate his plea that the signature available in the sale agreement is not his signature nor he prayed for examination of the sale agreement by forensic expert. The defendant/appellant only adduced his evidence denying execution of the sale agreement and also denied his signature. Thus, the learned Trial Court as well as the learned Appellate Court below had rightly arrived on a decision that the agreement was proved by the plaintiff/respondent and it was executed by the defendant No.1 in presence of the independent witnesses. Accordingly, the substantial question of law goes against the defendant/appellant, as he could not substantiate his plea that the signature available in the sale agreement is not his signature nor he ever executed any sale agreement. The defendant/appellant could have approached the learned Trial Court with a prayer for examination of his signature through forensic expert, when he disputed the signature. Thus the simple rebuttal evidence of the defendant/appellant, there is no other evidence to disprove the plea of the defendant/appellant in regards to execution of the sale agreement and it is rightly observed by the learned Trial Court below that a registered document carries a presumption about genuineness of its execution and such presumption cannot be dislodged by parole evidence.

14. Coming to the issue raised by the learned counsel for the defendant/appellant in regards to the saleable right of the defendant No.1, it is seen that the plaintiff/respondent

also exhibited the copy of the *jamabandi*, wherein the name of the present defendant/appellant is also mutated in place of his deceased father along with his brothers. In the same time, it is also seen that on the strength of inheritance, the appellant/defendant also filed application before the authority concerned for issuance of No Objection Certificate for selling the land to one Madhu Ram Boro, who is stated to be in possession of the suit land. At the time of issuing the No Objection Certificate also, one proceeding was initiated as KRM Case No.87/2004 and vide order dated 09.12.2004, which is exhibited as Ext.2 also, it is seen that the sale permission was given in favour of one Madhu Ram Boro on application filed by the defendant/appellant, wherein the plaintiff/respondent was also heard while issuing the order of No Objection Certificate in favour of said Madhu Ram Boro. Thus, it cannot be held that the defendant/ appellant had no saleable right over the suit land wherein he already obtained sale permission to sale the land to one Madhu Ram Boro, who is also stated to be in possession over the suit land. But it is an admitted fact that prior to the issuance of the No Objection Certificate for sale of the suit land in favour of Madhu Ram Boro, the sale agreement was executed on 23.04.2002.

15. Further, it is the issue raised by the learned counsel for the defendant/appellant that there was no prove about the readiness and willingness on the part of the plaintiff/respondent to perform his part of contract. But from the record it is seen that the plaintiff/respondent took necessary steps and even file objection when the defendant/appellant approached the authority concerned for obtaining the No Objection Certificate to sale the land in favour of one Madhu Ram Boro. The plaintiff/respondent all along ready to execute his part of contract but it is seen that he awaited for long as the defendant/ appellant assured him to obtain the No Objection Certificate from the authority concerned after receiving Rs.5,000/- in advance for execution of the sale deed. Thus it is not a case that the plaintiff/ respondent never showed his readiness and willingness to perform his part of contract. Rather it is the plaintiff/respondent, who took all initiatives for execution of the sale deed in his favour and to that regard, as referred above, he also approached the concerned authority filing an objection not to issue any No Objection Certificate in favour of one Madhu Ram Boro.

16. Further, Mr. Das, the learned counsel for the defendant/ appellant also referred to

Section 20 of the Specific Relief Act, when the Court can exercise its discretion not to decree a specific performance wherein the terms of the contract or conduct of the parties at the time of entering into the agreement or other circumstances, under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant or where the performance of the contract would involve some hardship on the defendant which he did not foresee.

17. But here in the instant case, it is seen that there is no such unfair advantages taken by the plaintiff. Rather, it is the defendant who did not perform his part of contract, in spite of entering into a sale agreement. The value of the suit property may be much higher than the value mentioned in the sale agreement, but that is not the look out of the Court as the parties are always at liberty to fix the sale consideration amount to their satisfaction. But it cannot be disproved by the defendant/appellant that at the time of executing the sale agreement, the consideration amount was fixed at Rs.18,000/- and out of which Rs.5,000/- was paid in advance by the plaintiff/ respondent.

18. From the discussions made above, it is also seen that the defendant/appellant also had the saleable right over the suit property and in view of such right, he also applied for the No Objection Certificate before the Circle Office to obtain the No Objection Certificate for execution of sale deed in favour of one Madhu Ram Boro.

19. As per Section 21 of the Specific Relief Act, if the contract becomes impermissible with no fault of the plaintiff, the Section 21 enables the Court to award compensation in lieu of the specific performance and such compensation can be awarded by the Court even if there is no specific/alternative prayer to that regard in case it is impossible on the part of the defendant to perform his part of the contract. But here in the instant case, as discussed above, it is seen that there is no evidence at all to hold that the contract has become impossible and it is not possible on the part of the defendant/appellant to execute the sale deed in favour of the plaintiff/respondent, in pursuance to the sale agreement to provide any other alternative remedy for compensation to the plaintiff/respondent.

20. Considering the entire discussions made above, this Court is of the opinion that the substantial question of law, which has been framed in this appeal is decided in negative,

which goes against the appellant/defendant. Accordingly, there is no need of any interference in the concurrent findings of the learned Civil Judge No.3, Kamrup at Guwahati in Title Appeal No. 68/2008, whereby the judgment and decree dated 18.08.2008, passed by the learned Munsiff No. 1, Guwahati in Title Suit No. 303/2004, was upheld.

21. Accordingly, the present appeal is devoid of merit and accordingly the same stands dismissed.

22. Return back the Trial Court Record along with a copy of this judgment forthwith.

JUDGE

Comparing Assistant

**Manoranjan
Barman**

Digitally signed by Manoranjan Barman
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