



the learned 2nd Additional District Judge, Cuttack in Title Appeal No.74 of 1993, whereby the First Appellate Court allowed the cross-appeal filed by the plaintiff and decreed the suit for specific performance of contract. Earlier, this Court had disposed of this appeal by judgment dated 14.01.2016. However, the said judgment having been recalled in RVWPET No.40 of 2016, the appeal has been heard afresh and is being disposed of by this judgment.

2. For convenience, the parties are referred to as per their respective status before the trial Court.

3. Plaintiff's case is that he instituted the suit for specific performance of contract on the basis of an agreement dated 04.08.1986 (Ext.1) alleging that defendant no.1, who had acquired Ac.0.096 dec. of land under a registered deed of gift, agreed to sell Ac.0.040 dec. out of the same for a total consideration of Rs 20,000/-. Plaintiff pleaded that a sum of Rs 4,000/- was paid as advance consideration and the balance amount of Rs.16,000/- was agreed to be paid at the time of execution and registration of the sale deed within three years from the date of the agreement after obtaining permission from the Urban



Ceiling Authority. According to the plaintiff, he was always ready and willing to perform his part of the contract, but the defendants failed to execute the sale deed for which he filed the suit. In the alternative to the relief for specific performance, he prayed for refund of the advance amount with interest.

4. The defendants denied execution of the agreement and pleaded that their signatures and left thumb impressions had been obtained on blank papers on the pretext of arranging a loan. They further contended that the suit property had not been properly described and was not identifiable and, therefore, no decree for specific performance could be granted.

5. Basing on the rival pleadings, the trial Court framed the following issues for determination:

- 1) *Is the suit maintainable?*
- 2) *Is there any cause of action to file the suit?*
- 3) *Whether suit is barred by law of limitation?*
- 4) *Is the suit bad for non-joinder and mis-joinder of parties?*
- 5) *Whether the agreement for sale dated 04.05.1986 executed by the defendants is genuine, valid and enforceable against the defendants?*
- 6) *Whether the plaintiff is ready and willing to perform his part of contract?*
- 7) *Whether the suit schedule property properly described and identifiable for passing an executable decree?*



8) *To what other relief or reliefs to which plaintiff is entitled?"*

6. Taking up issue Nos.5 and 6 at the first instance the trial Court disbelieved the defence plea that the signatures and left thumb impressions of the defendants had been obtained on blank papers for the purpose of arranging a loan and subsequently converted into the agreement (Ext.1). However, it recorded a finding that the plaintiff had failed to establish that he was all along ready and willing to perform his part of the contract, which is an essential requirement for grant of decree for specific performance. While answering Issue No.7, the trial Court held that the suit schedule property had not been properly described and was not identifiable so as to enable the Court to pass an executable decree for specific performance. On the other issues relating to maintainability, cause of action, limitation and non-joinder or mis-joinder of parties, the findings were returned in favour of the plaintiff. Ultimately, the trial Court refused the relief of specific performance but decreed the suit in part by granting the alternative relief of refund of the



advance consideration of Rs.4,000/- with pendente lite and future interest at the rate of 6% per annum.

7. Being aggrieved, the defendants carried appeal and a cross-appeal was filed by the plaintiff against the refusal of the trial Court to grant the decree for specific performance of contract.

8. The First Appellate Court, upon reappraisal of the entire evidence on record, concurred with the trial Court that the defendants' plea of obtaining signatures and left thumb impressions on blank papers was not established and that the agreement (Ext.1) was genuine and valid. However, it disagreed with the finding of the trial Court on the question of readiness and willingness of the plaintiff. Consequently, the cross-appeal filed by the plaintiff was allowed, the appeal filed by the defendants was dismissed, and the suit was decreed in full granting the relief of specific performance of contract with a direction to the defendants to execute the sale deed in respect of the suit land within the stipulated period on receipt of the balance consideration, failing which the



plaintiff was granted liberty to get the deed executed through process of Court.

9. Being dissatisfied by the judgment of the First Appellate Court, defendants have preferred the present Second Appeal which was admitted on the following substantial question of law:

“Whether an executable decree for specific performance of contract can be passed on the basis of wrong boundary description of the suit, more so when, no sketch map is attached to the contract?”

10. This Court, by judgment dated 14.01.2016 upheld the judgment passed by trial Court and set aside the judgment and decree of the First Appellate Court on the ground that the agreement concerned Ac.0.040 dec. out of Ac.0.096 dec., but the boundaries mentioned corresponded to the entire land and no sketch map or clear demarcation of the specific portion was available. This Court concluded that the property was not properly identifiable and that a decree for specific performance would be inexecutable.

11. The plaintiff filed RVWPET No.40 of 2016 seeking review of the said judgment. The review petition was allowed on the ground that the finding regarding non-identifiability of the suit land suffered from an error



apparent on the face of the record. It was observed that the plaint schedule contained specific particulars such as Khata number, Plot number and Holding number and that the evidence indicated no other land existed at the spot.

12. In view of the order passed in the review petition recalling the earlier judgment and decree, the present Second Appeal was heard afresh.

13. Heard Mr.R.K Mohanty, learned Senior Counsel with Mr. S.K Pattanaik learned counsel for the defendant-appellants and Mr. S.P. Mishra, learned Senior Counsel with Ms. S. Rout, learned counsel for the plaintiff-respondent.

14. Mr. R.K. Mohanty would submit that the First Appellate Court committed error in reversing the judgment of the trial Court without properly addressing the defect in the description of the suit property. According to him, the agreement (Ext.1) admittedly relates to Ac.0.040 dec. out of the total Ac.0.096 dec., but neither the agreement nor the plaint schedule clearly demarcates the specific portion agreed to be sold. He argues that the boundaries mentioned correspond to the entire extent of Ac.0.096 dec.



and not to the specific Ac.0.040 dec., and in absence of a sketch map or definite identification, the exact location of the agreed land remains uncertain. He further argues that in a suit for specific performance, the property must be described with certainty so as to enable the Court to pass an executable decree. If the land cannot be identified with precision, any decree passed would be incapable of execution and would lead to multiplicity of proceedings. He submits that the burden lies upon the plaintiff to prove that the suit land was clearly identifiable, which, according to him, has not been satisfactorily discharged.

15. Per contra Mr. S.P. Mishra would submit that the judgment and decree passed by the First Appellate Court is well-reasoned and based on proper appreciation of the pleadings and evidence on record. He submits that the agreement for sale (Ext.1) has been concurrently held to be genuine and valid, and the defendants' plea of obtaining signatures and left thumb impressions on blank papers has rightly been disbelieved by both the courts below. He further submits that the objection regarding identifiability of the suit land is misconceived. Drawing attention to the



plaint schedule, he argues that the land has been described by specific Khata number, Plot number and Municipal Holding number, along with its boundaries, and that the agreement clearly relates to Ac.0.040 dec. out of the total land. He emphasized that the evidence on record shows that the defendants have no other land at the spot, and therefore, the suit property is capable of identification with certainty. According to him, the mere absence of a sketch map does not render the decree inexecutable when sufficient particulars are otherwise available.

16. Having heard learned counsel for the parties at length, this Court finds that there is, in fact, no dispute with regard to the recital in the agreement (Ext.1), the only dispute that arises is relating to the sufficiency and adequacy of the description of the suit land in the plaint schedule and whether such description is definite and certain enough to enable the Court to pass an executable decree for specific performance of contract or not.

17. It would be profitable to refer to the schedule in the plaint which is quoted below-

"Schedule
*Dist-Cuttack, Sub-Register-Cuttack Town, Thana-
Cuttack, Thana No.-204, P.H Bakharbad 880B*



Pattadar, Mouza/Town-Bishambar commonly known as Kumbhar Sahi.

Khata No.—247, Pattadar, A 0.096 dec Rent Jama Rs. 1.56 paise out of which leaving some portions sold. From the rest A0.040 dec. Jama 0.80 paise constituting of one old room Kachha thatched house, Cuttack Municipality Ward No.-16, Holding No.-367, Plot No.-881, Total A0.096 dec. out of which A0.040 dec.

*Bounded by-
East-Road
West- Jugal Kishore Behera
North- Road
South-Nidhi Muduli”*

18. The schedule of the agreement (Ext.1) also contains the same description of the suit property as mentioned in the plaint, namely Ac.0.040 dec. out of Ac.0.096 dec., with the property being bounded as follows:

East- Road

West- Jugal Kishore Behera

North- Road

South- Nidhi Muduli

19. It is otherwise borne out from the record that Ac.0.039 dec. out of the total extent of Ac.0.096 dec. was sold earlier to a deity namely, *Patita Pabana* (Ac.0.019 dec.) and to one Jugal Kishore Behera (Ac.0.020 dec.). Thus, accounting for Ac.0.019 dec. + Ac.0.020 dec. + Ac.0.040 dec., the total extent comes to Ac.0.079 dec., leaving a balance unsold land of Ac.0.017 dec. The exact location of



the said remaining Ac.0.017 dec. has not been mentioned anywhere. Even if the assertion that the land sold to the deity situates at the extreme west of the total land is accepted, the land sold to Jugal Kishore Behera cannot be held to be located contiguous to the west of the suit land. The portion contiguous to the west would then be the said Ac.0.017 dec., which finds no reflection anywhere either in the plaint schedule or in the agreement.

20. Even assuming that the property sold to Jugal Kishore Behera situates to the contiguous west of the suit land then also, the balance portion i.e., Ac.0.017 dec. remains non-described. It would then fall between the land sold to the deity and the land sold to Jugal Kishore Behera. Such is not the case of the plaintiff. This Court therefore, finds that there is much ambiguity in the manner of description of the suit land.

21. The true test is whether, on the basis of the particulars furnished in the plaint schedule and the materials available on record, the suit land can be located with reasonable certainty in execution. If the identity of the property can be ascertained by reference to revenue



records, municipal records and local boundaries, the decree cannot be termed inexecutable merely for want of a sketch map. But as discussed above, the description itself is far from clear and unambiguous for an executable decree to be passed.

22. From a conspectus of analysis of facts as well as the contentions raised, this Court is of the view that considerable ambiguity persists in the description of the suit land. Though the agreement and the plaint schedule mention sale of Ac.0.040 dec. out of the total Ac.0.096 dec., the boundaries furnished therein relate to the entire extent of Ac.0.096 dec. and not to the specific portion agreed to be transferred. The materials on record also disclose that portions of the same land were already alienated in favour of the deity *Patita Pabana* and one Jugal Kishore Behera. However, neither the agreement nor the plaint schedule indicates the precise location of the remaining portions or the exact situation of the suit land within the larger extent.

23. The settled legal position is that in a suit for specific performance, the property agreed to be sold must be capable of identification with reasonable certainty so as



to enable execution of the decree without giving rise to further disputes. While absence of a sketch map by itself may not always be fatal, the description furnished must nevertheless be definite enough to locate the property on the spot with reference to existing records or boundaries. In the present case, the inconsistencies noticed in the extent, prior alienations and boundary description give rise to much uncertainty regarding the exact identity and location of the suit land.

24. For the foregoing reasons, this Court finds that the First Appellate Court erred in allowing the cross-appeal of the plaintiff partly reversing the decree of the trial Court. As such, the impugned judgment warrants interference.

25. In the result, the Second Appeal succeeds and is allowed. The judgment and decree passed by First Appellate Court is set aside and the judgment and decree passed by the trial Court is confirmed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 27th February, 2026/A.K. Rana/P.A.