

GAHC010207082022



2025:GAU-AS:1840

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

Case No. : RFA/37/2022

JURIMONI BORDOLOI
W/O DUGRA PRASAD,
R/O KOLIABOR TINIALI (HATIGAON) P.O.- KUWARITOL,
DIST.- NAGAON, ASSAM, PIN- 782137.

VERSUS

BIPUL BHOWMICK
S/O KARTIK CHANDRA BHOWMICK,
R/O BHITARSUTI,
P.O.- NIKAMUL,
P.S.- TEZPUR,
DIST.- TEZPUR, ASSAM.

Advocate for the Petitioner : MR. P K ROYCHOUDHURY, MR G DEKA,MR. N G KUNDU

Advocate for the Respondent : MR. A GANGULY, MR. A DHANUKA,MR. A DUTTA

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. P.K. Roychoudhury,
Advocate.

For the Respondents: Mr. A. Ganguly,
Advocate.

Date of Hearing : 23.07.2024.

Date of Judgment : 21.02.2025.

JUDGMENT AND ORDER(CAV)

Heard Mr. P.K. Roychoudhury, learned counsel representing the appellant as well as Mr. A. Ganguly, learned counsel appearing for the respondent.

2. This is a Regular First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure (CPC) whereby the judgment and decree dated 20.08.2022 passed by the court of learned Civil Judge, Sonitpur in Title Suit No.13/2018 is under challenge.

3. The appellant is the owner of the properties mentioned in Schedule-A, B and C. It may be mentioned that these properties are parts of a single building.

Case of the Respondent:

4. In the month of August, 2017, the appellant proposed to sell the properties to the respondent as she was in need of money. The respondent agreed to purchase the properties at a price of ₹25 lakhs. In the month of August, 2017 itself, the appellant requested the respondent to pay some advance money. Accordingly, both sides approached Advocate Debabrata Bose for preparation of deed of agreement for sale. An agreement for sale was prepared by the lawyer and the appellant had put her signature thereon. After that, the present respondent paid a sum of ₹5 lakhs to the appellant, in presence of witnesses. It may be stated that the appellant had put her signature in the said agreement after receiving the aforesaid money. The respondent and the witnesses also put their signatures in the said agreement for sale. Both sides agreed that the remaining ₹20 lakhs shall be paid at the time of registration of the sale deed. The appellant promised that she will obtain necessary sale permission from the concerned authority. She also agreed that within next three months of execution of the agreement for sale, she would have the sale deed registered.

5. After execution of the agreement for sale, the respondent, on many occasions, requested the present appellant to execute the registered sale deed in his favour. The appellant used to take time.

6. The respondent apprehended that something wrong must be going on. On 21.10.2017, he went to the house of the appellant along with a witness. This time, the appellant informed the respondent that she had already applied for permission.

7. On 05.12.2017, the respondent visited the office of the Circle Officer, Tezpur to know about the fate of the application of the appellant. The respondent was shocked to find that on 23.11.2017, the

appellant had, in fact, filed an application stating her objection, against the proposed sale.

8. Therefore, on 06.12.2017 and on 26.01.2018, the respondent went to the house of the appellant and requested her to withdraw her objection and to obtain sale permission for execution of the sale deed in his favour. But this time, the appellant, flatly refused to execute the sale deed in favour of the respondent.

9. Finding no other alternative, on 01.02.2018, through Advocate Sri Debabrata Bose, the respondent issued a notice to the appellant asking her to register the sale deed after taking the balance amount of money. The appellant issued a reply through her Advocate Sri Ajay Kr. Paul. In that reply, the appellant admitted execution of the agreement for sale on 14.08.2017. She claimed that she was to submit the documents to the respondent and the respondent was to pursue the matter before the appropriate authority for procuring the sale permission. She, however, agreed that for treatment of her ailing husband, she had agreed to sell the property. She further alleged that after execution of the agreement for sale on 14.08.2017, the respondent never met her nor made any telephone calls to her.

10. The appellant alleged that the respondent applied for sale permission and those documents showed that he would buy one part of the properties and another person named Tapan Barai would purchase the other portion of the properties. According to the appellant, she never had any agreement for sale with Tapan Barai. The appellant stated that it was the reason why she filed the objection before the authority.

Case of the Appellant:

11. The present appellant contested the suit by filing a written statement. She claimed that she had purchased Schedule-C property on 12.05.2009 from Surojit Bose. Thereafter, on 05.12.2009, from the same vendor, she purchased the Schedule-A and B properties.

12. The appellant claimed that she took a loan of ₹5 lakh from the respondent for medical treatment of her husband. According to the appellant, the respondent forcefully obtained her signatures on some stamp papers having 20 rupees denominations. He also took her signatures on some blank papers.

13. The appellant stated that she wanted to return the money to the respondent but he refused to accept the money. According to her, the respondent insisted that she should sale the properties to some persons who will be arranged by him.

14. The appellant stated that during the months of September to October, 2017, she invited the respondent several times to her house to accept the money, but he did not come. She claims that she never agreed to sale the suit property to the respondent.

15. On the basis of the pleadings of the parties, the trial court framed the following issues.

- i. Whether there is any cause of action for the suit?
- ii. Whether the parties entered into an agreement for sale of the suit land on 14.08.2017?
- iii. Whether signature of the defendant on the sale deed agreement documents was obtained by force by the plaintiff?
- iv. Whether the defendant took Rs.5 lakhs as loan from the plaintiff and was always willing and ready to return the same?
- v. Whether the defendant has no other residential property and would become homeless if the suit property is sold out?

- vi. Whether the Agreement for Advance (Bina-Patra) for transfer of immovable property is forged and manufactured?
- vii. Whether the plaintiff is entitled to decree, as prayed?
- viii. To what other relief/reliefs the parties are entitled to?

16. At the time of hearing, the respondent examined himself along with Sri Debabrata Bose and Tapan Barai. The appellant examined herself and her husband Durga Prasad Bordoloi.

17. On the basis of the evidence on record, the trial court decreed the suit on contest.

18. I have gone through the evidence and the judgment. This Court is of the opinion that the only point for determination in this appeal is, as to whether the respondent was ready and willing to perform his part of the contract.

19. Section 16(C) of the Specific Relief Act, 1963 makes it obligatory on the part of the plaintiff to prove his readiness and willingness to perform the contract according to its true construction. According to this provision of law, readiness and willingness on the part of the plaintiff, is a condition precedent for obtaining relief of grant of Specific Performance.

20. In *Man Kaur v. Hartar Singh Sangha*, (2010) 10 SCC 512, the Supreme Court has held as under:

“17. To succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered into by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract. If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he has all along been ready and willing to perform his part of the contract and subject himself to cross-examination on that issue. A plaintiff cannot obviously examine in his place, his attorney-holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore a third party who has no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney-holder of the person concerned.”

21. I have found that the trial court did not frame any issue to that effect. Non-framing of such an issue, debarred the respondent/plaintiff to prove his readiness and willingness to perform his part of the contract. Moreover, such a lapse caused loss of an opportunity, on the part of the appellant/defendant to cross-examine the respondent/plaintiff on that issue.

22. In the written statement, the appellant claimed that the respondent took her signatures on some documents by using force. She denied executing any agreement for sale in favour of the respondent. But in Exhibit-4, which is a reply issued by Advocate Ajay Kr. Paul to Advocate Debabrata Bose, she admitted execution of the agreement for sale dated 14.08.2017. In the said letter, she claimed that she objected to the issue of sale permission on the ground that the respondent wanted the sale permission be given to Tapan Barai in respect of some portion of her property. The appellant pleaded that she never had any agreement for sale with Tapan Barai and that is why she expressed her objection before the concerned authority. The aforesaid facts make it clear that the Issue No.3 was unnecessarily framed.

23. In a Civil Suit, issues are framed on the basis of the pleadings available in the plaint and the written statement. The appellant never pleaded in her written statement that she has no other residential properties and would become homeless if her properties are sold out. In spite of that, the trial court unnecessarily framed the Issue No.5.

24. For the aforesaid reasons, this Court has come to the conclusion that the impugned judgment requires interference of this Court.

25. Therefore, the appeal is allowed. The impugned judgment and decree dated 20.08.2022 passed by the court of learned Civil Judge, Sonitpur at Tezpur in Title Suit No.13/2018, is set aside.

26. The case is remanded to the trial court for framing appropriate issues as mentioned hereinbefore. Thereafter, if the trial court finds it necessary, both sides shall be directed to adduce further evidence. Thereafter, on the basis of evidence already available in the record and on the basis of fresh evidence, if available, the trial court shall pass a fresh judgment on all issues. At the end of the hearing, both sides shall be given opportunity to submit their oral arguments.

With the aforesaid directions, the appeal is disposed of.

Send back the LCR.

JUDGE

Comparing Assistant