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**(2000) 02 PAT CK 0142**

**In the Patna High Court**

**Case No : Second Appeal No. 291 of 1994**

Mostt. Markhi Devi and Others

APPELLANT

Vs

Ram Charan Mahto and Others

RESPONDENT

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**Date of Decision : 02-02-2000**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11

**Citation : (2000) 3 PLJR 98**

**Hon'ble Judges : Gurusharan Sharma, J**

**Bench : Single Bench**

**Advocate : Anand Kumar Singh, for the Appellant; Panchanand Pandit, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Gurusharan Sharma, J.—Heard the parties and with their consent this appeal is disposed of under Order 41 Rule 11 of the Code of Civil Procedure. Plaintiff filed Title Suit No. 64 of 1976 against the defendants for specific performance of contract. On 29.12.1975 defendant no.1 executed a sada agreement for sale (Ext.2) in respect of 32 1/2 decimals land, situated in village Nonihari, District Bhagalpur (now Banka) for valuable consideration of Rs.3500/- out of which Rs.2000/- was paid on the same day and further Rs.1200/- was paid on 12.3.1976 (vide Receipt Ext.3). Stipulated time of execution of sale deed and payment of balance consideration amount was mentioned in the deed by 31.7.1976. However, defendant no.1 by registered sale deed dated 28.7.1976 sold 30 decimals out of the said land to defendants 2 to 4. Again on 9.5.1978 i.e. during pendency of the suit, defendant no.1 sold the rest 2 1/2 decimals to Parmeshwar Thakur, who was added as defendant no.5. The trial court held that Ext.2 was genuine and a sum of Rs. 3200/- was received by defendant no.1. However, it was held that defendants 2 to 4 had no knowledge about the agreement, Ext.2 and that they paid full consideration amount and were put in possession thereon. The trial court held that plaintiff was not entitled to decree

for specific performance. However, he was granted equitable relief for refund of money already paid by him to defendant no.1. The trial court, however, decreed the suit for specific performance of contract in respect of the said 2 1/2 decimals and the plaintiff was held entitled to recover the balance amount after deducting proportionately the amount equal to the full consideration of 2 1/2 decimals.

2. The plaintiff as well as defendant no.1 preferred two separate appeals against the trial court's decree. Both appeals were heard together and decided by the impugned judgment and decree. Trial Court's decree was modified and the entire suit was decreed. It was held that defendants 2 to 4 failed to discharge the onus of want of knowledge of the agreement dated 29.12.1975 between plaintiff and defendant no.1 and failed to prove that they had no knowledge of the same.

3. In the present Second Appeal by defendants 2 to 4 it has been contended that the court of appeal below misplaced the onus of proof upon them, whereas the onus was upon the plaintiff to prove that defendants 2 to 4 had knowledge of the contract (Ext.2). Under the provisions of Specific Relief Act, specific performance of a contract can be enforced against the either party thereto or against any other person claiming under him by a title arising subsequently to the contract, except a transferee for value, who has paid his money in good faith and without notice to the original contract. It is thus clear that the party, who wants to take advantage of the exception has to prove it. It was, therefore, incumbent upon the defendants 2 to 4, in the present case to prove in the first instance that they were transferees for value and that they had paid their money in good faith and without notice of the original contract.

4. In the present case, both the courts below recorded concurrent findings of fact that the plaintiff proved his prior contract. As such the burden of proving subsequent bonafide transfer for value without notice was on defendants 2 to 4, who alleged it. In any opinion, therefore, the learned First Additional District Judge, Banka was right in tin owing the onus upon the defendants 2 to 4 to prove that they were transferees for value without notice of the original contract.

5. However, very title evidence on the part of the defendants 2 to 4 for want of knowledge of the plaintiff's contract would have discharged their onus and shifted it on the plaintiff. In this regard a reference may be made to Division Bench decision of this court in Ramdeni Singh and Another Vs. Gumani Raut and Another, .

6. In the present case defendants 2 to 4 in their written statement spacifically, denied knowledge about plaintiff's contract dated 27.12.1975. Defendent no. 2 examined himself as D.W.1 and and categorically denied to have any knowledge of the plaintiff's agreement, Ext.2 and the plaintiff could not get anything in his cross-examination. On the other hand, plaintiff miserably failed to prove by either oral or documentary evidence that degendents 2 to 4 had knowledge of his agreement, Ext.2. In such situation, no doubt onus was on the contesting defendants 2 to 4 to prove that they were bonafied purchasers for value without

notice of the prior contract, yet in view of the of the denial regarding want of knowledge of the plaintiff's prior contract by them, the onus shifted on the plaintiff, but the court of appeal below committed an error of law in ignoring this aspect of the matter and took erroneous view of law that defendant second party failed to discharge their onus. In my opinion, the trial courts finding in this regard that defendant 2 to 4 had no knowledge whatsoever of the agreement in question, Ext.2 before the purchased 30 decimals land out of 32 1/2 decimals, which was subject matter of Ext.2 was neither unreasonable for perverse and I hold that the said finding wasa based on proper appraisal of the materials on record.

6. I, therefore, set aside the finding of the court of appeal below in this regard and confirm the finding of the trial court. In the result, this appeal is allowed and decree passed by the trial court is confirmed. However, there shall be no order as to costs.