

(2007) 05 OHC CK 0075

In the Orissa High Court

Case No : Regular Second Appeal No. 183 of 2004

Saubhagya Ranjan Kanungo

APPELLANT

Vs

Smt. Prafulata Mohapatra

RESPONDENT

Date of Decision : 16-05-2007

Acts Referred:

Contract Act, 1872 — Section 10, 7, 8, 9

Citation : (2007) CLT 90 Supp

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : S.K. Aziz, S.C. Nayak, R.P. Bhagat, S. Sabin, M.A. Baig and D.P. Swain, for the Appellant; B.M. Pattanaik and B.C. Swain, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—This is an appeal by the Defendant against the judgment and decree passed by the learned Judge, Cuttack in R.F.A. No. 58 of 2003 reversing the judgment and decree of learned 2nd Additional Civil Judge (Sr. Division), Cuttack in Title Suit No. 442 of 1994.

2. The Respondent as Plaintiff filed the above noted suit pleading, inter alia, that the Appellant Defendant being in need of money approached her for sale of Schedule "A" land for a consideration of Rs. 60,000/- and on acceptance of the proposal a contract for sale was entered into with the stipulation that the Appellant would receive Rs. 30,000/- as advance, obtain permission from the urban land ceiling authority for sale of the land and execute a registered sale deed in favour of the Respondent after receiving the balance consideration of Rs. 30,000/- and the cost of stamp duty, registration fee etc. It was alleged that the Appellant received the advance amount but thereafter despite the Respondent's willingness to perform her part of the contract failed to obtain the permission and execute the registered sale deed and ultimately denied the contract in his reply to the Defendant's notice which necessitated filing of the suit for specific performance of the contract. The Appellant-Defendant in his W.S. denied the

existence of the aforesaid contract and pleaded that under force and coercion his signatures were obtained on the document Ext.7/e. On the aforesaid pleadings, learned trial Court framed issues, accepted evidence of the parties and on considering such evidence came to hold that the contract was genuine and valid, but the Respondent-Plaintiff was never ready and willing to perform her part of the contract and therefore, she was not entitled to specific performance of the contract. Accordingly, learned trial Court dismissed the suit. The Plaintiff carried appeal. Learned first appellate Court on reappraisal of the evidence and taking note of the submissions of the learned Counsel for the parties held that the document Ext.7/e was not executed under fraud or coercion, that it is a genuine and valid document despite the absence of the signature of the Plaintiff-Respondent on it, that the Respondent was ready and willing to perform her part of the contract. Consequently, he allowed the appeal, set aside the impugned judgment and decree and directed the Defendant-Appellant to execute the registered sale deed in favour of the Respondent-Plaintiff after receiving the balance consideration of Rs. 30,000/ -. He also ordered that in case the Appellant-Defendant would be reluctant to execute the registered sale deed then the Respondent would be at liberty to get it executed and registered through Court. The legality of the said judgment and decree of the learned first appellate Court is under challenge in this appeal.

3. Since learned Courts below concurrently held that the Ext.7/e was never obtained by fraud, coercion or misrepresentation and that the Appellant-Defendant received the advance of Rs. 30,000/ - and the findings are in consonance with the evidence on record, the only substantial question of law for consideration in this appeal is:

Whether the observation of learned first appellate Court that Ext.7/e is valid and executable document even if it is not signed by the proposed vendee is legally correct?

4. Mr. Sk. Aziz, learned Counsel appearing for the Appellant submits that to constitute a valid contract there should be an offer by one party and acceptance by the other party for performance of a lawful transaction. He submits that a contract cannot be constituted unilaterally by one party and for that reason Ext.7/e cannot be accepted as a valid and executable contract for the reason that the same is not signed by the Respondent-Plaintiff. In support of this contention he relied on the cases of B. Rajamani v. Mrs. Azhar Sultana and Ors. 2005 (2) S.C.C. 696 (A.P.); S.M. Gopal Chetty v. Raman alias Natesan and 7 Ors. AIR 1998 Mad 169; Sri Narayan Gosain and Others Vs. The Collector, Cuttack and Others, ; M/s. Orissa Agro Industries Corporation Ltd. v. K.C.S. Private Ltd. 2003 OLR 675 and Sri Tarsem Singh Vs. Sri Sukhminder Singh, .

5. Mr. B.M. Patnaik, learned Counsel for the Respondent submits per contra that to constitute a valid and executable contract no doubt there should be an offer by one party and acceptance by other party to certain terms and conditions relating to the transaction, but to constitute a valid contract it is not essentials to

convert the contract into writing or to have the signatures of both the parties on such document. According to him, it not essential for the parties to sign a contract document if the terms and conditions noted in the written contract expressly convey the willingness of the parties to abide by the terms and conditions noted therein. He states that when the terms and conditions noted in Ext.7/e clearly suggest that the Appellant-Defendant made an offer to sell the suit land to the Respondent for Rs. 60,000/- and accepted part of the consideration money giving an undertaking that after obtaining permission from the concerned authority for the sale and after receiving the balance consideration amount he would execute the registered sale deed in favour of the Respondent-Plaintiff, the willingness of the both parties to the terms of the alleged contract can be inferred. Mr. Patnaik states that the case laws cited from the side of the Appellant are not applicable to the present case as the facts and circumstances of those cases are materially different from the present case.

6. Section 10 of the Contract Act postulates that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, which are not expressly declared to be void and as such a transaction to constitute a contract must be preceded by offer of an proposal by one party and acceptance of the same by the other party. Analysing the scope of this provision it was observed in the cases of Tarsem Singh v. Sukhminder Singh (supra), M/s. Orissa Agro Industries Corporation Ltd. v. M/s. K.C.S. Private Ltd. (supra) and Sri Sri Narayan gosain represented by Prafulla Kumar Nayak and Ors. v. The Collector, Cuttack and Ors. (supra), that a valid contract cannot be constituted by the act of one party and that there must be a valid offer and valid acceptance by the parties. In the case of B. Rajamani v. Mrs. Azhar Sultana and Ors. (supra) after analyzing the provision of Sections 7, 8 and 9 of the Contract Act, it was said that if a party to the contract makes an offer and the same is accepted in an absolutely unqualified manner by the other party then the contract becomes a valid and complete contract. It was, however, pointed out that law does not require such proposal an acceptance to be always in writing, but once it is made in writing it should be express and clear and the terms thereafter become binding on the parties. It was also clarified that if the terms and conditions of the contract simply postulate a duty or obligation of one party and does not contain any obligation or performance by the other, then such a contract cannot be executable contract. In the said case because the alleged contract did not stipulate the obligation or the task to be performed by the acceptors, the contract was not considered to be valid and executable contract. In the case of S.M. Gopal Chetty v. Raman alias Natesan and 7 Ors. (supra) the question was whether the document which did not contain the signatures of the Plaintiff at all could be accepted as valid document of contract. Since there was no stipulation on the part of the Plaintiff to pay the balance of the sale consideration within the period mentioned in the said document and to take the sale deed, it was held that the document never formed a valid and executable contract. A cumulative reading of the above noted cases along with the Sections

7 to 10 of the Contract Act would explain that a written contract containing signatures of both the parties is not sine qua non to constitute a valid and executable contract. All that is essential is that there should be a valid offer, unqualified acceptance and agreement of the parties to abide by the terms and conditions and perform their respective part of contract. In the present case, Ext.7/e is no doubt signed by the Appellant-Defendant only and it has not been signed by the Respondent-Plaintiff, but the contents of the document reveal that the parties agreed for sale of the suit Schedule "A" land for Rs. 60,000/- and the Appellant-Defendant accepted Rs. 30,000/- as advance with an understanding that the registered sale deed would be executed after obtaining permission from the Urban Ceiling Authority and on payment of the balance consideration of Rs. 30,000/-. Even though the document has not been signed by the Respondent-Plaintiff yet the contents of the document convey an offer by the Appellant and acceptance by the Respondent and an undertaking by the parties to abide by the terms noted in the document. The document also stipulates performance of some terms by the person accepting the offer. The document is a registered one and signed by the Defendant-Appellant and witnesses. That being so, learned first appellate Court did not commit legal error in observing that the document can be accepted as a valid agreement even if it is not signed by the Respondent-Plaintiff. The substantial question of law is accordingly, answered in favour of the Respondent.

7. Consequently, the appeal is found to be without any merit and is dismissed on contest, but in the peculiar circumstances without any cost.