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**(1985) 07 PAT CK 0023**  
**In the Patna High Court**  
**Case No : S.A. No. 399 of 1981**

Shiv Shanker Rai @ and Sheo Shankar Rai APPELLANT  
Vs  
Babu Janardan Rai RESPONDENT

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**Date of Decision :** 31-07-1985

**Acts Referred:**

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 5

**Citation :** (1985) 33 BLJR 775 : (1986) PLJR 263

**Hon'ble Judges :** M.P. Verma, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

M.P. Varma, J.—The suit by the plaintiff-appellant was for specific performance of contract for sale of lands based " upon agreement which was executed by defendant on failure to return the mortgage money who has taken the same said lands in mortgage from the defendant much prior to the agreement for sale in question"

2. The defence was that the documents were forged and the facts pleaded in the point were untrue. The trial court found the agreement to be valid and decreed the suit. The lower appellate Court also concurred with the findings of the trial court on the question of validity and genuineness of the agreement for sale. However, the lower appellate court entertained a question of law raised on behalf of the defendant as to the agreement having been hit by Section 5 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act. He found it as a fact that the consolidation operation had started in the village in question in 1973 itself and discussed the authority reported in the case of and held that on the ratio laid down in that decision, the present contract being a contingent contract and not providing for consequences in case permission u/s 5 of the Consolidation Act was refused by the consolidation authorities. In that view, the lower appellate court held that the contract for sale was unenforceable in law.

3. In the present appeal, the substantial question of law raised by the plaintiff appellant is whether sanction contemplated u/s 5 be the Bihar Consolidation of Holdings and Prevention of Fragmentation Act will be required even in the case of mere agreement for sale.

4. Referring to the lower appellate Court's judgment on this question which has been dealt with in detail, I do not find any significance in the present question of law and any discussion on this question for or against will be mere academic. Hence, the question is not that the defendant before entering into an agreement for sale had not taken permission from the Consolidation authorities. The question is as to what would happen to a supposed decree for specific performance followed; by a refusal to grant sanction for sale which is a condition present in law to complete the sale and keeping that aspect in view the lower court upset the judgment of the trial court holding that the contingency was dependant upon uncertain future events and therefore, a decree for specific performance could not be passed.

5. I have gone through the entire discussion of the court on the subject and have also perused the decision cited, and I am satisfied about the reasonableness of the approach to the question by the lower appellate court. I too hold that a contingent in a contract depending upon uncertain future events is not enforceable in law unless that event happened which may or may not happen. The agreement in question is completely silent about this aspect of sanction by consolidation authority and does not provide for any remedy in case the sanction was refused, and thus, the contract being contingent, without any provision having been made in the event the contingency did not occur (i. e. if the sanction was refused). I also find that a decree for specific performance could not be granted in law as also on facts obtaining in the case-

6. In the result, the appeal fails and is dismissed. But in the special circumstance, there will be no order as to costs.