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ALOKA BOSE

v.

PARMATMA DEVI & ORS.

(Civil Appeal No. 6197 of 2000)

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DECEMBER 17, 2008

[R.V. RAVEENDRAN AND P. SATHASIVAM, JJ.]

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Contract Act, 1872: s.10 – Agreement to sell signed only by vendor and not by purchaser – Suit for specific performance – Maintainability of, challenged on the ground that agreement was not valid/concluded – Held: Agreement to sell signed by vendor alone and delivered to purchaser, and accepted by purchaser was a valid contract – Moreover, vendor acknowledged receipt of earnest money and further receipt of part of consideration amount – Evidence of witnesses also show that it was concluded contract – Notice by purchaser conveying willingness and readiness to pay balance sale consideration – Plaintiff entitled to decree for specific performance – Specific relief Act, 1963 – s.16(c).

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The appellant-defendants agreed to sell suit property on 7.9.1979 for a consideration of Rs.34,500/-. Respondent-Plaintiff paid Rs.2001/- as earnest money and further sum of Rs.2000/- on 10.10.1979 to plaintiff on a condition that the sale deed would be executed within three months and balance consideration would be paid at the time of execution of the sale deed. As the defendant did not execute the sale deed, plaintiff instituted suit for specific performance. Trial court decreed the suit, which was set aside by Single Judge of High Court. On appeal, Division Bench of High Court restored the judgment of trial court.

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In appeal to this Court, it was contended for the appellant that the signature found in the agreement was forged and in any event in the absence of signature of the purchaser, an agreement to sale was neither

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complete nor a valid agreement and accordingly the plaintiff was not entitled to endorse the same; and that a contract of sale like any other contract is bilateral in nature under which both vendor and purchaser have rights and obligations. A

Dismissing the appeal, the Court B

HELD: 1. There was no valid reason to disturb the factual finding based on acceptable materials. The Single Judge of the High Court committed an error in taking a contrary view. [Para 4] [828-D]

2. All agreements of sale are bilateral contracts as promises are made by both – the vendor agreeing to sell and the purchaser agreeing to purchase. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. S.10 of the Contract Act, 1872 provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void. The proviso to s.10 of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an C
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A agreement of sale and signed by both parties or the
vendor alone (unless it is by a series of offers and
counter-offers by letters or other modes of recognized
communication). In India, an agreement of sale signed by
the vendor alone and delivered to the purchaser, and
B accepted by the purchaser, has always been considered
to be a valid contract. In the event of breach by the
vendor, it can be specifically enforced by the purchaser.
There is, however, no practice of purchaser alone signing
an agreement of sale. [Para 7] [829-H; 830-A-G]

C 3. The testimonium portion in the agreement in
question is in an archaic form which has lost its meaning.
Parties no longer 'subscribe their respective hands and
seals'. It is true that the format obviously contemplates
signature by both parties. But it is clear that the intention
D of the parties was that it should be complete on signature
by only the vendor. This is evident from the fact that the
document is signed by the vendor and duly witnessed
by four witnesses and was delivered to the purchaser.
Apart from a separate endorsement made on the date of
the agreement itself (7.9.1979) by the vendor
E acknowledging the receipt of Rs.2001 as advance, it also
contains a second endorsement (which is also duly
witnessed) made on 10.10.1979 by the vendor,
acknowledging the receipt of a further sum of Rs.2000
and confirming that the total earnest money received was
F Rs.4001. This shows that the purchaser accepted and
acted in terms of the agreement which was signed,
witnessed and delivered to her as a complete instrument
and that she then obtained an endorsement thereon by
the vendor, in regard to second payment. If the agreement
G was not complete, the vendor would not have received
a further amount and endorsed an acknowledgement
thereon on 10.10.1979. Apart from the above, the
evidence of the witnesses also shows that there was a
concluded contract. Therefore, even though the
draftsman who prepared the agreement might have used
H a format intended for execution by both vendor and

purchaser, the manner in which the parties had proceeded, clearly demonstrated that it was intended to be executed only by the vendor alone. Thus the agreement of sale (Ext. 2) signed only by the vendor was valid and enforceable by the purchaser. [Para 8] [831-C-H; 832-A]

4. The trial Court as well as the Division Bench of the High Court on the analysis of the materials in the form of oral and documentary evidence concluded that the purchaser had performed her part by paying the earnest money and sent a notice conveying her willingness and readiness to pay the balance of sale consideration. The trial Court and the Division Bench also concluded that the plaintiff had fulfilled the conditions as stated in s.16(c) of the Specific Relief Act and in that event the plaintiff is entitled decree for specific performance which was rightly granted by the trial Court. The agreement of sale was enforceable and the trial Court has rightly granted decree which was affirmed by the Division Bench of the High Court. Looked at from any angle, the judgment of the Division Bench of the High Court setting aside the order of the Single Judge and affirming the judgment and decree of the trial Court, does not warrant any interference by this Court. [Paras 9 and 11] [825-B-C-D-E-F]

S. M. Gopal Chetty v. Raman AIR (1998) Madras 169 and *Md. Mohar Ali v. Md. Mamud Ali* AIR (1998) Gauhati 92, referred to.

Case Law Reference:

AIR (1998) Madras 169 referred to Para 6

AIR (1998) Gauhati 92 referred to Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6197 of 2000.

From the final Judgment and Order dated 7.9.1999 of the High Court of Patna, Ranchi Bench, Ranchi in Letters Patent Appeal No. 29 of 1993 (R).

Ranjan Mukherjee and S.C. Ghosh for the Appellant.

Shekhar Prit Jha for the Respondents.

A The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Challenge in this appeal is to the order dated 7.9.1999 passed by the Division Bench of the High Court of Patna, Ranchi Bench allowing L.P.A. No.29 of 1993 (R) filed by Smt. Parmatma Devi – first respondent herein.

B 2. The facts of the case, in a nutshell, are as follows:

By virtue of a written agreement of sale on 7.9.1979, one Kanika Bose (since deceased) had agreed to sell to the first respondent the southern portion of house being Holding No. 786-C, Ward No.1, Mohalla Barmasia under Giridih Municipality for a consideration of Rs.34,500/-. The first respondent paid a sum of Rs.2001/- as earnest money and part payment and a further sum of Rs.2000/- on 10.10.1979 to Kanika Bose on a condition that the sale deed would be executed within three months and balance consideration money would be paid at the time of execution of the sale deed. As Kanika Bose did not execute the sale deed, on 6.12.1979, the first respondent instituted suit being T.S. No. 54 of 1979 for specific performance in the Court of Subordinate Judge, Giridih, Bihar. In the said suit, the defendant – Kanika Bose filed her written statement denying the averments made in the plaint. By judgment dated 28.09.1983, the subordinate Judge, Giridih decreed the suit against the defendant. Challenging the said decree, the defendant preferred a first appeal before the High Court of Patna, Ranchi Bench and the same was registered as First Appeal No. 111 of 1983 (R). By judgment dated 04.10.1993, learned single Judge allowed the first appeal and dismissed the suit. Against the said judgment, the first respondent herein filed L.P.A. No. 29 of 1993(R). A Division Bench of the High Court, by the impugned judgment dated 7.9.1999 allowed the said L.P.A. by setting aside the judgment dated 4.10.1993 passed by the learned single Judge and restoring the judgment and decree of the trial court. Aggrieved by the said judgment, Kanika Bose-the defendant has preferred this appeal by way of special leave before this Court. Pending appeal, Kanika Bose died on 27.5.2007. On an application for bringing the legal heirs on record, three legal representatives

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were brought on record i.e., Alokha Bose as appellant and other two legal heirs as proforma respondent Nos. 2 & 3.

3. We have heard Mr. Ranjan Mukherjee, learned counsel appearing for the appellant. On the contentions urged, the following points arise for consideration in this appeal:

- (i) Whether an agreement of sale (Ext.2) executed only by the vendor, and not by the purchaser, is valid?
- (ii) Whether the plaintiff has satisfied and established her case for decree for specific performance under Section 16(c) of the Specific Relief Act, 1963.

4. The main contention urged on behalf of the defendant is that the signature found in the agreement was forged and in any event, in the absence of signature of the purchaser, Ext.2 is neither a complete nor a valid agreement; and consequently the plaintiff is not entitled to enforce the same. In this respect, it is relevant to point out that the learned trial Judge framed specific issues, namely, Issue Nos. 5 and 6 and discussed the same in detail. In the plaint, the plaintiff has asserted that an agreement of sale was duly executed by the defendant and she had put her signature in token of its execution after receiving the earnest money. In order to prove the genuineness of the agreement of sale (Ext.2), the plaintiff has asserted that defendant had executed the said agreement. She also got the signature of the defendant in the agreement of sale Ext.2 examined and compared with the admitted signature of the defendant through handwriting expert P.W.1 Syed Ekbal Taiyab Hussain Raza who opined that the signature on the agreement of sale as well as specimen signatures of the defendant are one and the same. Apart from the expert evidence, plaintiff has also produced P.W.3 – Shankar Lal, a land broker, who asserted on oath that the defendant had put her signature in the agreement of sale. Apart from this, P.W. 4 – Jagdish Prasad, brother of the plaintiff's husband and P.W. 9 – Ishwari Prasad Budholia, husband of the plaintiff also asserted that the defendant Kanika Bose had put her signature in the agreement of sale in their presence. As stated earlier, it is not the case of the defendant that she did not put any signature in the

- A agreement of sale. On the other hand, she had given an explanation how her signature was obtained on a blank paper. Though defendant has also examined one expert D.W. 2 S.K. Chatterjee, the trial Court has concluded that the said D.W.2 has not compared all the signatures alleged to have been put by the defendant in the agreement of sale nor examined those endorsements which are alleged to be made by the defendant Kanika Bose. Since the trial Court analyzed and compared the opinion of two experts with materials placed before them and preferred to accept the opinion of expert examined by the side of the plaintiff, there is no reason to dispute the said conclusion.
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- C In the light of the controversy the Division Bench of the High Court also compared the signature found in other documents such as vakalatnama, written statement with that of the signature found in Ext.2 and concluded that the signature found in the agreement of sale was that of the defendant Ms. Kanika Bose.
- D We are of the view that there is no valid reason to disturb the above factual finding based on acceptable materials. The learned Single Judge of the High Court committed an error in taking a contrary view.

5. The defendant submitted that a contract for sale, like any other contract, is bilateral in nature under which both vendor and the purchaser have rights and obligations. It is submitted that an agreement for sale being a contract for sale, creating a right in the purchaser to obtain a deed of conveyance in terms of the agreement under which, the vendor agrees to convey to the purchaser, and the purchaser agrees to purchase, the subject-matter of the agreement for an agreed consideration, subject to the terms and conditions stipulated in the said agreement, it is bilateral. It is therefore contended that an agreement of sale is neither complete nor enforceable unless it is signed by both parties.
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6. Certain amount of confusion is created on account of two divergent views expressed by two High Courts. In *S. M. Gopal Chetty vs. Raman* [AIR 1998 Madras 169], a learned Single Judge held that where the agreement of sale was not signed by the purchaser, but only by the vendor, it cannot be
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said that there was a contract between the vendor and the purchaser; and as there was no contract, the question of specific performance of an agreement signed only by the vendor did not arise. On the other hand, in *Md. Mohar Ali vs. Md. Mamud Ali* [AIR 1998 Gauhati 92], a learned Single Judge held that an agreement of sale was an unilateral contract (under which the vendor agreed to sell the immovable property to the purchaser in accordance with the terms contained in the said agreement), that such an agreement for sale did not require the signatures of both parties, and that therefore an agreement for sale signed only by the vendor was enforceable by the purchaser.

7. We find that neither of the two decisions have addressed the real issue and cannot be said to be laying down the correct law. The observation in *Md. Mohar Ali* (supra) stating that an agreement of sale is an unilateral contract is not correct. An unilateral contract refers to a gratuitous promise where only party makes a promise without a return promise. Unilateral contract is explained thus by *John D. Calamari & Joseph M. Perillo* in *The Law of Contracts* (4th Edition Para 2-10(a) at pages 64-65):

"If A says to B, 'If you walk across the Brooklyn Bridge I will pay you \$ 100,' A has made a promise but has not asked B for a return promise. A has asked B to perform, not a commitment to perform. A has thus made an offer looking to a unilateral contract. B cannot accept this offer by promising to walk the bridge. B must accept, if at all, by performing the act. Because no return promise is requested, at no point is B bound to perform. If B does perform, a contract involving two parties is created, but the contract is classified as unilateral because only one party is ever under an obligation."

All agreements of sale are bilateral contracts as promises are made by both – the vendor agreeing to sell and the purchaser agreeing to purchase. On the other hand, the observation in *S.M. Gopal Chetty* (supra) that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is

- A also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed
- B by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. Section 10
- C of the Act provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. The proviso to section 10 of the Act makes it clear
- D that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time, which requires an agreement of sale to be made in writing or
- E in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. In any agreement of sale, the terms are always negotiated and thereafter reduced in the
- F form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognized communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of
- G breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale.

8. The defendant next contended that the agreement of sale in this case (Ex.2) was clearly in a form which required
- H signatures of both vendor and purchaser. It is pointed out that

the agreement begins as : "Agreement for sale *between* Kanika Bose and Parmatma Devi" and not an "Agreement of sale executed by Kanika Bose *in favour of* Parmatma Devi". Our attention is also drawn to the testimonium clause (the provision at the end of the instrument stating when and by whom it was signed) of the agreement, which reads thus : "*In witnesses whereof, the parties hereto have hereunto set and subscribed their respective hands and seals on these presents.*" It is therefore contended that the agreement specifically contemplated execution by both parties; and as it was not so executed, it was incomplete and unenforceable. We have carefully examined the agreement (Ex.2), a photocopy of which is produced. The testimonium portion in the agreement is in an archaic form which has lost its meaning. Parties no longer 'subscribe their respective hands and seals'. It is true that the format obviously contemplates signature by both parties. But it is clear that the intention of the parties was that it should be complete on signature by only the vendor. This is evident from the fact that the document is signed by the vendor and duly witnessed by four witnesses and was delivered to the purchaser. Apart from a separate endorsement made on the date of the agreement itself (7.9.1979) by the vendor acknowledging the receipt of Rs.2001 as advance, it also contains a second endorsement (which is also duly witnessed) made on 10.10.1979 by the vendor, acknowledging the receipt of a further sum of Rs.2000 and confirming that the total earnest money received was Rs.4001. This shows that the purchaser accepted and acted in terms of the agreement which was signed, witnessed and delivered to her as a complete instrument and that she then obtained an endorsement thereon by the vendor, in regard to second payment. If the agreement was not complete, the vendor would not have received a further amount and endorsed an acknowledgement thereon on 10.10.1979. Apart from the above, the evidence of the witnesses also shows that there was a concluded contract. Therefore, even though the draftsman who prepared the agreement might have used a format intended for execution by both vendor and purchaser, the manner in which the parties had

- A proceeded, clearly demonstrated that it was intended to be executed only by the vendor alone. Thus we hold that the agreement of sale (Ext. 2) signed only by the vendor was valid and enforceable by the purchaser.

9. The trial Court as well as the Division Bench of the High Court on the analysis of the materials in the form of oral and documentary evidence concluded that the vendee had performed her part by paying the earnest money and sent a notice conveying her willingness and readiness to pay the balance of sale consideration. The said notice was acknowledged by the defendant. The clauses in the agreement clearly show that the vendor had to perform and fulfill the terms of agreement by executing the sale deed on receipt of the consideration. We have already adverted to the fact that the vendee had performed her part of the contract.

10. The trial Court and the Division Bench also concluded that the plaintiff had fulfilled the conditions as stated in Section 16(c) of the Specific Relief Act and in that event the plaintiff is entitled to decree for specific performance which was rightly granted by the trial Court. Though learned counsel for the appellants pointed out that the claim of the plaintiff that she was put in possession of a portion of the suit property in part performance was not accepted by the trial Court, in the light of the categorical findings about the validity of Ext. 2 and satisfactory proof of other conditions for granting the decree for specific performance, we are unable to accept the said contention. On the other hand, we agree with the conclusion arrived at by the Division Bench and hold that the agreement of sale was enforceable and the trial Court has rightly granted decree which was affirmed by the Division Bench of the High Court.

11. Looked at from any angle, the judgment of the Division Bench of the High Court setting aside the order of the Single Judge and affirming the judgment and decree of the trial Court, does not warrant any interference by this Court. Consequently, the appeal fails and the same is dismissed. No costs.