

**Tirthanand Singh and ors. Vs. Sk. Zer Mohammad and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/126005](http://sooperkanoon.com/126005)

**Court :** Patna

**Decided On :** Jul-03-2001

**Judge :** Someshwar Nath Pathak, J.

**Appeal No. :** Appeal From Appellat Decree Nos. 704 and 705 of 1986

**Appellant :** Tirthanand Singh and ors.

**Respondent :** Sk. Zer Mohammad and ors.

**Disposition :** Appeal Dsimised

**Judgement :**

**Someshwar Nath Pathak, J.**

1. These two appeals were heard analogous because in both the suits under appeal, issues were identical and the parties were also the same. So this common judgment will govern both these appeals.
2. The learned trial Court had decreed the suit (T.S. No. 5 of 1983 and T.S. No. 6 of i 983) and, on appeal being preferred by the defendants of the suit, the first appellate Court reversed the judgment of the trial Court and dismissed the appeal.
3. That in a nut-shell, the case of the plaintiff-appellant in both the suits before the trial Court, as mentioned above, was that he had sold the suit land in favour of defendant-respondents for Rs. 3000/- and through a separate agreement, it was

agreed by the defendant-respondent that he will reconvey the suit land to the plaintiff-appellant after receiving the consideration money by the 30th Magh 1390 M.S. (Fasli Year); However, when he went to tender the consideration money to the defendant-respondent, the latter failed to accept the same and so two different suits were filed for specific performance of contract. Both the suits were heard by the trial Court and, on contest, they were decreed. On appeal being preferred by the defendant-respondent, the judgments of the trial Court were set aside and the suits were dismissed.

4. On perusal of the judgments of the first appellate Court, it transpired that the suits were dismissed on the ground that the plaintiff-appellant had failed to prove that he was willing to perform the part of his contract and that he had tendered the consideration money to the defendant-respondent, in time. The suits were also dismissed on the ground that the sale of the suit land by the plaintiff in favour of defendant was hit by Section 5 of the Consolidation of Holdings and Prevention of Fragmentation Act and that the contract for re-sale was also illegal because it was based on a contingent event. The appellate Court held that since the lands under suit were subject-matter of consolidation, it was not certain that the lands would be allotted to the plaintiff or the defendant during the course of consolidation proceedings. So the contract was contingent on future uncertain events which made it illegal.

5. In both these appeals, identical questions of law were formulated for decision. The first legal point was whether the learned lower appellate Court committed an error in reversing the judgment of the trial Court, so far as it held that the plaintiff did not tender the consideration amount, he had been all along avoiding to perform his part of contract, without considering the reasonings of the trial Court as well as the evidence on the record. The second point was whether the decree can be passed in a suit for specific performance of contract wherein prior permission of the competent authority in terms of Section 5 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, is necessary.

6. I find that the trial Court decided the issue whether the contract entered into between the plaintiff and the defendant (Ext-2) for re-sale of the suit land was, of

course, executed and was valid. The trial Court further considered the issue whether the suit was maintainable, it being not premature, as contended by the defendant-respondent and whether the plaintiff-appellant had any cause of action. These two issues were decided in favour of the plaintiff. The first appellate Court did not reverse these findings of the trial Court. The trial Court, rather, held the agreement to be properly executed and it also held that the suit was not premature just because it was filed just a day before the 30th Magh 1390 M.S. (corresponding to the year 1983). However, the first appellate Court dismissed the suits on the ground that the plaintiff had failed to prove that he was ever willing and ready to perform his part of contract. It also held that since the contract was based on contingent events, the agreement was not enforceable. It were only on these grounds that the first appellate Court dismissed the suits. It is further apparent that the trial Court had not considered the issue and so there is no question of the appellate Court giving its opinion regarding the reasonings advanced by the trial Court. So the first substantial question of law formulated for these appeals was beside the point.

7. So far the other question of law formulated for these appeals, it is to be found that under Section 5 of the Consolidation Act, if any land is to be sold, prior permission of the Consolidation authority is required and the sale shall also be subject to the allotment of the concerned land to the vendor on close of the consolidation operation. In such circumstance, any sale shall become void or voidable. In such a circumstance, any agreement for resale or reconveyance during the survey operations will also be unenforceable, because the subject-matter of the agreement would be under the consolidation proceedings and the allotment of the same either to the vendor or the vendee will also depend on contingent events. The reasonings advanced by the first appellate Court in this respect regarding unenforceability of the concerned contract (Ext-2) are, of course, valid and perfectly justified.

8. So far the fact whether the plaintiff-appellant was ready and willing to perform his burden of contract, I have already stated above that the learned trial Court did not examine the evidence in this connection nor did it give any finding. The first appellate Court is a Court of fact and law both. The appellate Court considered the

evidence adduced by the plaintiff-appellant in this connection and it held that only the plaintiff was examined to support the fact of tendering of money and refusal to accept the same by the defendant-respondent. The first appellate Court took notice of the fact that the plaintiff in his evidence failed to mention the date, month and year of tendering the money to the defendant. There is no other evidence on this point. So the appellate Court held that the plaintiff had failed to prove that he was ready and willing to perform his part of contract. I do not find any reason to dis-agree with this finding of the first appellate Court.

9. In the result, these two appeals are dismissed and the judgments and the decrees of the first appellate Court are hereby confirmed. There shall be no order as to costs of these appeals.

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