



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH
ON THE 17th OF APRIL, 2025**

FIRST APPEAL No. 1121 of 2011

LAXMINARAYAN

Versus

PRABHUDAYAL @ PRABHU AND OTHERS

Appearance:

Shri D. N. Pandey - Advocate for the appellant.

Shri Abhijit Bhowmik - Advocate for the respondent No.1.

Shri Manoj Jha - Panel Lawyer for the respondent/ State.

JUDGMENT

The appeal was finally heard on merit on 19.12.2024 and reserved for judgment.

2. This appeal is filed by the appellant/ plaintiff who has lost his Civil Suit No. 9-A/2011 (Laxminarayan Vs. Prabhudayal and another). Vide judgment dated 31.10.2011 learned Additional District Judge (Fast Track Court) to the Court of Second Additional District Judge, Khurai, Distt. Sagar rejected the suit for specific performance of agreement regarding area 0.45 hectare out of 0.98 hectare of the suit property situated in village Bardoura, Halka No. 142/2.
3. It is admitted fact that plaintiff and defendant are real brothers-in-law (*Jeeja-Saala*). The suit of the plaintiff was that he had sold the suit property by registered sale-deed Ex. D/1 to defendant No.1 on 6.7.2005 for an amount of Rs.1,12,000/- and on 29.08.2005 they both entered into an agreement Ex. P/1 that plaintiff will pay Rs.

1,80,000/- to defendant No.1 and then he will sell the suit property which was purchased vide Ex. D/1 but after the agreement the defendant did not sell the suit property to plaintiff. He sent a notice also but nothing was done regarding selling.

4. The defendant No.1 submitted that he never had any money to execute his part under the agreement. The trial Court framed the following issues. The findings are against them :-

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॥ वाद-प्रश्न ॥

॥ निष्कर्ष ॥

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|---|--|------------|
| 1 | क्या प्रतिवादी क्रं 1 ने दिनांक 29-8-2005 को वादी को विवादित भूमि एक लाख अस्सी हजार रुपये में बेचने का इकरार किया था ? | हाँ |
| 2 | क्या वादी विवादित भूमि को क्रय करते हेतु तैयार व तत्पर रहा है ? | नहीं |
| 3 | क्या वादी विवादित भूमि का प्रतिवादी क्रं 1 से अपने पक्ष में विक्रय-पत्र निष्पादित करा पाने का अधिकार है ? | नहीं |
| 4 | क्या वादी विवादित भूमि का कब्जा पाने का अधिकारी है ? | नहीं |
| 5 | सहायता एवं व्यय ? | वाद निरस्त |

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5. After recording the evidence of both the parties on the issues, the trial Court gave findings on them and dismissed the suit.

6. In the trial Court plaintiff has exhibited sale-deed Ex. P/1 and has also exhibited notices Ex. P/2 to Ex. P/6 which includes postal receipts and acknowledgment due and agreement Ex. P/7 dated 29.08.2005. It is seen that sale proceeds in Ex. P/1 is Rs.1,12,000/- whereas plaintiff has mentioned that he sold the suit property to defendant for Rs.1,44,000/- but he submitted that rest amount was expenses of the Registry, therefore, it is seen that plaintiff is stating different facts at different places which is not permitted. P.W.1 is Laxmi Narayan, P.W.2 is Dayaram Patel and P.W.3 is Balkishan.

7. On the other hand defendant has exhibited sale-deed Ex.D/1, reply to notice Ex. D/2, Khasra Panchshala Ex D/3 to Ex. D/4, documents regarding taking of loan from Bank and mortgaging of property Ex. D/5 to Ex. D/6 and certificate of Gram Panchayat Ex. D/7. Defendant Prabhudayal has examined himself and has also examined his witness Rajaram and Mahendra Singh.

8. The grounds of appeal is that the trial Court has failed to appreciate the evidence that plaintiff was always ready and willing to carry out his part under the agreement.

9. On perusal of the record and considering the judgment of the trial Court, it is seen that trial Court has correctly observed that in Ex. P/7 agreement the figures of Patwari Halka 17 and Khasra No. 142/2 have been subsequently added as on bare perusal it is seen that they are in different shade and it cannot be said as to whether these are from the same

typewriter or not but they are in different shade and not properly spaced also and no reasons have been assigned for the same, whereas any person coming to Court has to come with clean hands meaning clean and transparent action. No reason has been assigned as to why after short period of sale of suit property Ex. P/1 sale agreement, Ex. P/7 was executed. All these are factors which cannot be lightly brushed aside. It is mentioned in Ex. P/7 that after receiving Rs.1,80,000/- till 29.08.2010 he will execute the sale-deed in favour of the plaintiff Laxminarayan, therefore, transaction of Ex. P/7 is in mystery and something has been hidden and all facts have not been properly explained in plaint and it is seen that learned trial Court has considered all factual situations and this First Appellate Court also does not find that agreement Ex. P/7 has been proved strictly in accordance with the pleadings of the plaintiff and documents of the plaintiff are at variance with agreement Ex. P/7 and pleadings, therefore, learned trial Court has not committed any mistake in rejecting the suit for the reasons mentioned in judgment of the trial Court from paragraphs 14 to paragraphs 20, therefore, the appeal of the plaintiff / appellant fails and is hereby **dismissed**.

(AVANINDRA KUMAR SINGH)
JUDGE

VSG