

CASE NO.:
Appeal (civil) 4315 of 1991

PETITIONER:
MOTILAL JAIN

Vs.

RESPONDENT:
SMT.RAMDASI DEVI & ORS.

DATE OF JUDGMENT: 20/07/2000

BENCH:
S.V.Patil, S.S.M.Quadri

JUDGMENT:

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J U D G M E N T SYED SHAH MOHAMMED QUADRI, J. This appeal, by special leave, is directed against the judgment of the Gauhati High Court (Assam) in First Appeal No.43 of 1981 passed on October 22, 1990. The plaintiff in the suit, out of which this appeal arises, is the appellant and the respondents are legal representatives of the defendant - Ambika Prasad Ram. Hereinafter the parties will be referred to as the plaintiff and the defendant. The plaintiff entered into a contract with the defendant to purchase the suit property for a consideration of Rs.25,000/- out of which a sum of Rs.17,000/- was paid at the time of the execution of the contract on February 20, 1977 (Ext.2); the balance of the consideration, Rs.8000/-, was stipulated to be paid within five months from the date of Ext.2, at the time of execution of registered sale deed in favour of the plaintiff. Alleging that the defendant was evading to receive the balance amount of Rs.8000/- and execute the sale deed, the plaintiff sent notices through his advocate on March 15, 1978 (Ext.5), and again on April 4, 1978 (Ext.3) and finally on November 26, 1978 (Ext.4). The plaintiff then filed the suit, T.S.No.36 of 1979, against the defendant in the court of the Assistant District Judge of Goalpara at Dhubri, praying for a decree of specific performance of contract for sale of the suit property (Ext.1) and claimed in the alternative damages in the sum of Rs.38,000/- on August 10, 1979. The defendant denied the execution of Ext.2, receipt of Rs.17,000/- as part consideration thereunder, his signature on it and submitted that, therefore, the question of avoiding to execute the sale deed would not arise. He pleaded that the appellant was entitled to neither the specific performance of contract nor the damages, the alternative claim. On considering the evidence produced by the parties, the trial court found that the defendant executed Ext.2 and decreed the suit for specific performance of Ext.2 on July 25, 1981. The defendant filed First Appeal No.43 of 1981 against the

judgment of the trial court in the Gauhati High Court (Assam). During the pendency of the appeal the said defendant died and the respondents were brought on record as his legal representatives. The High Court confirmed the finding of the trial court that the defendant executed Ext.2 but noted: (i) that the suit was filed after two years of the accrual of the cause of action on July 21, 1977 and after about one year of last notice issued on November 26, 1978 (Ext.4); (ii) from the averment in the plaint the readiness and willingness could not be inferred; and (iii) even assuming that the averment made out the readiness and willingness, there was no evidence to prove the readiness and willingness of the plaintiff. In that view of the matter, by the impugned judgment, the High Court set aside the judgment of the trial court with regard to relief of specific performance of the contract (Ext.2) but granted a decree for compensation in a sum of Rs.22,094/- (Rs.17,000/-

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