

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**FIRST APPEAL No.67 of 2017**

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Prusottam Swaroop Son of Late Bhagwan Swaroop, resident of Mohalla-Bhagirathi Lane, Mahendru, P.O. Mahendru, P.S. Sultanganj, Patna- 800006, District and Town of Patna.

... .. Appellant/Defendant

Versus

Umesh Kumar Sahu Son of Sri Ram Narayan Sahu, resident of Village Piprahi, P.S. Ladaniya, District- Madhubani, at present 'Physical Chemistry to the Point' Bazar Samitee, Main gate, Near Hanuman Mandir, Bahadurpur, Patna- 800016.

... .. Respondent/Plaintiff

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**Appearance :**

For the Appellant	:	Mr. Dhiraj Sagar, Advocate Mr. Santosh Kumar Singh, Advocate
For the Respondent	:	Mr. P.N. Shahi, Sr. Advocate Mr. Bipin Bihari, Advocate

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR**  
**CAV JUDGMENT**

**Date : 15-06-2026**

**Introduction**

The present Appeal has been preferred by the Appellant (Defendant before the Trial Court) against the impugned judgment and decree dated 07.02.2017, passed by learned Sub-Judge -Ist, Patna in Title Suit No. 564 of 2011, whereby the Suit of the Respondent/Plaintiff was part decreed directing the Appellant/Defendant to pay back the total paid amount of Rs. 43,30,000/- along with interest @ 9% per annum since 31.12.2010. Additional compensation of Rs.5 *lakh* was



also directed to be paid by the Defendant/Appellant to the Plaintiff/Respondent. However, the execution of sale deed as sought by the Plaintiff/Respondent was denied by learned Trial Court.

**Cross-Appeal not pressed**

2. Here, it is also pertinent to mention that the Respondent herein, who was Plaintiff before the Trial Court, had also preferred Cross-Appeal against the impugned judgment seeking specific performance by way of execution of the sale deed in pursuance of the agreement for sale between the parties in regard to the subject landed property. However, the Cross-Appeal has not been pressed by the Respondent as it transpires from the order dated 14.07.2025, passed by this Court in this proceeding. In course of the hearing, the appellant had informed this Court that the whole subject property has been sold out to third party. Hence, the purchaser of the subject landed property was required to be impleaded in the Cross-Appeal for effective decision. However, such impleadment would have led to delay in disposal of the Cross-Appeal. Therefore, learned counsel for the Respondent/Plaintiff stated before the Court that the Respondent did not want to press the Cross-Appeal, because there would be inordinate delay in disposal of the appeal.



**Title Suit No.564 of 2011**

3. Coming back to the present appeal, it transpires that the Title Suit No. 564 of 2011 was filed by the Respondent/Plaintiff for specific performance of the contract dated 23.08.2010 for sale of the house property built over the land measuring 3 *katha* and 10 *dhurs* for total consideration amount of Rs. 1 crore 55 lakhs.

**Case of the Plaintiff/Respondent**

4. The case of Respondent/Plaintiff was that despite performance of his part of the contract and his readiness and willingness to perform the rest part of the contract, the Appellant/Defendant failed to execute the sale deed.

5. The Respondent/Plaintiff had also sought alternative relief of return of Rs. 43 lakh and 30 thousand with interest @ 18% per annum which was paid to the Appellant/Defendant towards consideration amount.

**Case of the Defendant/Appellant**

6. However, the Appellant/Defendant contested the Suit of the Respondent/Plaintiff by filing his written statement and claimed that the Respondent/Plaintiff failed to perform his part of the contract and hence, the sale deed could not be executed. The prayer was made by the Appellant/Defendant to



dismiss the Suit with exemplary costs.

**Issues framed during trial**

7. On the basis of the pleadings of the parties, the following issues were framed :

- “(i) Is the suit as framed maintainable?
- (ii) Has the plaintiff got cause of action for the suit?
- (iii) Is the suit barred by estoppel, acquiescence and waiver?
- (iv) Is the suit barred by Specific Relief Act?
- (v) Is the agreement for sale dated 23.08.2010 legal, valid and operative?
- (vi) Is the plaintiff ready and willing to perform his part of contract?
- (vii) Is the plaintiff entitled to a decree for Specific Performance of Contract in suit as sought for or is the plaintiff entitled to an alternative decree for Rs.41,30,000/- with interest @ 18% per annum as sought for?
- (viii) To what other relief or reliefs, if any, the plaintiff is entitled?”

**Evidence of the Plaintiff/Respondent**

8. During the Trial, three witnesses were examined on behalf of the Respondent herein/Plaintiff : (i) **P.W.1** - Umesh Kumar Sahu, who was the plaintiff himself, (ii) **P.W. 2** – Pramod Mishra and (iii) **P.W. 3** – Shashibhushan Kumar

9. The documentary evidence brought on record by the Respondent/Plaintiff are as follows : (i) **Ext.1** - Original agreement for sale dated 28.08.2010, (ii) **Ext.2**- Endorsement of defendant Prushottam Swarup, (iii) **Ext.2/A**- Endorsement of



money received on 31.12.2010, (iv) **Ext.3-** Advocate Notice dated 21.04.2011 on behalf of Umesh Kumar Sahu, (v) **Ext.3/A-** Advocate Notice dated 16.06.2011 on behalf of Umesh Kumar Sahu, (vi) **Ext.3/B-** Advocate Notice dated 26.07.2011 on behalf of Umesh Kumar Sahu, (vii) **Ext.3/C-** Reply Notice dated 05.08.2011 on behalf of Purushottam Swaroop, (viii) **Ext.3/D-** Advocate Notice dated 19.04.2011 on behalf of Purushottam Swaroop, (ix) **Ext.4-** Registered Envelope bearing a postal stamp dated 20.04.2011 sent by Hare Ram Sah to Umesh Kumar Sahu and (x) **Ext.5-** Signature of Pramod Mishra on Ext.1.

**Evidence of the Defendant/Appellant**

**10.** Defendant/Appellant has also examined the following four witnesses in support of his case: (i) **D.W.1-** Purusattom Swarup, the defendant himself, (ii) **D.W.2-** Dilip Kumar Sinha, (iii) **D.W.3-** Barhan Prasad and (iv) **D.W.4-** Anand Raj.

**11.** The documentary evidence adduced by the Defendant/Appellant are as follows: (i) **Ext.A-** Legal notice dated 23.02.2011 on behalf of Purushottam Swaroop, (ii) **Ext.A/1-** Legal notice dated 16.06.2011 on behalf of Umesh Kumar Sahu, (iii) **Ext.B-** Postal receipt dated 26.02.2011 sent to Umesh Kumar Sahu.



### **Findings and Decree of the Trial Court**

**12.** After trial, the Suit filed by the Respondent herein/Plaintiff was part decreed and part dismissed. The Appellant/Defendant was directed to refund Rs. 43,30,000/- with interest @ 9% per annum from 31.12.2010 till the payment of the same and additional compensation of Rs. 5 lakh within three months from the date of the judgment. However, execution of sale deed as sought for by the Respondent/Plaintiff was denied by the learned Trial Court by the impugned judgment and decree dated 07.02.2017.

**13.** Learned Trial Court found that there is no dispute regarding the agreement for sale between the parties dated 23.08.2010.

**14.** However, learned Trial Court found that the Respondent/Plaintiff herein had failed to perform his part of contract and there was no readiness and willingness in spirit and substance on the part of the Respondent/Plaintiff to perform his part of the contract.

**15.** However, learned Court below found that there is vagueness in the terms and conditions in regard to encumbrance on the subject property.

**16.** However, alternative relief was granted to the



Respondent/Plaintiff on the ground that there was some vagueness in the terms and conditions making the contract difficult to be enforced as per terms of the agreement.

**Submissions of the Parties**

17. I heard learned counsel for the Appellant and learned counsel for the Respondent.

**Submissions on behalf of the Defendant/Appellant**

18. Learned counsel for the Appellant submits that there was no vagueness in the terms and conditions of the agreement for sale. As per the agreement, the Plaintiff/Respondent/Umesh Kumar Sahu was required to pay Rs. 25 lakh within four months, besides the payment already made at the time of execution and only then the Appellant was required to take steps to redeem the property from mortgage and clear the dues regarding holding tax, electric bill and land revenue in regard to property. But the Respondent/Plaintiff had failed to pay Rs. 25 lakh within the stipulated time and even thereafter, and, hence, the Appellant/Defendant was constrained to cancel/rescind the agreement for sale and offered to pay back the total advance money after deduction of 10% from the same. He also points out that even learned Trial Court has found that the Respondent/Plaintiff had failed to perform his part of



contract and there was no readiness and willingness to perform his part of contract and hence, learned Trial Court denied the specific performance of the contract by directing the execution of sale of the subject property by the Appellant in favour of the Respondent.

**19.** He further submits that the impugned judgment is contradictory in itself, as much as it finds, on the one hand, that the Plaintiff/Respondent had failed to perform his part of contract, but on the other hand, he directed the Appellant/Defendant to return the whole advance money with interest @ 9% per annum and to pay additional compensation of Rs. 5 lakh. As a matter of fact, learned Trial Court has rightly denied the execution of sale of the subject property in favour of the Respondent, but has erroneously penalized the Appellant/Defendant by directing him to return the whole advance money with interest, besides additional compensation of Rs. 5 lakh.

**20.** Hence, in view of learned counsel for the Appellant, the impugned judgment is not sustainable to the extent that the Appellant is directed to pay the whole advance money with interest @ 9% per annum, besides additional compensation of Rs. 5 lakh. Learned Trial Court should have, at



most, directed the Appellant to pay advance money after deduction of 10% to the Respondent. There is no sustainable reason to return the whole advance money with interest and additional compensation of Rs. Five Lakh.

**Submission on behalf of the Plaintiff/Respondent**

**21.** However, learned counsel for the Respondent/Plaintiff defends the impugned judgment submitting that there is no illegality or infirmity in it.

**22.** He further submits that time as stipulated in the contract was not of essence. Moreover, the Respondent has performed his part of contract and he was ready and willing to perform his rest part of the contract and the Appellant was required to execute the sale deed in regard to the subject property in favour of the Respondent/Plaintiff or alternatively, the Appellant was duty bound to return the whole advance money with interest @ 9% per annum, besides additional compensation of Rs. 5 lakh, because it was the Appellant who was at fault and not the Respondent.

**Point for determination by this Court**

**23.** In view of the rival submissions of the parties, the only point for determination by this Court is, whether the Appellant is liable to pay the whole paid amount of



Rs.43,30,000/- with an interest @ 9 per cent per annum from 31.12.2010, in addition to the compensation amount of Rs.5,00,000/- or whether the Appellant/Defendant is liable to pay back the total paid amount of Rs.43,30,000/- after deduction of 10 per cent.

### **Consideration**

**24.** Coming to the case on hand, I find that there is no dispute regarding agreement for sale between the parties and the terms thereof in regard to the subject landed property belonging to the Defendant/Appellant.

**25(i).** I further find that as per terms and conditions of the contract between the parties, out of the total consideration amount of Rs. 1 crore 55 lakh, Rs. 35 lakh was already paid by the Plaintiff/Respondent to the Appellant/Defendant and thereafter, the Plaintiff/Respondent was required to pay Rs. 25 lakh within four months from the date of the execution of the agreement for sale. Thereafter, further Rs. 25 lakh was required to be paid by the Plaintiff/Respondent within eight months from the date of the execution of the agreement for sale. But prior to the payment of the next installment of Rs. 25 lakh, the Defendant/Appellant was required to redeem the subject property which was mortgaged in C.C. Loan Account No.



30208722531 of State Bank of India, Bhikhna Pahadi, Patna.

**25(ii).** It was further stipulated that the balance consideration amount was to be paid at the time of execution of the sale deed, subject to the holding tax, electric bill and land revenue in regard to the subject property having been paid.

**25(iii).** The rent received by the Defendant/Appellant from the tenants of the subject house property was to be adjusted against the balance consideration amount.

**25(iv).** It was further stipulated that in case of refusal to execute the sale deed by the Defendant/Appellant, the Plaintiff/Respondent could resort to legal remedy for execution of the sale deed.

**25(v).** It was also stipulated that in case of default on the part of the Plaintiff/Respondent to pay the money as per stipulation, the Appellant/Defendant was entitled to deduct 10% of the advance money given to him and pay back the rest amount to the Respondent/Plaintiff.

**26.** From perusal of the aforesaid terms and conditions of the agreement for sale (**Ext.1**), the Plaintiff/Respondent was required in unambiguous term to pay Rs.25,00,000/- without any condition to the Defendant/Appellant within four months of the execution of the



agreement for sale, which was executed on 23.08.2010, but I find that there is no pleading or evidence, whatsoever, that he paid Rs.25,00,000/- to the Defendant/Appellant or he was willing and ready pay this amount to the Defendant/Appellant.

**27.** It clearly transpires that the whole consideration amount for the sale of the subject landed property was Rs.1,55,00,000/- and at the time of the execution of the agreement for sale, Rs. 35,00,000/- was already paid by the Plaintiff/Respondent to the Defendant/Appellant and subsequent to the execution of agreement for sale, the Plaintiff/Respondent paid Rs.6,00,000/- on 06.12.2010 and subsequently, Rs.2,30,000/- on 31.12.2010 and thereafter, no payment was made by the Plaintiff/Respondent to the Defendant/Appellant despite demand on his part, nor was any willingness and readiness to pay it.

**28.** Hence, it clearly shows that the Plaintiff/Respondent did not perform his part of the contract as required, rendering him disentitled to get equitable relief of specific performance by the Defendant/Appellant.

**29.** Here, it would be relevant to refer to Section 16 of the Specific Relief Act, 1963 which provides personal bars to Specific Relief. It reads as follows, as prevailing at the time of



the execution of the contract between the parties or filing the suit:

**“16. Personal bars to relief:** *Specific performance of a contract can not be enforced in favour of a person-*

(a) .....

(b).....

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

**Explanation.-** *For the purpose of clause (c) –*

(i) *Where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;*

(ii) *the plaintiff must aver performance of, or readiness and willingness to perform, the contract accordingly to its true construction.”*

(Emphasis supplied)

**30.** Here, **Sub-Section (c) of Section 16 of the Act** clearly shows that if the Plaintiff fails to perform his part of the essential terms and conditions of the contract, which was required to be performed by him, he cannot enforce the specific performance of the contract.

**31.** I further find that as per the terms of the contract between the parties, the Defendant/Appellant was entitled to deduct 10 per cent of the advance money given to him before paying back the rest amount to the Respondent/Plaintiff in case of default on the part of the Plaintiff/Respondent to pay the consideration money as per stipulation. As such, the



Plaintiff/Respondent was entitled to get back the paid amount of Rs.43,30,000/- only after deduction of 10 per cent from the same.

**32.** However, I further find that even the Defendant/Appellant has not paid back the amount payable by him to the Plaintiff/Respondent after deduction in view of the failure of the agreement for sale, nor has he ever offered.

**33.** Hence, the Defendant/Appellant is required to pay back the paid amount after deduction of 10 per cent of it. He is also required to pay reasonable interest on the amount due to be paid to the Plaintiff/Respondent to avoid unjust enrichment.

**34.** I further find that 10 per cent of Rs.43,30,000/- comes to Rs.4,33,000/- which is liable to be deducted from the paid amount of Rs. 43,30,000/-. Hence, the due amount payable by the Defendant/Appellant to the Plaintiff/Respondent comes to Rs.43,30,000/- minus Rs.4,33,000/- i.e Rs.38,97,000/-

**35.** I further find that the agreement for sale was executed on 23.08.2010 and Rs.25,00,000/- was required to be paid by 23.12.2010. Hence, after 23.12.2010, the paid amount was required to be returned by the Appellant to the Respondent. Hence, the Appellant is required to pay to the Respondent Rs.38,97,000/- with interest @ 6 per cent per annum since



23.12.2010 within two months, failing which he will be required to pay penal interest @ 12 per cent per annum.

36. In view of the default on the part of the Respondent/Plaintiff to perform his part of contract, the Appellant/Defendant cannot be penalized by directing him to pay any compensation. In fact, the Appellant/Defendant is liable to return the total paid amount to him only after deduction of 10 per cent from it.

### **Relief**

37. Hence, the impugned judgment/decreed is not sustainable. Accordingly, it is set aside and the Appellant is directed to pay only Rs.38,97,000/- with interest @ 6 per cent per annum since 23.12.2010 within two months. If the payment is not made along with the interest within the stipulated time, the Appellant would be liable to pay penal interest @ 12 per cent thereafter.

38. The Appeal stands part allowed, accordingly.

**(Jitendra Kumar, J.)**

ravishankar/shoaib

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