NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 91 of 2002

Munshi Ram **---- Appellant**

Versus

Smt. Narmada Kumari Devi and others **---- Respondents**

For Appellant	:	Shri Vishnu Koshta, Advocate
For Respondent No.4/State	:	Smt. M. Asha, Panel Lawyer
For other Respondents	:	None

Hon'ble Shri Justice Goutam Bhaduri

Judgment

30/06/2015

1. The instant appeal preferred under Section 96 of the Code of Civil Procedure is directed against judgment and decree dated 8-5-2002 passed in Civil Suit No.6-A/1992 by the Additional District Judge, Bemetara, District Durg, whereby the suit filed by the appellant/plaintiff for specific performance, permanent injunction, declaration and in the alternative for possession has been dismissed.

2. Brief facts of the case are that a suit was filed by appellant/plaintiff Munshi Ram for specific performance of an agreement that he had entered into with defendant No.1 Smt. Narmada Kumari Devi widow of Lal Rajendra Singh Gond on 22-7-1991 for purchase of land bearing Khasra No.1515 Part ad-measuring 3.44 hectares and Khasra No.1512/1 ad-measuring 0.85 hectares, total ad-measuring 4.29 hectares situated at Village Parpodi, Tahsil Saja, District Durg at the rate of Rs.7,251/- per acre.

3. As per the agreement, the total sale-consideration was valued at Rs.77,793.23, out of which, the plaintiff had paid an amount of

Rs.45,000/- to defendant No.1 at the time of agreement itself, i.e., on 22-7-1991 and it was agreed between them that remaining amount of Rs.32,793.23 will be paid by the plaintiff to defendant No.1 till 31-3-1992. It is further stated that after payment of the amount of Rs.45,000/-, defendant No.1, as per the agreement, handed over possession of the suit land to the plaintiff on 22-7-1991.

4. It is further stated that after the agreement, on demand made by defendant No.1, on 18-11-1991 an amount of Rs.500/-, was paid on 12-1-1992 an amount of Rs.1,000/- and on 30-1-1992 an amount of Rs.200/- were paid to defendant No.1 towards remaining amount of sale-consideration of the land. Thus, total amount of Rs.46,700/- was paid and an amount of Rs.31,093.23 was left to be paid towards the sale-consideration.

5. It was stated that despite having made the aforesaid payments by the plaintiff to defendant No.1, sale-deed of the suit land was not executed by defendant No.1 in favour of the plaintiff on 31-3-1992. However before 31-3-1992, on 6-3-1992, a sale-deed of a part of the suit land ad-measuring 4.72 acres was executed by defendant No.1 in favour of defendant No.2 Jai Singh. The sale-deed was got registered by power of attorney holder defendant No.3 Prahalad Singh on behalf of defendant No.1 on 10-3-1992. A prayer was further made by the plaintiff that by the said sale there exists all probabilities that Jai Singh and Prahalad Singh would be disturbing the possession of the plaintiff over the suit land and consequently permanent injunction was also sought for that the plaintiff may not be disturbed from his possession over the land. During the pendency of the suit the plaint was amended and it was added that by the subsequent sale-deed dated 11-3-1994 the land bearing Khasra No.1515/1 ad-measuring 0.72 hectares was further sold to defendants

Rohit and Vishram and by the sale-deed dated 11-3-1994 the land bearing Khasra No.1515/1 ad-measuring 1.68 hectares was further sold to defendants Rajesh and Vishram. Defendant Jai Singh, out of the suit land, transferred land bearing Khasra No.1515/2 ad-measuring 1.04 hectares in favour of defendant Anjor. The amendment was also incorporated to the extent that if the specific performance of the suit cannot be done then in such eventuality the advance amount of Rs.46,700/- already paid by the plaintiff may be refunded and the interest also be given on such amount.

6. Defendants No.1 and 3, namely, Smt. Narmada Kumari Devi and Prahalad Singh, respectively filed their written statement jointly and admitted that an agreement to execute a sale was executed between the plaintiff and defendant No.1, but the sale-consideration was fixed at Rs.18,000/- for unirrigated land per acre and for irrigated land it was Rs.25,000/- per acre. It was further stated that at the time of the agreement, amount of Rs.45,000/- was paid and defendant No.1 Smt. Narmada Kumari signed the papers on belief without reading them. It was further stated that when the defendants asked the plaintiff to get the sale-deed registered, according to them, then, it was denied by the plaintiff. Consequently, the land was sold to defendant No.2 Jai Singh and another person. It was further stated that the land was further sold to different persons and the possession was also given to them. Therefore, dismissal of the suit was prayed for.

7. Defendant No.2 Jai Singh filed his written statement separately and it was stated that he had the knowledge of the agreement between the plaintiff and defendant No.1 and on inquiry when it revealed that only Rs.45,000/- was paid by the plaintiff/purchaser, then after knowing it fully well, the said land was purchased by him for a sale-consideration of Rs.95,000/- and after the sale, he is in possession of the land and is cultivating the same.

8. Written statement was also filed by defendant No.6 Rajesh and defendant No.7 Vishram jointly. It was stated by them in their written statement that they had, after payment of the sale-consideration, got the sale-deed registered in their names and were placed in possession and they were *bona fide* purchasers and did not have any knowledge about the agreement which was existing, if any, between defendant No.1 Narmada Kumari and the plaintiff. Original defendant No.8, namely, Anjor through his legal heirs Ramkunwar and others filed written statement and denied the averments and the plaint allegations. Defendant No.5 Rohit did not file his written statement and the State/defendant No.4 which was a formal party also did not file its written statement.

9. The Court below, after hearing the parties and evaluating the evidence available on record, dismissed the suit for specific performance, however, decreed the suit for Rs.45,000/- in favour of the plaintiff along with interest @ 6% from 22-7-1991. Therefore, the instant appeal against the impugned judgment and decree.

10. Learned counsel appearing for the appellant would submit that the Court below has misdirected itself in reading and interpreting the pleading and evidence on record. He submits that reading of paragraphs 4, 5 and 6 of the plaint would clearly demonstrate that specific pleading is made that the plaintiff is ready and willing to perform his part of contract/agreement. He further submits that since during the pendency of the suit, certain sale was executed in respect of the suit land, the plaintiff had to amend his suit and made an alternative prayer that in case the Court comes to a conclusion that the specific performance of suit is not possible, then in such eventuality, a decree of Rs.46,700/- be granted along with interest.

He relied on **Motilal Jain v. Smt. Ramdasi Devi and others**[1] and submitted that under the facts of the case the plaintiff had claimed the compensation in lieu of the specific performance in case he is held to be disentitle to the specific performance. He further submits that applying such principle, the suit for specific performance of contract was not diluted, but in the facts, the sale-deed can be executed in respect of the same land. It is further submitted that the plaintiff is constrained to make such prayer and make the addition of the parties as sale of same land was executed to different persons who were the subsequent purchasers. He further relied on the averments of the written statement of defendant No.1 and stated that in paragraph 3 of the written statement it was admitted by defendant No.1 that defendant No.1 is ready and willing to transfer the land in favour of the plaintiff at the market rate of a value of a land of Rs.45,000/- and, therefore, a decree for specific performance to the extent be granted to the plaintiff.

11. I have heard learned counsel appearing for the parties and have also perused the pleadings and the evidence available on record. No representation is made on behalf of the respondents except the State. However, the State is a formal party/defendant and the litigation *inter se* is between the private parties and nothing much was submitted on behalf of the State.

12. Reading of the pleadings and the evidence shows that the agreement to sell is marked as Index A-1. The same is proved by the plaintiff. According to this agreement, the land bearing Khasra No.1515 Part ad-measuring 3.44 hectares and the land bearing Khasra No.1512/1 ad-measuring 0.85 hectares, total ad-measuring 4.29 hectares was agreed to be sold @ Rs.7,251/- per acre and an amount of Rs.45,000/- was

1 **AIR 2000 SC 2408**

received on the same day, i.e., 22-7-1991. It was further agreed that the remaining amount of Rs.32,793.23 was to be paid by a cut off date of 31-3-1992. Defendant No.1 Narmada Kumari, in her written statement, averred that the agreement was executed, but the sale-consideration was Rs.18,000/- for unirrigated land and for irrigated land it was Rs.25,000/-, thereby the agreement (Index A-1) though was admitted yet the dispute was with respect to the quantum of the sale-consideration. It is further stated that the agreement (Index A-1) bears signature of defendant No.1 Narmada Kumari and of defendant No.3 Prahalad Singh who was the power of attorney holder of defendant No.1. In cross-examination, defendant No.1 has further admitted that the agreement (Index A-1) was executed at her home and the other signatory to the document Prahalad Singh (defendant No.3) is son of her nephew, thereby it is revealed that they are in relation and defendant No.3 Prahalad Singh is educated upto M.A. Consequently, the finding arrived at by the Court below that the agreement (Index A-1) was signed by the seller/defendant No.1 without understanding it, cannot be accepted.

13. The plaintiff had stated that he had paid Rs.45,000/- which too is already admitted by defendant No.1 Narmada Kumari except the price of the land per acre. The plaintiff further had stated that after the agreement an amount of Rs.1,700/- was again paid in three installments. In the cross-examination, it was stated by the plaintiff that out of Rs.1,700/-, Rs.500/- was given to one Judawan but, subsequently, it was stated that the same was given to defendant No.1. The dispute is only with respect to the further payment of Rs.500/- in question, but the fact of payment of further sum of Rs.1,200/- is not in dispute and nothing has come on record except the amount of Rs.500/- which was said to be paid to one Judawan. Consequently, from the evidence of the plaintiff, it can be held that the

amount of Rs.1,200/- was further paid to defendant No.1 apart from Rs.45,000/-. Therefore, a reading of the evidence which has come on record this fact is substantiated that the plaintiff has paid total sum of Rs.46,200/- to defendant No.1 for purchase of the land and which is not denied by defendant No.1. Consequently, the existence of Index A-1 cannot be denied.

14. Further perusal of the plaint would show that along with defendant No.1 Narmada Kumari, Jai Singh and Prahalad Singh were arrayed as defendants No.2 and 3, respectively in the original suit. As per the plaintiff, the plaintiff was initially placed in possession of the suit land, but, subsequently, the other persons are in possession, therefore, the fact of addition of Jai Singh is also corroborated by the statement of the plaintiff that some of the suit land was sold to defendant No.2 Jai Singh and thereafter some of the suit land was sold to defendants No.5 and 6, namely, Rohit and Rajesh, and defendant No.2 Jai Singh further sold the land to one Anjor, who was arrayed as original defendant No.8 and whose legal heirs were brought on record after his death as defendants No.8A to 8E, namely, Ramkunwar Bewa and others. Perusal of the plaint shows that pleading with respect to defendants No.2 and 3, namely, Jai Singh and Prahalad Singh have been made that the sale-deed dated 6-3-1992 which was registered on 10-3-1992 executed in favour of the said defendants by the original owner of the suit land defendant No.1 Narmada Kumari be declared *void ab initio.*

15. Nothing has been stated against defendants No.5, 6, 7 and 8, namely, Rohit, Rajesh, Vishram and Anjor (represented by his legal heirs), respectively in the plaint. No relief has been claimed against them. A pleading has been made by way of amendment that the said defendants Rohit, Rajesh, Vishram and Anjor purchased the land during the

pendency of the suit and, therefore, they did not acquire any right over the said property. The particulars of such sale have not been stated in the plaint neither any evidence has been led and by way of amendment it was added in the prayer clause of the plaint that in the alternative, if the Court comes to a conclusion that the sale-deed cannot be executed in favour of the plaintiff, then, in such case, the amount of Rs.46,700/- be ordered to be refunded to the plaintiff along with interest.

16. Therefore, reading of the plaint allegations would show that the plaintiff was aware of the fact that the subsequent sale in respect of the same land has been made. From reading of the pleading and the evidence adduced by the parties this fact is established that the agreement was of the year 1991, therefore, the consideration time which has passed becomes relevant as on date. The evidence has also come on record that during the pendency of the suit, many sales had been executed in favour of different purchasers in respect of the same land. It is true that grant of decree of specific performance lies in discretion of the Court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. Ordinarily, the plaintiff is not denied the specific performance only on account of phenomenal increase in the price of the land, but at the same time, considerable time has elapsed. In the instant case, as the agreement was of 1991 and 23 years have elapsed, the same cannot escape the consideration of the Court.

17. The facts have been established that in respect of the same land different sales have been executed, as many as six persons were arrayed as defendants who were said to be purchasers. The plaintiff has also, by his amendment in the plaint, has stated that in case, a decree for specific performance is not possible, a money decree should be passed in his favour. Therefore, taking into account the totality of the circumstances

coupled with the facts that in respect of the same land different sale-deeds have been executed for which no specific relief is claimed for cancellation of such sale-deeds except one of 10-3-1992 in favour of defendant No.2 Jai Singh, it will not be equitable to grant a decree for specific performance in favour of the plaintiff which may ultimately defeat the sale which is made in favour of original defendants No.5, 6, 7 and 8, namely, Rohit, Rajesh, Vishram and deceased Anjor (represented by his legal heirs Ramkunwar Bewa and four others), respectively. Therefore, by a decree of specific performance almost eight persons will be affected and keeping in mind the amendment made by the plaintiff that he is ready to accept the amount of money decree, in the opinion of this Court, it does not appear to be equitable to grant a decree for specific performance.

18. Their Lordships of the Supreme Court, in **Zarina Siddiqui v. A. Ramalingam alias R. Amarnathan[2],** held as under:

> "**24**. It is well settled that remedy for specific performance is an equitable remedy. The court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that the Court's discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles."

19. Further, in **Satya Jain v. Anis Ahmed Rushdie[3],** their Lordships of the Supreme Court observed as under:

> "**40**. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the

2 **(2015) 1 SCC 705**
3 **(2013) 8 SCC 131**

exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasised that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in *P.S. Ranakrishna Reddy* v. *M.K. Bhagyalakshmi,* (2007) 10 SCC 231, and more recently in *Narinderjit Singh* v. *North Star Estate Promoters Ltd.,* (2012) 5 SCC 712, may be usefully recapitulated."

20. Similarly, in **K. Prakash v. B.R. Sampath Kumar**[4], their Lordships of the Supreme Court observed as under:

"**16**. The principles which can be enunciated are that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance: that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act,

4 **(2015) 1 SCC 597**

> that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree are established then the court has to exercise its discretion in favour of granting relief for specific performance."

21. Therefore, applying the aforesaid principles, taking the elapsed period of 23 years and the fact that for the same land different sale-deeds were executed in favour of different persons at different points of time, I do not feel it proper to relegate the parties back by decree of specific performance. Therefore, as an appellate Court, this Court is also restraining itself to exercise its discretion in favour of the appellant/plaintiff. Consequently, the decree for denial of the specific performance is held to be valid.

22. Now, coming to the part of the consideration paid, the evidence and the facts have come on record, admission has come on record, that undisputedly, an amount of Rs.46,200/- was paid to defendant No.1. Though defendant No.1 in her written statement has admitted that she is willing to execute the sale-deed for a value of a land of Rs.45,000/- but at the same time she has disputed the value of the land then existing. In absence of any other evidence as to the ownership of other land, the Court cannot create a contract between the parties, but at the same time, while denying the decree for specific performance, the amount of sale-consideration paid, admitted and proved, cannot be ignored. As has been held, the appellant/plaintiff has been able to prove that the amount of Rs.46,200/- was paid by way of a sale-consideration. This Court, while refusing the decree for specific performance, is of the opinion that the plaintiff is entitled to a decree for an amount of Rs.46,200/- which was paid by him as a way of sale-consideration. As a result, the money decree of

Rs.45,000/- is modified to Rs.46,200/- and in the facts and circumstances of the case, the plaintiff shall be further entitled to simple interest @ 9% per annum from defendant No.1 from 22-7-1991. Defendant No.1 shall further bear the expenses of the cost of the litigation of the trial Court as also that of the appellate Court.

23. Consequently, the appeal is allowed in part.

24. A decree be drawn-up accordingly.

Sd/-
(**Goutam Bhaduri)**
JUDGE

Gopal