

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

F.A.No. 101 of 2002

Shri Shivaram, son of Chiter Sahu, aged about 45 years, Farmer,
resident of village Akalwara, Tah. Saja, Distt. Durg (C.G.)

--- Appellant

Versus

1. Shri Banafer Sahu, son of Kartik Sahu, aged about 60 years,
Farmer, resident of village Hardawa, Tah. Saja, Distt. Durg (C.G).

2. Smt. Fekan Bai, wife of Pyarelal, aged about 35 years, Farmer,
resident of village Hardawa, Tah. Saja, Distt. Durg (C.G)

3. Bhurelal, son of Banafer, aged about 32 years, Farmer, resident
of village Thelka, Tah. Saja, Distt. Durg (C.G).

4. Bhururam, son of Banafer, aged about 30 years, Farmer,
resident of village Hardawa, Tah. Saja, Dist. Durg (C.G).

5. Smt. Tulsi Bai, wife of Ramnath, aged about 28 years, Farmer,
resident of village Ranka, Tah. Berla, Dist. Durg (C.G).

6. Mohan Bhaiya, son of Banafer, aged about 26 years, Farmer,
resident of village Hardawa, Tah. Saja, Dist. Durg (C.G).

7. State of Chhattisgarh, through the Collector, Durg (C.G).

---- Respondents

For Appellant	:	Mr. Rajnish Singh Baghel, Advocate.
For Respondent 1 to 6	:	Mr. Vimlesh Bajpai, Advocate.
For Respondent No.7/State	:	Mrs. Farha Minhaj, Panel Lawyer.

HON'BLE SHRI JUSTICE GOUTAM BHADURI

JUDGMENT/ORDER ON BOARD

07/09/2015

1. This appeal is against the judgment and decree dated
06.07.2000 passed by the Court of Additional District Judge,

Bemetara, in Civil Suit No.1-A/1996 whereby the suit filed by the plaintiff/appellant for specific performance was dismissed.

2. Briefly stated facts of the case are that the lands bearing Khasra Nos. 41, area 1.68 hectares and Kh.No.620 area 0.36 hectares which are situated at village Akalwada, P.H.No.26, Tahsil Saja, District Durg were agreed to be sold by one Banafer Sahu Respondent No.1 and his wife Suruj Bai on 30.05.1988. Pursuant thereto, an agreement of sale was executed. The sale consideration of land was fixed for Rs.55,000/-. It was pleaded by the plaintiff that at the time of execution of agreement on 30.05.1988, an amount of Rs.20,000/- was paid in advance as earnest money and the possession of the land was also given to the plaintiff and subsequently on 17.04.1990 the remaining amount was paid to the respondent No.1 and his wife Suruj Bai. It was contended by the plaintiff that after the delivery of possession of the said land to the plaintiff appellant, the land was developed and the documents *Rin Pustika* and copy of B-1 in respect of the land was given to the plaintiff on 29.01.1991. It was assured by the respondent/defendant that the plaintiff can get the sale deed executed to his convenience. However, the plaintiff was under apprehension that the defendants are trying to sell the land to others by making another *Rin Pustika*. After death of Suruj Bai her legal representatives were made as party/respondents. The State was made as formal party. The plaintiff had filed the suit for specific performance of the contract along-with prayer for issuing permanent injunction against respondents 1 to 6 and in the alternative, relief was

also sought that if for any reasons, the execution of the sale deed is not possible the amount of Rs.55,000/- paid to the defendants be refunded with interest @ 24% per annum.

3. Defendant 1 Banafar Sahu who was party to agreement of sale along-with defendants 2 to 6 who were legal representatives of Suruj Bai have filed joint written statement. It was stated that the suit land was owned by Suruj Bai and she was the exclusive owner. It was further stated that Suruj Bai has not entered into agreement for sale along-with plaintiff. Further it was stated that no amount was received by the defendants and the possession of the land was also not handed over to the plaintiff. It was also stated that the suit is barred by limitation.
4. After framing the issues, the learned court below has dismissed the suit however, the finding was given that the possession of the suit land has been handed over to the appellant/plaintiff.
5. The instant appeal is by the plaintiff/prospective purchaser. There is no challenge to the finding that the possession of the land is given to the appellant plaintiff. No cross appeal has been preferred. Therefore, the appeal is adjudicated on the issue that whether the denial of prayer for specific performance of the agreement is justified or not ?
6. Shri R.S. Bhagel, learned counsel appearing for the appellant submits that the evidence is on record vide Ex.P-1 Article-A that the entire sale consideration of Rs.55,000/- was received by the defendant/ respondent. He further submits that in view of such admission made, the court should have decreed the suit for specific performance. It is further submitted that the

finding with respect to the fact that possession of the land has been handed over to the plaintiff would go to show that actually the agreement was entered into between the parties. It was further submitted that the Court can infer about the oral agreement also as it has not been specifically denied despite the evidence on record that in respect of the suit land, an agreement existed. He, therefore, prays that the judgment and decree of the court below be set aside and the suit for specific performance be decreed.

7. Per contra, learned counsel for the respondents 1 to 6 would submit that though it was the appellant's case that the land was agreed to be sold by Banafar Sahu and his wife Suruj Bai, but the agreement would show that Suruj Bai was not a party to the agreement. He therefore submits that in such circumstances, when the vendor himself was not a party to the agreement, the inference cannot be drawn about the existence of the agreement. He further submits that virtually, it is a case where no agreement was existed which can be enforced. He submits that the judgment and decree of the learned court below is well merited which do not call for any interference.
8. I have heard learned counsel for the parties and have also perused the documents on record.
9. The plaintiff/appellant in his pleading and statement has contended that he entered into an agreement for purchase of certain suit land which is situated at village Akalawada from Banafar Sahu and Suruj Bai. It is further stated that the land was recorded in the name of Suruj Bai. After fixation of sale consideration of Rs.55,000/-, the agreement was entered on

30th May 1988 and on the same date, an amount of Rs.20,000/- was paid to Banafar and Suruj Bai. A perusal of the agreement styled as *Ekrarnama* Ex.P-1 would show that the agreement was executed by defendant Banafar Sahu and appellant/plaintiff Shivram. The agreement do not contain the signature of Suruj Bai. Likewise, another document which is placed on record is marked as Index-A.

10. If the statement of the plaintiff is read, he has stated that on 17.04.1990 another amount of Rs.35,000/- was paid to the defendants in addition to Rs.20,000/- paid on 30.05.1988 thereby the entire amount of sale consideration of Rs.55,000/- was said to have been paid. A perusal of the Index-A would show that it also do not contain the signature of Suruj Bai who is said to be sole owner of the suit land. The statement of the plaintiff witnesses Brij Bhushan Lal Shukla (P.W.2) would show that while referring to the agreement Ex.P-1 and Index A, he has stated that the sale agreement was in between Banafar and the plaintiff Shiva Ram. He has scribed the document styled as Index-A. This witness (P.W.2) further stated that while such document was scribed, Suruj Bai was not present on the spot. He further stated that the amount though was not transacted , however, Banafar has admitted that he has received the sale consideration of Rs.55,000/-. The trial Court has given a finding that the amount of Rs.55,000/- was received. Therefore, there is no dispute to the fact that sale consideration of Rs.55,000/- was paid to the seller Banafar. According to the plaintiff's own statement, the land was owned by Suruj Bai and she was not a party to the agreement.

- 11.** Admittedly, in this case, the document i.e., sale agreement do not bear the signature of Suruj Bai, therefore, it cannot be stated that Suruj was party to Ex.P-1. Even according to the admission of the plaintiff itself, the land belonged to Suruj Bai, therefore, if Suruj was not party to the agreement this cannot be inferred that a valid agreement was entered into by the original owner of the property to sell the land in favour of the appellant/plaintiff. In the result, the finding of the trial Court that no agreement was entered into between the original owner of land being seller and the purchaser appellant cannot be faulted with as per the evidence on record.
- 12.** The trial Court has given a finding that the plaintiff was put to possession of the land. The said finding of fact is not under challenge by the respondents. Therefore, in absence of any challenge to it, the same is affirmed.
- 13.** Therefore, after perusal of the entire record and evidence on record, I am of the opinion that in absence of any proof that the agreement was entered between the original land owner and the plaintiff, the decree for specific performance cannot be granted.
- 14.** In the result, the appeal fails and dismissed. No order as to costs.

Sd/-
GOUTAM BHADURI
JUDGE