

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**F. A. No. 109 of 2007**

Bisahu Son of Jageshwar Sahu, aged about 53 years, Agriculturist, Next Friend Smt. Koushilya Bai, wife of Shri Bisahu Ram Sahu, aged about 50 years, Guardian for Suit, Bisahuram, resident of Village Singhauri, Ward No.13, Tahsil, Bemetara, District Durg (C.G).

---- Appellant

Versus

1. Purushottam Vaishnav, Son of Sukhram Vaishnav, aged about 42 years, Agriculturist, Resident of Village Kanteli, Tahsil Bemetara, District Durg (C.G).
2. State of Chhattisgarh, Through the Collector Durg, District Durg (C.G).

---- Respondents

For Appellant	:	Mr. P.P. Sahu, Advocate.
For Respondent No.1	:	Mr. Sanjay S. Agrawal, Advocate.
For Respondent /State:	:	Mrs. Farha Minhaj, Panel Lawyer.

HON'BLE SHRI JUSTICE GOUTAM BHADURI**JUDGMENT/ORDER ON BOARD****16/09/2015**

1. This appeal is against the judgment and decree dated 30.06.2007 passed in Civil Suit No.15-A/2002 whereby the suit filed for specific performance by the respondent plaintiff namely Purushottam Vaishnav was dismissed and it was directed to refund the amount of sale consideration of Rs.80,000/- to the purchaser which was paid as a sale consideration. The said judgment and decree was subject of appeal before this Court. This Court in First Appeal No.109 of 2007 decided on

07.09.2012 framed additional issues as to whether the seller Bisahu was of unsound mind on the date of execution of agreement and further whether such agreement is enforceable. It was directed to the trial Court to record its finding on such issues and thereby remitted the matter back to the trial Court to record its findings. Subsequent to it, before the trial Court the seller defendant again on the basis of the issues framed adduced the evidence of witnesses and thereafter the trial Court by judgment dated 11.02.2014 recorded the finding that seller/ defendant No.1 Bisahu was not lunatic on the date of agreement of sale i.e., 15.06.2001 and was not suffering with any mental disorder. Consequently, the agreement Ex.P-1 was held to be validly executed. Subsequent to it, the said findings, judgment and decree of the Trial Court are under challenge before this Court. Therefore, with such findings, the instant appeal is for adjudication afresh.

2. Briefly stated facts of the case are that the suit was filed by Purushottam Vaishnav, the original plaintiff/respondent herein on the ground that defendant No.1 Bisahu, appellant herein, has entered into agreement of sale dated 15.06.2001 and agreed to sell the part of land bearing Khasra Nos.6/4, 15/14, 75/1 & 75/4, total admeasuring 0.695 RA situated at village Singhauri for a sale consideration of Rs.84,000/-. It was contended that out of sale consideration of Rs.84,000/-, Rs.80,000/- was received by the defendant in advance and agreement of sale was executed on 15.06.2001. It is further agreed that the remaining sale consideration of Rs.4000/- would be paid at the time of registration of the sale deed and the sale deed was agreed to be executed by 30.05.2002. It is further contended that the agreement of sale was scribed by one Prafull Chand Tiwari who was a document

writer and the said agreement was signed by Bisahu, defendant No.1 in presence of the witnesses Dukalaha Verma and Daya Ram who also signed the said agreement.

3. The plaintiff/respondent contended that he is ready and willing to pay remaining part of sale consideration but in order to defeat the agreement of sale, the land was further recorded in the names of his sons namely of Daulat Ram and Hariram in the revenue records which was subject of challenge in the revenue proceeding. It was stated that initially the names of sons were recorded but subsequently on appeal being made by the plaintiff Purushottam, the same was set aside by order dated 26.2.2002 passed by the SDO, Bemetara. The plaintiff contended that after lapse of agreed date i.e., 30.05.2002 for execution of the sale deed as per the conditions of agreement, the plaintiff requested the defendant to execute the sale deed but the same was not adhered to and therefore, two notices were served on defendant on 04.07.2002 and 18.07.2002 which the defendant refused to accept. Consequently, a civil suit was filed for specific performance of the sale. The plaintiff also contended that because of the fact that sale was not executed, the plaintiff has suffered loss, therefore, damages of Rs.5000/- was claimed and in the alternative it was prayed that an amount of Rs.80,000/- with interest should be refunded to the plaintiff in case the sale is not executed.
4. The defendant Bisahu was represented by its next friend with the permission of the Court on the ground that Bisahu is incapacitated for his mental condition to take decision in his favour or to adjudge the outcome of any litigation and the wife of the defendant Bisahu as next friend filed the written statement. In such written statement, the

execution of sale agreement was completely disowned/denied. It was contended that since the defendant Bisahu was suffering from mental illness, as such, any agreement which has been executed would be a nullity. It was contended that Bisahu being lunatic has not been able to take care of himself and at times, due to mental disorder he used to go out of the house and wanders here and there and for no reason, he used to scold/abuse family members and others, therefore, sometimes, he was required to be tied with cuffs. Therefore, it was contended that the document Ex.P-1 is completely outcome of fraud played by the plaintiff and cannot be executed by way of specific performance.

5. Initially, the trial Court by judgment and decree dated 30.06.2007 has refused to grant a decree for specific performance in respect of the sale of land, however, directed that amount of sale consideration paid to the defendant Bisahu be refunded with interest @ 6% per annum from 12.09.2009 within a period of two months, failing which, the rate of interest would be chargeable to the extent of 8% till the date of recovery. The said judgment was subject of appeal in first appeal No. 109/2007. This Court while adjudicating such first appeal by order dated 07.09.2012 recorded a finding that the trial Court having found the defendant as a person of unsound mind permitted the plaintiff to sue the defendant Bisahu through his guardian/next friend, but has omitted to frame the following issues before deciding the case on merits. This Court, therefore, framed two issues on 07.09.2012 which read as under.

- (i) Whether or not the defendant No.1 was a person of unsound mind on the date of agreement of sale deed, i.e., 15.06.2001 (Ex.P-1) ?
- (ii) If yes, whether the agreement of sale (Ex.P-1) is void and not enforceable in law as the same has been

executed by a person of unsound mind ?

6. Thereafter in exercise of power under Order 41 Rule 25, the case was referred to the trial Court with the following direction. Para 10 of the order dated 07.09.2012 is reproduced herein below:

10. In view of above, this matter is referred under Order 41 Rule 25 of the Code to the trial Court with the following discretions:

- i) The trial Court upon recording the evidence on the additional issues framed by this Court shall transmit the record to this Court with a copy of its report annexed thereto.
- ii) Such an exercise by the learned trial Court must be completed within a period of 3 months from the date of communication of this order.

7. Pursuant thereto, the trial Court recorded the evidence of Doctor namely Prakash Narayan Shukla, Psychiatrist, who treated the defendant and one more witness namely Madan Singh Verma was examined. The trial Court thereafter by its further order dated 11.02.2014 recorded its finding about the mental condition of Bisahu on the date of agreement i.e., 15.06.2001 and held that nothing has been placed on record to hold that the seller Bisahu was suffering with mental disorder on the date of execution of agreement. Consequently it was held that the agreement dated 15.06.2001 was valid one. The said findings, judgment and decree of the Trial Court are under challenge before this court.

8. Shri P.P. Sahu, learned counsel appearing for the appellant Bisahu would submit that after the matter was referred to the trial Court, the doctor who had treated the appellant Bisahu was examined. He would submit that it would be very relevant to note that the agreement which is on record is dated 15.06.2001 and the Doctor in his deposition stated

that he examined Bisahu on 04.09.2001 wherein Bisahu was shown to be suffering with Paranoid Schizophrenia. He further submits that the suit was filed on 12.09.2002 and even the permission to the defendant was granted to appear through the next friend and the evidence would reveal that it has come on record that Bisahu was suffering from mental disorder prior to execution of the agreement thereby it establishes the fact that on 15.06.2001, Bisahu was not in a fit state of mind to execute the document. Therefore, it is submitted that as per Section 12 of the Indian Contract Act 1872, Bisahu cannot be stated to be capable of understanding or forming a rational judgment which affects his interest and consequently, the agreement cannot be acted upon being outcome of fraud. He further submits that the circumstances also speak itself that almost maximum amount of Rs.80,000/- though was paid out of Rs.84,000/- and only Rs.4000/- was retained thereby it creates a doubt about the conduct and circumstances in which it exist. He further submits that the agreement also contains signature of the seller only thereby the purchaser cannot be allowed to enforce the agreement. With respect to the cross objection it is stated that the original judgment and decree was dated 30.06.2007 and at first round of litigation, the cross objection was not filed claiming relief for specific performance of the contract but after the matter was referred to the Trial Court and again when it came back with a finding on the issue by its order dated 11.02.2014 this cross objection has been filed. It is contended that it goes to show that it was entirely an after thought and respondent himself was not serious to enforce the claim for specific performance. He further submits that proceeding for recovery of amount was filed on 14.09.2007, therefore, the stand of respondent plaintiff is contradictory

and destroys the claim of decree for specific performance.

9. Per contra, Shri Sanjay S. Agrawal, learned counsel appearing on behalf of the respondent plaintiff would submit that despite the opportunity afforded to the appellant/ defendant Bisahu no evidence was brought on record so as to establish the fact that on the date of execution of agreement on 15.06.2001, Bisahu was suffering with mental disorder. He would submit that according to the statement of Doctor, for the first time on 04.09.2001 Bisahu was taken to the doctor which would go to show that on 15.06.2001 no mental disorder existed. It is further contended that from the statement of attesting witness Dukalha, this fact has clearly been established that on the date of execution, Bisahu was in fit state of mind and this fact is corroborated by the document writer P.W.6. He further contended that the evidence is on record that Dukalha was treated on 04.09.2001, in the year 1998 the sale deed was also executed by Bisahu and even in 1999 an election was contested by Bisahu. Therefore, it is submitted that cumulative reading of the facts would go to show that on the date of execution of the agreement of sale, Bisahu was in fit statement of mind.

10. I have heard learned counsel for the parties at length and have also gone through the documents and evidence on record.

11. A perusal of the record shows that voluminous evidence is on record. The record would reveal that initially on 30.06.2007, a decree was passed by the trial Court whereby the Court held that the defendant Bisahu represented through his next friend has failed to prove the fact before the Court that on the date of execution of agreement of sale i.e., on 15.6.2001 he was suffering from mental disorder. The said judgment and decree was subject of appeal and this Court in First Appeal bearing

No.109/2007 decided on 07.09.2012 framed additional issues and referred the case to the trial Court in exercise of powers under Order 41 Rule 25 and directed to return the case with findings on the additional issues framed. The additional issues were framed on the point that whether on the date of agreement of sale deed i.e., 15.6.2001 Ex.P-1, the defendant Bisahu was a person of unsound mind or not ?

12.After the case was referred to the trial Court, the record would show that the doctor treating Bisahu was examined on 20.12.2013. The Doctor has stated that on 04.09.2001 according to register of the patients, Bisahu was brought to the Hospital for the first time. He further stated that after examination of Bisahu, he was diagnosed with paranoid Schizophrenia and it was grave in nature. In the cross examination, he stated that he according to his records, Bisahu was not brought to the hospital before 04.09.2001 and he was not able to state the fact that how long he was suffering before the date of such examination. He further stated that subsequently he was again brought on 19.09.2001 and thereafter he had not treated. Apart from this evidence, the statement of Madan Singh Verma was recorded on 17th January, 2014. He also narrated the same fact that Bisahu was suffering with unsound mind for the last 20 years. Therefore, reading of the entire statement of the Doctor which was recorded after the matter was referred to the trial Court, would show that pertinent evidence has not come on record as to what was the condition of Bisahu on the date of execution of agreement i.e., 15.06.2001. According to the statement of Doctor, he was treated on 04.09.2001 whereas prior to that in the month of June 2001 the agreement was executed. The defendant Bisahu has taken a stand that on the date of agreement i.e., 15.06.2001 he was man of unsound mind.

When a transaction was attempted to be impeached on the ground that the person who has executed the document was a man of unsound mind, the initial onus undoubtedly lies on the person who comes up with the case that the executant was a person of unsound mind. Normally the presumption is of sanity. Therefore, in the present case, initially the burden was on the defendant Bisahu to show that on the date of execution of agreement i.e., 15.06.2001 he was man of unsound mind. When the matter was referred to the court below after the first round of litigation, Dr. Prakash Narayan Shukla was examined on 20.12.2013. The doctor has also not stated that on 15.06.2001 what was the mental condition of the executor Bisahu, therefore, the evidence is silent about mental state of Bisahu on the date of agreement.

13. At this juncture, if the evidence adduced by the plaintiff is examined that is of attesting witness P.W.3 Dukalha, he has categorically stated that the agreement was executed in his presence and he had scribed his signature along-with Bisahu. He further stated that after the agreement was reduced in writing, Bisahu had scribed his signature and as a witness he had also signed it. Further the document i.e., the revenue papers were also handed over by Bisahu itself which was attached along-with Ex.P-1. Perusal of the document Ex.P-1 would show that it contains copy of *Kist Bandi* B-1 and the map. The signature of Dukalha also appears at a place "A" to "A". The stamp paper Ex.P-1 is shown to have been purchased by Bisahu which bears his signature at its back. The statement of stamp vendor P.W.6 Prafull Chandra Tiwari, is also there wherein he stated that on 15.06.2001 an agreement was executed between Bisahu and Purushottam in respect of land situated at village Singhaury which was recorded in his register. The

record of register was marked as Ex.P-15. A perusal of Ex. P-15 would also corroborate the fact that recording of such transaction finds place in such register. The witness has stated that the agreement was written according to the instructions of Bisahu and the stamp paper was also brought by Bisahu. It is further stated by the witness that after writing the agreement, the contents thereof were read over and explained to Bisahu and after understanding the contents, Bisahu had signed it. In the cross examination, he further stated that earlier Bisahu was not known to him but since the person who was executing the sale deed disclosed his name as Bisahu, therefore, the same was written. Consequently, reading of the statement would show that witness P.W.6 was an independent witness as he was only professionally discharging his duties. On a suggestion given to him that Bisahu was insane, this was completely disowned/denied by him.

- 14.** It has been submitted by the appellant Bisahu that he was insane on the date of execution of the agreement dated 15.06.2001, but no evidence has been placed on the record to hold that during period of execution of agreement on 15.06.2001 Bisahu was incapacitated in mental capacity. A lunatic is not a person who is continuously in a state of unsoundness of mind and once it has been established that a person is a lunatic, the burden of proof is on the party who alleges that a document he relies on as having been executed by the alleged lunatic was executed by him during a lucid interval. In this case, if the complete evidence is examined it has been proved that when the document of sale agreement was executed, the seller Bisahu was in correct state of mind. Reading of the evidence in this case would otherwise establish this fact and nothing has come on record to state that on the date of execution of

agreement, the executor Bisahu was not able to understand and take a rational decision which affects his own interest. Further the evidence is on record that before such execution of agreement, further sale was also made by Bisahu vide Ex.P-12 in favour of one Paras Ram on 27.01.1998 and further, the document Ex.P-16 would show that he had contested the election at Bemetara. Therefore, from the general statement made by the plaintiff witnesses that he is lunatic for the last 8-10 years as would be evident from the evidence of Kanhaiyalal (P.W.2) who was examined on 10.05.2004, it cannot be conclusively held that at the time of execution of the agreement dated 15.06.2001 the executor Bisahu was not in fit state of mind. Because the statement of Kanhaiyalal would also show that in the intervening period at times Bisahu also used to behave in normal fashion. Therefore, considering all the evidence and reading it cumulatively, the finding of the trial Court whereby it is held that at the time of execution of sale agreement, it is not proved that Bisahu was suffering from insanity, cannot be held to be perverse and the findings are upheld.

15. With respect to cross objection raised by the respondent Purushottam, admittedly, initially when the appeal was filed by Bisahu, no cross objection was preferred and execution proceeding was filed for recovery of the amount. The matter was remitted back to the court below by order of this Court dated 07.09.2012 wherein the enquiry was directed to be made and after enquiry, the trial Court by its order dated 11.02.2014 gave a finding that on the date of execution of agreement i.e., 15.06.2001, it cannot be held that Bisahu was suffering with mental disorder, therefore, the appeal revived again. At that stage, the cross objection for execution of the sale deed has been prayed for. Presently,

the evidence is on record that after 04.09.2001, the doctor has certified the fact that Bisahu was suffering with mental disorder of paranoid schizophrenia meaning thereby he is incapable of understanding or forming any rational judgment which affects his interest. In this case, Bisahu was represented through his next friend, the wife. Under the facts and circumstances of this case and in view of the subsequent development which has taken place, it will be relevant to refer section 20 of the Specific Relief Act which reads as under:

“20 (2)(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

Therefore, taking the facts involved in this case, certainly under the existing facts of the present case, the performance of a contract would involve hardship on the defendant and non performance would not be involved so much hardship to the plaintiff.

16. Further the Supreme Court in the matter of **A.C. Arulappan v. Ahalya Naik reported in 2001 (6) SCC 600** held as under:

“If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the Court may not exercise its discretion in favour of the plaintiff..... if it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.”

17. The same preposition has been recently reiterated in ***Shamsher Singh & others V. Rajinder Kumar & others, reported in JT 2014 (5) SC 319.***
18. Considering the totality of facts and circumstances, this Court is not inclined to pass a decree of specific performance for execution of the

agreement.

19. In the result, the appeal fails and is dismissed. The impugned judgment and decree dated 30.06.2007 whereby the amount of Rs.80,000/- has been directed to be refunded is upheld. However, so far as it relates to interest granted by impugned judgment and decree, considering the facts involved in this case, it is directed that the amount of Rs.80,000/- shall be recoverable with simple interest @ 6% per annum from the date of agreement i.e., 15.06.2001 till the date of payment. The cross objection/cross appeal also fails and is dismissed in view of the aforesaid observations.
20. In the facts and circumstances, there shall be no order as to costs.
21. Accordingly, a decree be drawn.

Sd/-
GOUTAM BHADURI
JUDGE