

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 95 /2013

Manlal, S/o. Sahdev Sahu, Aged About 47 Years, Occupation-Agriculturist, R/o. Village Singhanpuri, Tahsil Kawardha, District Kabeerdham (C.G.)

---- Appellant

Versus

1. Urmila Bai, W/o. Mangal Das, Aged About 46 Years, Occupation Housewife.
2. Manohar, S/o. Mangal Das, Aged About 26 Years, Occupation Agriculturist.
3. Makhan, S/o. Mangal Das, Aged About 22 Years, Occupation Agriculturist.
4. Puran Das, S/o. Mangal Das, Aged About 18 Years, Occupation Agriculturist.
5. Laxman Das, S/o. Mangal Das, Aged About 14 Years, Minor, Through the Natural Legal Guardian Mother Amrika Bai, Widow of Mangal Das.
6. Amrika Bai, Widow of Mangal Das, Aged About 45 Years, Occupation Housewife.

Respondents No.1 to 6 are R/o. Village Singhanpuri, Tahsil Kawardha, District Kabeerdham (C.G.)

7. Gokul, S/o. Dinesh Sahu, Aged About 8 Years.
8. Ramu, S/o. Dinesh Sahu, Aged About 6 Years.

Respondents No.7 & 8 are Minor through the Natural Legal Guardian Father Dinesh Sahu, S/o. Bhuvan Sahu

Respondents No.7 & 8 are R/o. Village Singhanpuri, Tahsil Kawardha, Distt. Kabeerdham (C.G.)

9. State Of Chhattisgarh, Through the Collector, Kabeerdham (C.G.)

---- Respondents

For Appellant : Mr. Malay Shrivastava, Advocate.

For Respondent/State : Mr. Anupam Dubey, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

15/02/2016

1. The appeal is against the judgment & decree dated 21.01.2013 passed in Civil Appeal No.78-A/2012 passed by Additional District Judge, Kabeerdham. The appeal was preferred against the

judgment & decree dated 03.03.2011 passed in Civil Suit No.08-A/2010 by the Civil Judge Class-I, Kabeerdham (Kawardha).

2. The appeal is by the plaintiff. The trial Court decreed the suit against that an appeal was preferred by the subsequent purchaser of land which was allowed and judgment & decree was set aside, therefore, the instant second appeal.
3. The facts of this case, as pleaded by the plaintiff, are that the deceased Mangal Das entered into an agreement for sale of land bearing Khasra No.14/1 and out of the total land of 2.54 acres land situated at the southern part of the total land admeasuring 1.50 acre was offered to be sold. The plaintiff/appellant expressed his inability to purchase the entire land, therefore, such land was jointly agreed to be purchased i.e. 50-50 dismil by Pawan & Ranju along-with the plaintiff of 50 dismil. Since the plaintiff belonged to the tribal class, as such, the permission under Section 165 of the Land Revenue Code was required from the Collector and awaiting the permission initially an earnest money of Rs.18,000/- was paid by the plaintiff out of the total sale consideration of Rs.28,000/-. It was further agreed that rest of the amount would be paid at the time of execution of the sale deed. It was further pleaded that on 12.08.2004 the defendant required some amount for treatment of his mother, as such, an amount of Rs.4,300/- was further paid and rest of the amount of Rs.5,600/- was agreed to be paid at the time of execution of the sale deed. The pleading was further to the effect was that the land bearing Khasra No.14/1 admeasuring 50 dismil for which the permission was sought for, the Collector by its order dated 31.12.2009 granted permission but grant of such permission was concealed and on 20.01.2010 it was revealed that the same land has been sold in favour of Gokul and Ramu. Therefore, it was contended that the original seller without any rhyme or reason has

refused to execute the sale deed in favour of plaintiff and consequently the suit for specific performance was filed.

4. The suit was decreed by the Civil Judge Class-I, Kabeerdham, and having been assailed in appeal by the purchasers, the judgment & decree was set aside, therefore, this second appeal.
5. Learned counsel for the appellant would submit that without any rhyme and reason, the judgment & decree of specific performance granted by the trial Court has been set aside by the appellate Court and no reason has been assigned. It is further contended that the appeal was dismissed predominantly on the ground that the identity of the plot is not established but this fact is negated by the evidence, therefore, there was no reason to set aside the judgment & decree of the specific performance.
6. Perused the file, record of the Court below and also the evidence in the pleadings.
7. Perusal of the plaint would show that the suit was only filed for specific performance of sale deed. In the plaint, Gokul and Ramu, Son of Dinesh were also made defendants on the ground that they are the subsequent purchasers of the same land. The plaint does not contain the prayer neither for cancellation of the sale deed nor for any declaration to this effect. The suit is also not valued for the same. The suit is filed simpliciter for specific performance of the sale deed.
8. The agreement in this case has been filed as Ex.P-1, which is dated 03.03.2004. Ex.P-1 does not disclose any particular and identity of the land, it is only described as part of Khasra No.14/1. The document Ex.P-2 is the sale deed executed in favour of Gokul & Ramu, which according to the plaintiff is the same land i.e. Khasra No.14/1 (and 28/1) was sold to Gokul and Ramu. Therefore Ex.P-2

necessary contains the sale of land bearing Khasra No.14/1 as alleged by the plaintiff.

9. Perusal of the document would also show another agreement 03.03.2004, which is filed as Ex.P-3 which pertains to sale of land to the another person Pawan and another agreement dated 12.08.2004 which was filed and marked as Ex.P-4. This document records the further payment of amount. The agreement of sale contains the statement that the possession of the land has been given to the purchaser i.e. plaintiff but Ex.P-2 at the same time shows that the possession of land was given to the subsequent purchaser Gokul and Ramu as per the averments of the plaintiff. Primarily, therefore appears that the averments of handing over possession of land which is recorded in the agreement is negated by the averments of sale deed. The agreement Ex.P-1 also do not disclose the identity of the property. Therefore, if according to the plaintiff, the same property is agreed to be purchased if was sold to the other defendants i.e. Gokul & Ramu, the suit should have been valued for cancellation of the sale deed along with necessary prayer for cancellation of sale deed and possession too. The suit was only simplicitor for specific performance of the sale. When the another sale deed is existing in respect of the same land according to the averments of the plaint and the plaintiff have not pleaded for cancellation of such sale deed, the specific performance of the suit could not have been decreed. Therefore, in view of the above, no substantial question of law arises for consideration.

10. Accordingly, the appeal is dismissed at the motion stage itself.

Sd/-
(Goutam Bhaduri)
Judge