

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 24 of 2017**

1. Lal Kumar Patel S/o Shri Ajambar Singh Patel, Aged About 65 Years R/o Village Nansiya, Tahsil And District Raigarh Chhattisgarh
2. Laxman Patel @ Lachan Kumar Patel, S/o Shri Damrudhar Patel, Aged About 56 Years R/o Village Nansiya Tahsil And District Raigarh Chhattisgarh
3. Padumlal Patel, S/o Shri Ramcharan Patel, Aged About 75 Years R/o Village Nansiya Tahsil And District Raigarh Chhattisgarh
4. Smt. Tikeshwari Patel, Wd/o Late Yuvraj Singh Patel, Aged About 58 Years R/o Village Nansiya Tahsil And District Raigarh Chhattisgarh
5. Kamlesh Patel, S/o Late Yuvraj Singh Patel, Aged About 30 Years R/o Village Nansiya Tahsil And District Raigarh Chhattisgarh Defendants

---- Applicants**Versus**

1. Bansal Infratek & Company The Partnership Firm Through Partner Suresh Kumar S/o Shri Santlal Bansal, Aged About 62, Years Occupation - Business, R/o Friends Colony, Raigarh District Raigarh Chhattisgarh Plaintiff
2. The State Of Chhattisgarh, Through The Collector, Raigarh, District Raigarh Chhattisgarh Defendant No. 6

---- Respondents

For Applicant	:	Shri Roop Naik, Advocate
For Respondent No.1	:	None appears though served.
For Respondent No.2/State	:	Shri V.B.Singh, Panel Lawyer

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****19/05/2017**

1. This is the revision preferred by the applicants/defendants No. 1 to 5 against the order dated 08.12.2016 passed by First Civil Judge, Class-1, Raigarh in Civil Suit No.24-A/2016, by which, the trial Court while entertaining the application filed by the applicants under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code of 1908' in short), has rejected the same.

2. The undisputed facts of the case, in brief, are that the plaintiff's Company instituted a suit for declaration and injunction by submitting, inter alia, that one Yuvaraj, the predecessor-in-interest of the defendants No. 1 to 5, has agreed to alienate the property in question (hereinafter referred to as the 'suit land') bearing Kh.No.259 admeasuring 1.310 hectares situated at village Amlibhauna, Tahsil and District Raigarh by executing an agreement to sale on 23.10.2012 upon receiving an earnest amount. It is pleaded in the plaint that a public notice was made by one Ahilya Bai on 20.12.2012 in daily newspaper, by which, he came to know that the suit land is the disputed land as a case with regard to the suit land was pending in the Court of Raigarh. Despite of that, a notice dated 19.03.2013 was served upon him by said Yuvaraj whereby he was directed to get the sale deed registered by 19.04.2013. Upon receiving the said notice, the plaintiff has requested to get it free from its encumbrance and also for its demarcation prior to the execution of the sale deed.

3. It is pleaded further that on 13.12.2016, the plaintiff came to know that one of the defendants, namely, Laxman Patel is trying to alienate the suit land to one Ramsharan Agrawal, therefore, the plaintiff has been constrained to institute a suit in the instant nature by claiming a declaration to the effect that the plaintiff has a preferential right to purchase the suit land and defendants No. 1 to 5 be restrained from its alienation to anyone else.

4. The defendants No. 1 to 5/applicants, upon receiving the summons of the suit, appeared and have submitted an application under Order 7 Rule 11 of the Code of 1908 by submitting, inter alia, that since the entire claim of the plaintiff is based upon an agreement to sale, dated 23.10.2012, therefore, the suit as framed and instituted is neither valued properly nor maintainable. As a consequence, they prayed for its rejection.

5. While contesting the aforesaid application, it is stated by the plaintiff in his reply that the suit as framed is well within the pecuniary jurisdiction of the Court

and has been valued properly. It is contested further on the ground that while entertaining the application filed under Order 7 Rule 11 of the Code of 1908, the plaint averments alone are required to be seen, therefore, the application deserves to be rejected.

6. After considering the aforesaid rival submissions of the parties, the trial Court has rejected the said application by observing that the plaintiff has instituted a suit for declaration and injunction claiming preferential right to purchase the suit land on the basis of alleged agreement to sale and since the suit was not instituted for the specific performance of contract on the basis of the alleged agreement to sale, therefore, it is a duly constituted suit and, in consequence, rejected the said application by its impugned order dated 08.12.2016.

7. Being aggrieved, the applicants have preferred this Revision. Shri Roop Naik, learned counsel for the applicants submits that the suit as instituted by the plaintiff based entirely upon an agreement to sale dated 23.10.2012 is neither valued properly nor the same is maintainable. He submits further that on the basis of the alleged agreement to sale, the plaintiff is required to institute a suit for specific performance of contract by paying a proper court fee in accordance with law instead of filing a suit in the instant nature. Having failed so, the suit in the instant nature is not at all maintainable and is barred by law.

8. The respondent No.1/plaintiff, despite the service of notice upon him, has failed to appear, therefore, I have heard learned counsel for the applicants and perused the entire relevant papers annexed to this petition carefully.

9. In order to ascertain as to whether the suit as framed and instituted based upon an unregistered agreement to sale dated 23.10.2012 by claiming declaration and injunction with regard to the suit land is barred by law or not; for which, it is necessary to examine first the relevant provisions as prescribed under Section 53-A of the Transfer of Property Act, 1882, which reads as under:-

“53A. Part Performance.---Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

10. By virtue of the aforesaid provision, the transferee is entitled to resist any attempt on part of the transferor to disturb his (transferee) lawful possession under the contract of sale irrespective of the facts whether the contract of sale is registered or not and his position either as a plaintiff or as a defendant would make no difference. However, it would certainly make a difference, if it is executed on or after 24.09.2001 without having its registration when the Act known as 'The Registration and Other Related Laws (Amendment) Act, 2001' (No.48 of 2001) (hereinafter referred to as the Act No.48 of 2001) has come into force. By virtue of Section 10 of the said Act, the words as mentioned and underlined aforesaid [“the contract though required to be registered, has not been registered, or”] are omitted with effect from 24.09.2001. The said amended provision after omitting the relevant words as mentioned and underlined herein above is relevant for the purpose is reproduced as under:-

“53A. Part Performance.---Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the

contract,

then, notwithstanding that [] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

11. In view of the aforesaid amended provisions, no relief under Section 53-A of the Transfer of Property Act, 1882, would be available to the transferee on the basis of contract of sale, if executed on or after the aforesaid cut off date, i.e., 24.09.2001 without having its registration. This interpretation of mine has been fortified by the provision prescribed under Section (1A) of Section 17 of the Registration Act, 1908, which has also been inserted with effect from 24.09.2001 by virtue of Section 3 (a) of the said Act No. 48 of 2001. The said insertion as incorporated in the Registration Act, 1908 is relevant for the purpose is reproduced herein as under:

“(1A) The documents containing contracts to transfer for consideration, any immoveable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.”

12. A close scrutiny of the aforesaid provision would make it clear that if the documents have been executed on or after the commencement of the said Act No.48 of 2001 and if such documents are not registered, then they have no effect for the purposes of the said amended Section 53-A of the Transfer of Property Act, 1882. Consequently, in view of the amended provisions of Section 53-A read with Section 17 (1A) of the Registration Act, no relief under Section 53-A will be available if the contract though required to be registered under the law has not been registered. Thus, by mandate of Section 17 (1A) of the Registration Act, any document containing contract to transfer for consideration any immoveable

property is compulsorily to be registered where such a document is intended to be used under Section 53-A of the Transfer of Property Act, 1882. The said provision provides a substantive right although it can be used only as a shield.

13. Thus, in view of the aforesaid specific provision, the benefit of Section 53-A of the Transfer of Property Act, 1882, can be used with regard to the document if executed on or after the commencement of the said Act No. 48 of 2001 only upon its registration.

14. Reverting back to the case in hand, the plaintiff's instant claim for declaration and injunction has been instituted solely upon an unregistered agreement to sale dated 23.10.2012 executed much after the said cut off date, i.e., 24.09.2001. Therefore, under such circumstances and based upon the aforesaid observations, he can not take the benefit of Section 53-A of the Transfer of Property Act, 1882, and his claim based upon such an unregistered document is certainly would not be held to be maintainable. At this juncture, the provisions of Section 41(h) of the Specific Relief Act, 1963, cannot be overlooked which provides very specifically that no injunction, as claimed herein, can be granted if equally efficacious remedy is available by any other usual mode of proceeding. The said provision reads as under:

“41. Injunction when refused. --- An injunction cannot be granted---

(a)	xxxx	xxxx	xxxx	xxxx	xxxx
(b)	xxxx	xxxx	xxxx	xxxx	xxxx
(c)	xxxx	xxxx	xxxx	xxxx	xxxx
(d)	xxxx	xxxx	xxxx	xxxx	xxxx
(e)	xxxx	xxxx	xxxx	xxxx	xxxx
(f)	xxxx	xxxx	xxxx	xxxx	xxxx
(g)	xxxx	xxxx	xxxx	xxxx	xxxx

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;”

15. In view of the aforesaid mandatory provisions, the suit as framed and instituted instead of claiming efficacious relief of specific performance of contract based upon such an unregistered agreement to sale cannot be held to be

maintainable.

16. Although based upon the aforesaid discussions, the plaintiff is not entitled to seek the relief for declaration and injunction on the basis of such an unregistered document, but irrespective of its non-registration, the alleged document executed on 23.10.2012 may be received as evidence of a contract only if a suit for specific performance of contract is instituted as evidenced by the provisions prescribed under Section 49 of the Registration Act, 1908. The said provision is relevant for the purpose is reproduced herein as under:-

“49. Effect of non-registration of documents required to be registered.--- No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall--

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.]”

17. By virtue of the abovementioned proviso to Section 49 of the Registration Act, the plaintiff's alleged document, which is an unregistered agreement to sale and executed on 23.10.2012 may be received as evidence of a contract, but that can be taken into consideration only in a suit for specific performance of contract under Chapter II of the Specific Relief Act, 1877 and not in any other suit as claimed herein by him.

18. In view of the aforesaid discussions, the plaintiff who has chosen to institute a suit for declaration and injunction, instead of instituting a suit for specific performance of contract based upon such an unregistered document executed much after the said cut off date, i.e., 24.09.2001, cannot be held to be a duly constituted suit. Accordingly, in my opinion, suit as framed and instituted is

apparently barred by law. Consequently, the order impugned rejecting the application filed under Order 7 Rule 11 of the Code of 1908, deserves to be and is hereby set aside. The suit as framed and instituted is, therefore, dismissed being barred by law.

19. Resultantly, the revision is allowed. There shall be no order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge