

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**C.R. No. 159 of 2017**

1. Chhedilal Shukla S/o Late Shri Ramadhar Shukla, Aged About 63 Years R/o Kududand, Bilaspur, Tahsil And District Bilaspur Chhattisgarh, Through Power Of Attorney Holder Shri Santosh Kumar Shukla, S/o Chhedilal Shukla, Aged About 50 Years, R/o House No. 290, Bastipara Newra, P. S. Kota, Tahsil Takhatpur, District Bilaspur Chhattisgarh.

---- Applicant**Versus**

1. Vijay Kumar Agarwal S/o Shri R. C. Lal Agrawal, Aged About 38 Years R/o Vinoba Nagar, Jhula Ghar Gali, Bilaspur, Tehsil And District Bilaspur (Chhattisgarh)
2. Neeraj Sharma, S/o Shri B. P. Sharma, Aged About 35 Years R/o Torwa, Bilaspur, Tehsil And District Bilaspur (Chhattisgarh)
3. Smt. Surajbai, Wd/o Late Chandrika Prasad Kachi, Aged About 63 Years R/o Village Mangla, Tehsil And District Bilaspur (Chhattisgarh)
4. Devishankar, S/o Late Chandrika Prasad Kachi, Aged About 46 Years R/o Village Mangla, Tehsil And District Bilaspur (Chhattisgarh)
5. Rameshwari, D/o Late Chandrika Prasad Kachi, Aged About 41 Years R/o Village Mangla, Tehsil And District Bilaspur (Chhattisgarh)
6. Ranjita, W/o Mithlesh Kashyap, Aged About 36 Years R/o Telipara, Old Bus Stand, Bilaspur, Tehsil & District Bilaspur (Chhattisgarh)
7. Ruhi Bai, D/o Late Chandrika Prasad Kachi, Aged About 27 Years W/o Sushil Kumar Kashyap, R/o Tarbahar, Bilaspur, Tehsil & District Bilaspur (Chhattisgarh)

---- Non-applicants

For Applicant:

Shri Sourabh Sharma, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****19.09.2017**

1. Heard on admission.
2. This Revision has been preferred by defendant No. 6 Chhedilal

under Section 151 of the Code of Civil Procedure, 1908(hereinafter referred to as the CPC) against the order dated 31.08.2017, whereby the application filed by him under Order 7 Rule 11 read with Section 151 of the CPC has been rejected.

3. The undisputed facts of the case are that the plaintiffs Vijay Kumar and Neeraj Sharma instituted a suit for specific performance of the contract on 29.07.2010 on the basis of the agreement to sale dated 17.04.2009 which has been executed by Defendants No. 1 to 5 in favour of them. During the pendency of the suit, the present applicant- Chhedilal has moved an application for his impleadment in the suit as per the provisions prescribed under Order 1 Rule 10 of the CPC. The said application was allowed and accordingly he was impleaded on 29.06.2013. After his impleadment, the Defendant No. 6 has submitted an application under Order 7 rule 11 read with Section 151 of the CPC on 11.05.2017 praying for rejection of the plaint on the ground that the suit property was already purchased by him on 27.12.2000, therefore, Defendants No. 1 to 5 are not at all entitled to execute the alleged agreement to sale dated 17.04.2009 in favour of the plaintiffs. The plaintiffs' suit based upon the alleged agreement to sale is therefore not at all sustainable and liable to be rejected.

4. The application was contested by the plaintiff No. 2 denying the averments of the said application. The trial Court, after considering the said application, has rejected the same by its impugned order dated 31.08.2017 by observing that since the suit is already in evidence stage, therefore, the application is liable to be rejected and accordingly, it was rejected.

5. Being aggrieved, the Defendant No. 6 has preferred this revision. Shri Sourabh Sharma, Counsel for the Applicant submits that order impugned as passed by the trial Court, without assigning proper reasons while rejecting the application filed under Order 7 rule 11 read with Section 151 of the CPC is apparently contrary to law. He submits further that since the suit property had already been purchased by defendant No. 6 Chhedilal from Defendants No. 1 to 5 on 27.12.2000, through their power of attorney holder namely Arun Singh Thakur, therefore, the Defendants No. 1 to 5 were not at all entitled to execute alleged agreement to sale in favour of plaintiffs. Without considering this material facts, the trial Court has committed gross illegality in rejecting the application, therefore order impugned be set aside while rejecting the plaintiffs' suit.

6. I have heard learned Counsel for the Applicant and perused the entire relevant papers annexed with this revision carefully.

7. Indisputably, the plaintiffs have instituted the suit on the basis of the agreement to sale dated 17.04.2009 executed by defendants No. 1 to 5 in their favour. The defendant No. 6 Chhedilal is, admittedly, not the party to the alleged agreement to sale dated 17.04.2009. By virtue Section 19 of the Specific Relief Act, 1963, the specific performance of contract could be enforced only against the parties to the agreement to sale. Therefore, at his instance, the suit cannot be rejected while entertaining the application filed under Order 7 rule 11 of the CPC. The grounds as raised by him is apparently not sustainable. Besides, the suit was filed in the year 2010 and the present applicant was impleaded in June, 2013 and four years thereafter the instant application under Order 7 Rule 11 read with Section 151 of the CPC has been made, therefore, under such circumstances, the

application is liable to be rejected. Consequently, the application is rightly rejected by the trial Court.

8. In view of the aforesaid discussions, I do not find any substance in this revision. Accordingly, the revision being devoid of merits and substance is hereby dismissed. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Nikita