

**HIGH COURT of CHHATTISGARH, BILASPUR**  
**First Appeal No.149 of 2006**

Ramesh Kumar Mishra, aged about 63 years, S/o late Shri Banwari Prasad Mishra, Agriculturist, R/o Motipara, Durg, Tehsil and District Durg (CG).

---- Appellant

**Versus**

1. Harminster Singh Hora, aged about 48 (44) years, S/o Shri Amrik Singh Hora, occupation Transport Business, R/o Sai Nagar, Raipur, Tehsil and District Raipur (CG).
2. State of Chhattisgarh through the Collector, District Office, Durg, Tehsil and District Durg (CG).

---- Respondents

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|---------------------|---|-------------------------------------------------|
| For Appellant       | : | Shri Vivek Ranjan Tiwari, Advocate.             |
| For respondent No.1 | : | Shri GD Vaswani and Shri MPS Bhatia, Advocates. |

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**SB: Hon'ble Shri Justice P. Sam Koshy**

**JUDGMENT**

**Reserved on 08.09.2017**

**Delivered on 01/11/2017.**

1. The present is a First Appeal by the defendant assailing the judgment and decree dated 10.05.2006, passed by the 9<sup>th</sup> Additional District Judge (FTC) Durg, Chhattisgarh, in Civil Suit No. 31-A/2004.
2. The fact, in brief, is that the plaintiff/respondent No.1 filed a suit for specific performance of contract. The relief sought for was a direction to the present appellant for execution of the agreement for sale entered into between the plaintiff with the present appellant in respect of the suit property situated at Khasra No.358/1 measuring 1.75 acres, at Tahsil and District Durg. According to the plaintiff, he had entered into an oral agreement for sale on 02.08.2000 with the present appellant for purchase of the aforementioned suit property

@2.75 lakhs in acre and for which an amount of Rs.51,000/- was also paid as an advance amount. Later a written agreement was duly executed and signed between the parties which was marked as Annexure P/1 on 09.08.2000 with a condition for sale to be completed within 3 months by paying the entire amount. However, since the present appellant is said to have not shown any interest.

3. The plaintiff had to file a civil suit seeking a relief of specific performance of contract praying for a direction to the present appellant, the defendant before the trial Court for the sale to be completed and the sale-deed be got registered in respect of the transaction between the parties. The case was registered as Civil Suit No. 31-A/2004, which stood allowed in favour of the plaintiff vide the impugned judgment where the direction was issued by the Court below to execute the sale-deed and get the document registered within a period of 4 months and with consequential directions.
4. The contention of the learned counsel for the appellant is that the plaintiff who is said to be alleged purchaser did not make any efforts of fulfilling his part that of paying the balance amount and getting the sale-deed executed and getting it duly registered as is proved from the first notice issued by the plaintiff on 08.04.2002 i.e. after one year, 3 months, 23 days to be precise. That the second notice was issued immediately before filing of the civil suit i.e. on 01.08.2003 and the suit was filed on 07.08.2003, thus there was a default and was not interested. According to the plaintiff, there was nothing to show the preparedness on the part of the plaintiff or any efforts which the plaintiff has made for the execution of the agreement.

5. It was further contended by the appellant that as per the agreement itself, the property was to be registered in the name of plaintiff within 3 months which when it did not occur the deal stood automatically cancelled and there was nothing for the plaintiff left for being executed. Further, there were certain requirements which had to be done before the sale-deed could be registered like the measurement/demarcation of the suit property which also did not take place nor did the plaintiff show any interest in getting the suit property measured or demarcated within the period within which the sale-deed had to be duly executed and registered.
6. According to the appellant, the plaintiff has failed to show his readiness and willingness for the sale to be complete. According to the appellant, the case of the plaintiff gets hit by sub-section (c) of section 16 of the Specific Reliefs Act. According to the appellant, if 15.07.2000 is accepted as the date on which the oral agreement was executed, then the case of the plaintiff would have been definitely barred by limitation and the trial Court has erred in not appreciating these factual aspects as well as the legal implications involved in the case and thus prayed for setting-aside of the impugned judgment and decree and to hold that the plaint of the respondent No.1/plaintiff be dismissed.
7. The appellant referred to the evidence/statement of defendant and drew attention of the court to the acceptance of the defendant of there being an oral agreement on 15.07.2000. This fact also stands admitted in the plaint itself so far as the execution of the oral agreement is concerned. According to appellant since the oral

agreement took place on 15.07.2000, for all practical purposes once when the appellant-defendant was not fulfilling the promise made as per agreement, the plaintiff should have immediately filed the suit. In the instant case the suit was filed only on 07.08.2003 which would reveal that the suit was filed after more than three years and as such the suit was barred by limitation.

8. Counsel for the appellant-defendant further referred to the statement of plaintiff deposed before the court and submits that from the reading of statement itself it would reveal that there was nothing to show any preparedness or efforts made by the plaintiff seeking for execution of the agreement. He further relied upon the statement of PW-3, Keju, and submitted that it proves that there was no Commissioner appointed so far as the measurement of the suit property with which it could have been demarcated which was also supposed to be done before the sale deed could have been executed between the parties.
9. The appellant relied upon the decision of the Supreme Court in case of Padmakumari & Ors. Vs. Dasayyan and Ors., 2015(8)SCC 695. In addition, he also relied upon the decision of this High Court in cases of Shankarlal Bijreja Vs. Ashok B Ahuja, 2011(1) CGLJ 498, Diwakar Mullick Vs. Kumari Ganga Khandelwal & Another, 2016 ILR 138.
10. Per contra, Shri GD Vaswani, learned counsel appearing for the respondent-plaintiff opposing the appeal submits that the appeal is totally misconceived and has no substance and the same deserves to be rejected. According to him, the appellant-defendant has failed to show any strong plea or evidence with which it could be said that the

trial court while passing the impugned judgment and decree have committed any error of law on facts. According to him, the findings of the court below is after due proper appreciation of the evidence which have come on record and as such there is no scope of interference left so far as issue of limitation is concerned. He further submits that indisputably Ex. P/1 is an agreement which was executed between the parties. Even if there would had been an oral agreement on an earlier occasion that by itself would not be taken as the time from which the limitation would start as the subsequent development that has taken place between the parties is that of an execution of written agreement between the parties and for all practical purposes the limitation would start from the date the written agreement was entered into between the parties and which is 09.08.2000. From the date of execution of written agreement the suit is well within the time as the same was filed on 07.08.2003.

11. Counsel for the respondent-plaintiff referred to the deposition of DW-1, Ramesh Mishra, wherein he has stated that measurement of property was not done. Since the property was not measured or demarcated, the sale deed could not have been executed and thus the measurement and demarcation part had to be done by the appellant-defendant. The measurement and demarcation part was an action which was supposed to be carried out by the defendant. Thus, prayed for rejection of the appeal.
12. Having heard the rival contentions put forth on either side and on perusal of the records, so far as the issue of limitation is concerned, this court is of the opinion that the issue of limitation raised by the

appellant-defendant would not be sustainable for the reason that even though there is an averment so far as oral agreement between the parties to have been entered into on 15.07.2000, but what is relevant and which cannot be brushed aside is that, after oral agreement was entered into both the parties subsequently executed a written agreement on 09.08.2000 which has also been duly marked as Ex. P/1 and for all practicable purpose since the oral agreement gets subsequently merged into a written agreement, it would be the date of execution of the written agreement which would be material for counting the period of limitation, if any, in respect of any dispute which arise out of the agreement between the parties. The written agreement was executed on 09.08.2000 and the civil suit in the instant case was filed within three years from the date of execution of the written agreement and in the given factual matrix of the case the issue of limitation raised by the present appellant-defendant is not sustainable.

13. Now left is only the ground that of plaintiff showing no preparedness or willingness or his readiness for the execution of the sale deed. For adjudication of the said issue, it would be relevant at this juncture to refer to the evidence which have come on record.
14. The plaintiff had examined himself and in his affidavit filed as examination in chief he has categorically stated that it was agreed between the parties on 02.08.2000 and the agreement was written down on the stamp paper on 09.08.2000 as is evident from paragraphs 2 & 3 of his affidavit. Further, from the paragraph 4 what is reflected is that as per plaintiff since the present appellant

defendant did not cooperate in getting the sale deed executed and registered, the plaintiff had sent a legal notice for the first time on 08.04.2002. Reminder to the said notice, marked Ex. P/2 was next sent only on 01.08.2003 i.e. P/5 which was again a notice sent through a different lawyer and thereafter the suit was filed on 07.08.2003.

15. From the evidence as well as from the cross examination of the plaintiff it does not reflect as to what were the specific steps taken by the plaintiff within a period of three months within which, as per agreement the sale deed had to be executed and registered. From the evidence of plaintiff it also does not reflect as to what steps the plaintiff have taken from the date of execution of the agreement between 09.08.2000 to 08.04.2002 i.e. date on which the first legal notice was sent i.e. there was gap of almost two years in between and no specific details is available either in the plaint or in the evidence of the plaintiff.
16. The plaintiff has got the statement of one Kejau recorded who was examined as PW-2. So far as PW-2 is concerned, he is an employee/servant of plaintiff. However, in his evidence there does not seem to be any averment so far as PW-2 being aware of any agreement which was entered into between the parties. His evidence was confined to the aspect that the appellant have not intimated him in respect of the measurement/demarcation of the suit property. PW-2 in his cross examination also states that he was only informed by the plaintiff about four years back that there is a talk for the purchase of land belonging to the appellant-defendant by the plaintiff. So far as

the readiness and willingness part is concerned, this witness of the plaintiff i.e. PW-2 has also not been able to establish or support the plaintiff as the said witness is totally silent on this aspect.

17. Coming to the evidence of present appellant, Ramesh Mishra, DW-1, in his deposition under Order 18 Rule 4 CPC before the trial court has accepted the agreement having entered into. According to appellant-defendant, he had taken a loan for the purpose of marriage of his daughter and for returning the same, he had decided to sell his land. He has further deposed that PW-2, after sometime had come to him and informed that plaintiff had expressed his unwillingness to purchase the land agreed upon, until the appellant/defendant sells the portion of land which is adjoining to road also. He has further stated that it was explicit in the agreement itself that in case if the plaintiff does not show any keen interest or try to avoid the execution of sale deed within three months, the agreement would automatically stand cancelled.
18. In his cross examination, the appellant has specifically stated that during this period of three months, he had got measured and demarcated the land and the same was in presence of PW-2, the employee of the plaintiff. The appellant has also in paragraph 18 of his cross examination given details of the persons who had come for demarcation and measurement of the property. The appellant has categorically stated that so called first notice dated 08.04.2002 was never received by him and it is only the notice dated 02.08.2003 which he had received. In support of defence, DW-2, Shatruhan Nishad and DW-3, Heera Das Manikpuri, were also examined. Both

of whom who are witnesses to the measurement and demarcation of the property conducted by the Patwari, have also disclosed the fact that PW-2, Kejau, an employee of plaintiff, was also present at the time of measurement and demarcation. In addition to the statement of witness Jalam Singh, the Patwari, who had measured and demarcated the land was also examined as DW-4, who has also supported the case of the appellant so far as the property having been duly measured and demarcated.

19. Now if we look into the legal position, one of the most essential element for establishing a case for grant of decree of specific performance is the fulfillment of essential requirement of Section 16(c) of the Specific Relief Act, which for ready reference is reproduced herein as under:

“16(c). who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.”

20. A plain reading of aforesaid provision clearly reflect that the provision of law itself mandates readiness and willingness on the part of the plaintiff not only to aver but also to prove and thus it is a condition precedent for obtaining a relief of grant of specific performance. In a suit for specific performance, the plaintiff must aver and prove continuous readiness and willingness to perform the contract on his part from the date of the contract.
21. In case of Chand Rani Vs. Kamla Rani, AIR 1993 SC 1742 it has been held by the Supreme Court that in case of sale of immovable property, there is no presumption as to time being the essence of

contract. Even if it is not being the essence of the contract, the court may infer that it is to be performed in a reasonable time.

22. In the instant case, the period of completion of sale as per the agreement itself was three months. Further, in between 09.08.2000 i.e. date of agreement to 08.04.2002 i.e. first day of the issuance of the legal notice to the appellant, the plaintiff has not been able to show any sort of evidence except for oral statement being made of repeatedly approaching the appellant. So far as his readiness and willingness is concerned, neither in his plaint nor in his averment before the court below has he been able to establish or satisfactorily explain as to what were the specific steps and efforts that were made by the plaintiff for completion of the contract agreement.
23. Under Section 16 (c) of the Specific Relief Act, it is incumbent on the part of the party who want to enforce the specific performance of contract to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. The Supreme Court has been very categorical on this issue and there is a catena of decisions rendered under Section 16(c) of the Act. To refer a few is Coromandel Indang Products (P) Ltd. Vs. Garuda Chit & Trading Co.Pvt. Ltd, 2011 (8) SCC 601, J.P. Builders Vs. A. Ramadas Rao, 2011 (1)SCC 429.
24. Another fact which cannot be brushed aside is that the agreement itself envisages a condition that in the event of plaintiff not showing any keen interest or try to avoid the execution of sale deed, the agreement would automatically stand cancelled. There is nothing on record of any effort being shown by the plaintiff during the said period

of three months or till the first legal notice was made after about two years time i.e. on 08.04.2002. Plaint as well as evidence is silent in this regard. The Supreme Court under the said situation in a case of Dadarao Vs. Ramrao, 1999(8)SCC 416 has held that “where agreement itself providing for contingencies of seller refusing to sell and purchaser refusing to buy by stipulating the return of earnest money plus another sum in either circumstances, on facts, there was no obligation on the seller to complete the sale transaction and the contract could not be specifically enforced”. In the instant case also since there was no efforts made by the plaintiff during the period of three months time with which it could be said that he has shown keen interest in getting the sale deed executed. As per terms of the contract itself, it stood cancelled beyond the period of three months.

25. In case of N.P. Thirugnanam Vs. Dr. R. Jagan Mohan Rao, 1995 (5)SCC 115, the Supreme Court has held that “continuous readiness and willingness on the part of the plaintiff is a condition precedent for grant of relief which plaintiff must establish on evidence. Availability of consideration amount, conduct of the plaintiff and attending circumstances have to be taken into account by the court in adjudging readiness and willingness of the plaintiff.” In the instant case, the plaint and the evidence of the plaintiff are silent so far as plaintiff's readiness and willingness in getting the sale deed executed is concerned. On the contrary, there is evidence on record by the appellant-defendant that so far as his part of contract in getting the suit property measured and demarcated stood established from the evidence of independent witness particularly that of Patwari who had

got the measurement done.

26. Thus, from the total facts and circumstances of the case, the only inference which can be arrived at is that the plaintiff was not ready and willing to perform his part of contract. Neither is there any evidence showing the efforts and steps taken by the plaintiff for the execution of the sale deed and on such finding when arrived at, the only option left with the court is to order of dismissal of the suit of the plaintiff by setting aside the judgment and decree passed by the trial court.
27. As a consequence, the appeal stands allowed and the judgment and decree dated 10.05.2006 passed in Civil Suit No.31-A/2004 is hereby ordered to be set aside.
28. Decree be drawn accordingly.

Sd/-  
(P. Sam Koshy)  
**Judge**