

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 76 of 2010****Judgment reserved on 12-9-2017****Judgment delivered on 13-12-2017**

(Arising out of judgment and decree dated 26-2-2010 passed by the First Additional District Judge, Bilaspur, in civil suit No.30-A/2008)

1. Pratap Rai Ahuja (Chaudhary) S/o Laxman Das, R/o Kashyap Colony, Bilaspur, Tahsil & Distt.-Bilaspur, C.G.

----- Appellant

Versus

1. Jai Bhagwan Agrawal, S/o Shri Munduram Agrawal, aged about 53 years, R/o Vidhya Nagar, Ward No.14, Qr.No.309, Tahsil & Dist. Bilaspur (CG)
2. Suresh Kumar Kachhawaha S/o Late Dauram Kachhawaha, aged about 35 years, R/o Juna Bilaspur, Pacharighat, Tah. & Distt.-Bilaspur, C.G.
3. Raj Kumar Kachhawaha S/o Late Dauram Kachhawaha, aged about 38 years, R/o Bus Stand, Imalipara, Tah. & Distt.-Bilaspur, C.G.
4. Pawan Kumar Kuchhawaha S/o Late Dauram Kachhawaha, aged about 38 years, R/o Bus Stand, Imalipara, Tah. & Distt.-Bilaspur, C.G.
5. Smt. Jamuna Bai Kachhawaha Wd/o Late Dauram Kachhawaha, aged about 65 years, R/o Juna Bilaspur, Pacharighat, Tah. & Distt.-Bilaspur, C.G.
6. Ranno Bai Wd/o Late Krishna Kumar Kachhawaha, aged about 37 years.
7. Vikki Kachhawaha S/o Late Krishna Kumar Kuchhawaha, aged about 14 Yr. (Minor), Represented Through Guardian Smt. Ranno Bai Wd/o Late Krishan Kumar Kachhawaha.

8. Komal Kachhawah S/o Late Krishna Kumar Kachhawaha, Represented Through Natural Guardian, Smt. Ranno Bai Wd/o Late Krishna Kumar Kachhawaha

S.No. 6 To 8 Are R/o Sabji Mandi, Katni, Tahsil & Distt.-Katni, M.P.

---- Respondent

For Appellant	Shri Ravish Chandra Agrawal, Sr. Adv. with Shri Sumesh Bajaj & Shri K.S. Jha, Advocates
For Respondent No.1	Shri H.B. Agrawal, Sr. Adv. with Ms. Prabha Sharma, Advocate
For Respondents No.2to8	None, though served and vakalatnama being filed by the counsel

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

C A V Judgment

The following judgment of the Court was delivered by
Prashant Kumar Mishra, J.

1. This is plaintiff's first appeal challenging dismissal of his suit for specific performance of the sale agreement dated 1-12-2005 and for delivery of possession; for declaring the sale deed executed by the defendant No.2 in favour of the defendant No.1 on 30-11-2007 as null, void and inoperative; in the alternative for refund of earnest money of Rs.11,50,000/-.

2. The suit property is situated at village Juna Bilaspur, PH No.20, bearing khasra No.490/9 area 0.02 acre (1000 sq.ft.) belonging to the defendant No.2 Suresh Kumar Kachhawaha. An agreement was entered between the defendant No.2 and plaintiff on 1-12-2005 wherein the defendant No.2 agreed to sell the property to the plaintiff for Rs.29,50,000/- and received Rs.9,50,000/- as earnest money promising to execute the sale deed within two months after receiving balance sale consideration of Rs.20,00,000/-. The defendant No.2 also agreed to pay interest @ 10% on the agreed amount in the event the transaction does not materialize for any reason whatsoever. The defendant No.2 received further earnest money of Rs.2,00,000/- on 18-1-2006 and executed another agreement on that date.
3. In the meanwhile, the defendant No.4-Pawan Kumar Kachhawaha, brother of the defendant No.2, filed civil suit No.50-A/2005 (later on re-numbered as 15-A/2006) for partition and separate possession in respect of the family property including the present suit land. In the said suit a temporary injunction was granted against the defendant No.2 on 24-2-2006 restraining him to alienate the suit property. In the said suit, the defendant No.2 pleaded that the present suit property is his

exclusive property. The said suit was eventually compromised on 30-11-2007, which, according to the plaintiff, was done to defeat his claim arising out of the sale agreement, even though in the second agreement dated 18-1-2006 the defendant No.2 had agreed that the balance amount shall be received and sale deed shall be executed after dismissal of the case pending in the Court, however, the defendant No.2 did not disclose anything about the present agreement in his written statement in the partition suit. As soon as the suit was compromised on 30-11-2007 the defendant No.2 executed the sale deed in favour of the defendant No.1 on the same day i.e. 30-11-2007, however, despite the sale deed the defendant No.1 would not acquire any valid title because of the subject agreement between the plaintiff and the defendant No.2.

4. The plaintiff pleaded that he was always ready and willing to perform his part of contract and bear the expenses for execution of the sale deed. During all the material time, the plaintiff kept on requesting the defendant No.2 to execute the sale deed, however, he avoided execution and registration of the sale deed on the ground of pendency of partition suit. Apprehending foul play the plaintiff got published a public notice in the daily Navabharat newspaper on 25-12-2006; in Dainik Haribhoomi &

Dainik Desh Bandhu newspapers on 28-12-2006; and in Dainik Bhaskar newspaper on 27-11-2007, however, he did not receive any objection from any members of public including the defendants. It was also pleaded that having agreed to sell the property in favour of the plaintiff for Rs.29,50,000/-, the defendant No.2 surprisingly executed the sale deed in favour of the defendant No.1 for Rs.25,00,000/-, which is abnormal and proves the *mala fide* nature of transaction.

5. The defendants No.2, 3 & 5 submitted joint written statement denying the suit allegations including execution of the agreement, however, admitted to have received the loan amounting to Rs.1,00,000/- from the plaintiff for construction of house at Pacharighat, Juna Bilaspur and further that the defendants No.2 to 8 have taken a consented decision to execute the sale deed in favour of the defendant No.1.
6. The defendant No.1 filed his separate written statement and denied knowledge of the agreement between the plaintiff and the defendant No.2. He, however, pleaded that the second agreement between them would prove plaintiff's knowledge of pendency of partition suit and title dispute between the members of the joint family (Defendants No.2 to 8), yet he

deliberately executed the subject agreement. According to this defendant, the defendant No.2 has executed the sale deed in his favour by joining the other defendants and has handed over possession of the suit property on 30-11-2007 itself. He also denied to have notice of the newspaper publication issued on plaintiff's behalf and for that matter the existence of any agreement between the plaintiff and the defendant No.2.

7. Both the parties have led evidence to prove their respective cases. The trial Court has found that the suit property was the joint property of the defendants No.2 to 8. It has also found proved execution of agreement between the plaintiff and the defendant No.2 on 1-12-2005 and 18-1-2006, however, the crucial question of plaintiff's readiness and willingness has been decided against him, which is coupled with the finding that the defendant No.1 is *bona fide* purchaser, therefore, the sale deed dated 30-11-2007 executed by the defendant No.2 in favour of the defendant No.1 is not be declared null & void.
8. The defendant No.2 or for that matter the defendant No.1 have not challenged the finding on issues No.2 to 5 in relation to the subject agreements by filing any cross appeal or cross objection, therefore, finding on these issues are not discussed in this judgment. It will confine to the findings on issues No.1, 6 to

9 and additional issue No.1. The defendants have also not questioned the finding on the additional issue No.2.

9. Shri Ravish Chandra Agrawal, learned senior counsel appearing for the plaintiff/appellant, would attack the finding that the defendant No.2 was not the absolute owner, on the strength of the provisions contained in Section 13 (1) (a) of the Specific Relief Act, 1963 (henceforth 'the Act, 1963') in view of the subsequent compromise decree in favour of the defendant No.2 and execution of sale deed by him in favour of the defendant No.1 on 30-11-2007. In other words, it is argued that even if the defendant No.2 was not the absolute owner on the date of agreement, if he subsequently becomes the exclusive owner he cannot resile from the agreement entered with the plaintiff. Referring to the evidence, learned senior counsel would argue that the plaintiff has proved his readiness and willingness to perform his part of contract during all material time. It is also argued that alternative prayer for refund of the earnest money is required in view of the statutory provisions contained under Section 22 (2) of the Act, 1963, therefore, the same cannot be used to conclude that the plaintiff was not ready and willing to perform his part of contract.

10. Learned senior counsel would further putforth that it was defendant No.2 who was never ready and willing to perform his part of contract and further the defendant No.1 is not the bona fide purchaser. The finding that the main purpose of the subject agreement was to secure interest is absolutely perverse.
11. Shri H.B. Agrawal, learned senior counsel appearing for the defendant No.1/respondent No.1, *per contra*, would submit that the defendant No.1 is the *bona fide* purchaser and has already constructed three storey building over the suit land after execution of the agreement dated 30-11-2007 in his favour. He would read out the evidence to support the finding recorded by the trial Court. Other defendants have not entered appearance in this appeal.
12. I shall first dwell on the issue as to whether the defendant No.2 was the absolute owner of the suit property on the date of execution of the subject agreement.
13. The plaintiff asserts that the defendant No.2 was the absolute owner of the suit property and even he has acquired exclusive title at a subsequent stage, he is bound to honour the agreement to execute the sale deed in plaintiff's favour.

14. Admittedly, the respondent No.4 Pawan Kumar Kachhawaha has preferred civil suit No.15-A/2006 for partition and separate possession claiming that the suit property belonged to his father Dauram Kachhawaha, who was the common ancestor in respect of the parties to the suit, therefore, his brother, defendant No.1 Suresh Kumar Kachhawaha (defendant No.2 in the present suit) was not entitled to mutate his name in the suit property after death of Dauram Kachhawaha in whose name the property was entered during his life time. In the said suit, the defendants did not aver that Suresh Kumar Kachhawaha is the exclusive owner of the suit property. The parties claimed 1/5th share each and eventually they entered into a compromise that the property detailed in schedule 'A' (the present suit property) would belong to Suresh Kumar, Jamuna Bai and Raj Kumar, who will pay Rs.12,00,000/- to Pawan Kumar & Ranno Bai, the other legal representatives of Dauram Kachhawaha, in lieu of relinquishment of their right over the schedule 'A' property.
15. The compromise decree passed between the parties is also to the effect that Suresh Kumar, Jamuna Bai and Raj Kumar shall be entitled to sell the suit property in schedule 'A' (present suit property). If any such sale deed is executed by Suresh Kumar, Jamuna Bai and Raj Kumar shall sign in the sale deed as

consentor. The compromise decree also records that Suresh Kumar has already entered into sale agreement with Jai Bhagwal Agrawal, the respondent No.1 in the present appeal. In respect of other property at Pacharighat, Juna Bilaspur, it was declared that the same would belong to Jamuna Bai and the plaintiff as well as the defendants No.4 to 6 of that suit shall not raise any claim.

16. It is, thus, clear that neither on the date of execution of the subject agreement nor by way of compromise decree, the present defendant No.2 Suresh Kumar Kachhawaha was made the absolute owner of the suit property, therefore, to argue that by virtue of Section 13 (1) (a) of the Act, 1963 Suresh Kumar Kachhawaha having subsequently acquired absolute title was bound to execute the sale deed, is not acceptable. It is precisely for this reason, reliance placed by the learned counsel on **Silla Chandra Sekharam v. Ramchandra Sahu** (AIR 1964 SC 1789) would not render any assistance.
17. In any case, Suresh Kumar having acquired title along with Jamuna Bai and Raj Kumar upon payment of Rs.12,00,000/- to Pawan Kumar, they cannot be made to execute the present sale deed for a sum of Rs.29,50,000/- because allowing this sale consideration would make the actual sale consideration of the

present property reduced by Rs.12,00,000/- i.e. Rs.29,50,000 - Rs.12,00,000 = Rs.17,50,000/-.

18. The next issue decided against the appellant is about his readiness and willingness to execute the sale deed in respect of the suit property.
19. The trial Court has considered the contents of the agreement to conclude that plaintiff appears to be interested in obtaining the earnest money with interest rather than purchasing the property. The agreement provides that the sale deed shall be executed within two months and if the agreement is cancelled for any reason, the prospective vendor shall pay 10% interest on the total sale consideration and not on the earnest money paid to the purchaser. It appears unusual that having obtained earnest money of Rs.9,50,000/- on the date of first agreement the vendor would bind himself to pay 10% interest on the entire amount i.e. Rs.29,50,000/-. Thus, a careful reading of the terms of agreement compels me to draw conclusion that obtaining interest on the agreed amount was one of the main object and purpose, even if it was not the only object.
20. Be that as it may, due to the wordings in respect of payment of interest, the trial Court is not completely misplaced or

misdirected to observe that obtainment of interest was the main object in the agreement. In the second agreement also the defendant No.2 has approved all the terms and conditions of the first agreement with further stipulation that the sale deed shall be executed after conclusion of the Court case.

21. Record of the trial Court would indicate that Pawar Kumar filed the partition suit against the present defendant No.2 on 12-12-2005 and soon thereafter, the second agreement was executed on 18-1-2006, therefore, 'reference of the Court case' in the said agreement indicates that the plaintiff was aware of the suit filed by Pawan Kumar Kachhawaha and was, thus, aware that there is a cloud on the exclusive title of Suresh Kumar Kachhawaha. It is also to be seen that instead of requiring the defendant No.2 to execute the sale deed, the plaintiff issued a public notice alerting the members of public not to purchase the suit property, however, no effort was made by the plaintiff to keep track of the partition suit filed by Pawan Kumar.
22. It is also worth notice that in the suit filed by Pawan Kumar the temporary injunction was issued on 24-2-2006 restraining the defendants including the present defendant No.2 to alienate the suit property, therefore, it was not possible for him to execute

the sale deed and, as such, it is not a case where the defendant No.2 refused to execute the sale deed in favour of the plaintiff because he could not have been executed the sale deed in view of the temporary injunction operative against him.

23. The question now remains to be determined is whether the defendant No.1 is the *bona fide* purchaser and whether the suit should have been decreed for the reason that no sooner than the compromise decree was passed on 30-11-2007, the defendant No.2 executed the sale deed in favour of the defendant No.1 on the same date i.e. on 30-11-2007. The plaintiff has relied on the public notice dated 27-11-2007 to attribute knowledge of the agreement to the defendant No.1, however, the said defendant No.1 has denied to have any knowledge of the agreement between the plaintiff and the defendant No.2 with further statement that at the time of registration of sale deed the defendant No.2 informed him that he had obtained loan from the plaintiff, but the plaintiff has fraudulently got executed a sale agreement by way of security of the loan transaction, therefore, there was no reason for him to disbelieve the defendant No.2.

24. As earlier discussed, one of the object of the first agreement was to obtain interest on the entire agreed amount rather

than the amount of earnest money, the defendant No.2 defence that the first agreement was, in fact, by way of security to the loan transaction cannot be lightly brushed aside. Thus, there is no proof that the defendant No.1 was aware of the subject agreement, therefore, the trial Court has rightly held that the defendant No.1 is the *bona fide* purchaser of the suit property.

25. Admittedly, after purchase of the suit land, the defendant No.1 has already constructed a three storey building and is operating his business from the said premises. He has categorically stated in para 9 of his cross-examination that he is carrying on business of sanitary wares in the name of Ganapati Enterprises from the building built on the suit land. He would further state in para 14 that since there was no interim order operative against him restraining any construction on the suit property, he has already completed the construction. Thus, decreeing the suit, at this juncture, would cause more hardship to the defendant No.1 than the plaintiff, who is otherwise not entitled for a decree in view of the terms of agreement wherein he agreed to receive interest on the entire agreed amount rather than on the earnest money only. The subject agreement, thus, appears to be a speculative transaction rather than a genuine agreement to sell carrying true intent to purchase the property.

26. For all the reasons mentioned hereinabove, it is crystal clear that the trial Judge has not committed any illegality or irregularity in dismissing the suit. The same is just and proper warranting no interference of this Court. Accordingly, the impugned judgment and decree passed by the trial Court is hereby affirmed.
27. *Ex.consequenti*, the appeal, *sans substratum*, is liable to be and is hereby dismissed.
28. There shall be no order as to costs.
29. A decree be drawn accordingly.

Sd/-

Sd/-

Judge
Prashant Kumar Mishra

Judge
Arvind Singh Chandel

Gowri