

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 126 of 2010

(Arising out of judgment dated 12.8.2010 in Civil Suit No.2-A/2008 of the learned District Judge, Durg)

Judgment Reserved On : 19/09/2017

Judgment Delivered On : 13/12/2017

- Satya Pal Bansal S/o Shri T.R. Bansal, aged about 47 years, R/o Kadambari Nagar, Dhamdha Road, Durg, Tahsil And Distt.-Durg (CG)

---- Appellant

Versus

1. Shashank Rastogi, S/o late Shri Y.P. Rastogi, aged about 41 years, R/o 7 B/4, Nehru Nagar (East), Bhilai, Tehsil & District Durg, Chhattisgarh
2. State Of Chhattisgarh Through Collector, Durg, Distt.-Durg (CG)

---- Respondent

And

FA No. 132 Of 2010

- Shashank Rastogi S/o Late Y.P. Rastogi, aged about 40 years, R/o 7-B/4, Nehru Nagar (East), Bhilai, Tahsil & District - Durg (CG)

---- Appellant

Vs

1. Satyapal Bansal, S/o Shri T.R. Bansal, aged about 47 years, R/o Kadambari, Dhamdha Road, Durg, Tahsil & District Durg (CG)
2. State Of Chhattisgarh Through Collector, Durg, District Durg (C.G.)

---- Respondent

For Appellant in FA 126/10 : Shri Rajeev Shrivastava and Shri Ankit Singhal,
Advocates.

For Appellant in FA No.132/10 : Shri Prateek Sharma, Advocate.

For Respondent No.1 in FA 132/10 : Shri Rajeev Shrivastava and Shri Ankit
Singhal, Advocates.

For Respondent No.1 in FA 126/10 : Shri Prateek Sharma, Advocate.

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 passed by **Prashant Kumar Mishra, J.**

1. Plaintiff Satyapal Bansal has filed FA No.126/2010 challenging dismissal of his suit for specific performance of contract whereas defendant Shashank Rastogi has filed FA No.132/2010 to challenge the decree which directs him to refund earnest money of Rs.5 lakhs to the plaintiff.
2. Both the appeals are arising out of the same judgment and decree, therefore, they are taken up for disposal by this common judgment.
3. Plaintiff's case, in short, is that an agreement between him and defendant No.1 (henceforth 'the defendant') was executed on 26.9.2007 for sale of suit property ad measuring 16 acres situate at village Sirsa, Tehsil and District Durg at the rate of Rs.4,61,000/-

per acre, total amounting to Rs.73,76,000/-. The defendant received the earnest money of Rs.5 lakhs in the presence of witnesses promising to execute the sale deed on or before 21.10.2007 after receiving the balance sale consideration. According to the plaintiff, the defendant did not provide necessary documents viz. B-1, Khasra Panchshala nor demarcated the land despite repeated requests and eventually refused to execute the sale deed. Because of greed, the defendant wanted to sell the land to some other person on higher rate whereas the plaintiff was, and is, always ready and willing to perform his part of contract.

4. The defendant denied the plaintiff's allegations. According to him, the plaintiff did not approach him for execution of the sale deed because he was not having sufficient funds. There being no stipulation in the agreement for demarcation, the defendant was not bound to carry out demarcation before execution of the sale deed. The defendant also stated that he never avoided or refused to execute sale deed but it was the plaintiff who did not take interest because of which the defendant had served letters on the plaintiff on 17.10.2007 and 5.11.2007 for executing sale deed, but despite the communications, the plaintiff did not initiate process and violated the terms of agreement.
5. Both the parties led evidence to prove their respective cases.

6. While deciding issue No.1, the trial Court has held that there was no stipulation of providing B-1, Khasra Panchshala and demarcation by the defendant in the agreement. While deciding issue No.2, it was held that the plaintiff was not ready and willing to perform his part of contract, however, the defendant having received earnest money is liable to refund the amount of Rs.5 lakhs to the plaintiff.
7. Learned counsel for the appellant has challenged the impugned decree on submission that the finding that the plaintiff was not ready and willing to perform his part of contract is perverse and therefore the suit should have been decreed. Per contra, learned counsel for the respondent/defendant Shashank Rastogi has argued that the suit should have been dismissed in its entirety.
8. Having heard learned counsel for the parties at length and on perusal of the record, we are of the view that both the appeals deserve to be dismissed for the reasons stated infra.
9. Plaintiff Satyapal Bansal would admit that there is no stipulation in the agreement for providing B-1, Khasra Panchshala or for carrying out demarcation by the defendant. He would also admit that he wanted to pay the balance amount by cheque which could not be handed over to the defendant nor did he serve any notice on

the defendant before filing of the suit to accept the balance amount and execute the sale deed. He would further depose that he would have purchased the property by paying the balance sale consideration of his own and by obtaining funds from his brothers. It is stated by him that he could have obtained money from his firm Bansal Food Products or Bajrang Agro Tech. However, he admits that he has not filed any document to prove the availability of funds.

10. Plaintiff's witness Amit Agrawal is the signatory to the agreement (Ex.-P/1) whereas the plaintiff's another witness Satya Prakash Bansal is his real brother. He admits that he is one of the Directors of the Bajrang Agro Tech India Limited. The two other Directors are his sons Anil and Sunil. Thus the plaintiff is not related to this company whereas he has deposed that he would obtain money from Bajrang Agro Tech, meaning thereby that he would have obtained loan from this company. This witness also admits that they are involved in the business of real estate or sale and purchase of the property.
11. On the other hand, the defendant and his witnesses have stated that the defendant was ready and willing to perform his part of contract but the plaintiff did not take interest because he had no funds and being a property dealer he was not finding purchasers in whose

name he could have purchased the property.

12. Agreement (Ex.-P/1) stipulates that buyers are free to get the land registered in any other name on full payment of sale consideration which indicates that the plaintiff may not have purchased the property for themselves but could have got it registered in the name of any other purchaser. Such clause is generally inserted in the agreement between the property dealer and the prospective vendors.

13. In view of the admission made by the plaintiff's witnesses that they are involved in real estate business, it would be apt to refer to the observations made by the Supreme Court in the matter of **N.P. Thirugnanam (Dead) by LRs Vs. Dr. R. Jagan Mohan Rao and Others**¹ that the very contract was speculative in nature and entered into by the plaintiff who has been dabbling in real estate transactions without the means to purchase a substantial immovable property like the suit property. Therefore, the High Court has rightly refused to direct specific performance.

14. In addition to the above, the plaintiff's basic case is that it was the defendant who did not provide B-1, Khasra Panchshala and demarcation report, therefore, he could not get the sale deed executed. However such stipulation is not available in the

¹ (1995) 5 SCC 115

agreement (Ex.-P/1), therefore, the plaintiff's basic case is not proved which again indicates that he was not ready and willing to perform his part of contract. The trial Court's finding on this score is fully borne out from the record and is not perverse in any manner.

15. It is also to be seen that the time was not essence of the contract.

16. In the matters of **Chand Rani (Smt) (Dead) by LRs Vs. Kamal Rani (Smt) (Dead) by LRs², Balasaheb Dayandeo Naik (Dead) through LRs and Others Vs. Appasaheb Dattatraya Pawar³, Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and Another⁴, Smt. Indira Kaur and Others Vs. Sheo Lal Kapoor⁵ and Silvey and Others Vs. Arun Varghese and Another⁶** the Supreme Court has held that ordinarily in transactions concerning immovable property time is not the essence of the contract.

17. Therefore, the decree passed by the trial Court for refund of money despite there being a forfeiture clause in the agreement is not to be faulted with. The trial Court has rightly decreed the suit in part.

18. For the foregoing, both the Appeals fail and are hereby dismissed.

² (1993) 1 SCC 519

³ (2008) 4 SCC 464

⁴ (1977) 2 SCC 539

⁵ (1988) 2 SCC 488

⁶ (2008) 11 SCC 45

19. Parties to bear their own cost.

20. A common decree be drawn accordingly.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Arvind Singh Chandel)

Barve