

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 4 of 2005**Judgment reserved on : 06.07.2018Judgment delivered on : 24.07.2018

Kanudas, S/o Shri D.L. Das, aged about 43 Years, Caste Bengali, R/o Village Barpali Chowk, Champa, Tahsil Champa, District- Janjgir-Champa (C.G.)

---- Appellant**Versus**

1. Premjit Singh, S/o Swarup Singh, aged about 45 years.
2. Kulwant Singh, S/o Swarup Singh, aged about 40 years.
3. Harjeet Singh, S/o Swarup Singh, aged about 35 years.
4. Smt. Jaswir, W/o Swarup Singh, aged about 60 years.

Respondents No. 1 to 4 R/o Village Barpali Chowk, Champa, Tahsil Champa, District- Janjgir-Champa (C.G.)

5. State of Chhattisgarh through Collector- District- Janjgir-Champa (C.G.)

---- Respondents

For Appellant	:	Mr. Sourabh Sharma, Advocate
For Respondent No. 4	:	Mrs. Laxmin Tondey, Advocate.
For State	:	Mr. Sameer Behar, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 08.12.2004 passed by Additional District Judge, Janjgir, District- Bilaspur (C.G.) in Civil Suit No. 77-A/2002 wherein the said court dismissed the suit filed by the appellant for specific performance of contract for executing sale deed for land bearing khasra No. 1891/3 admeasuring 0.01 acre (448 sq.ft.) situated at Champa.
2. As per the appellant, respondents No. 1 to 4 entered into an agreement to sale the suit land bearing khasra No. 1891/3 area 0.01 Acre (448 sq.ft.) situated at Champa, Tahsil- Champa, District- Janjgir-Champa for cash

consideration of Rs. 1,50,000/- and obtained cash of Rs. 30,000/- on 29.12.1988 and undertook to execute the sale deed in favour of the appellant/ plaintiff on or before 31.05.1999. Time was extended for registration of sale deed on 22.05.1999 and 23.07.1999, but sale deed was not executed. The appellant/ plaintiff served a registered notice on 30.05.2000 to the respondents which was received on 02.06.2000, but no sale deed was executed in favour of the appellant that's why he filed suit before the trial court.

3. After recording evidence of both sides and hearing the parties, the trial court opined that time was not extended for registration of sale deed upto 30.11.1999 and it is not proved that the appellant was willing to perform his part of contract upto 31.05.1999.
4. Learned counsel for the appellant submits that the time is not the essence of the contract and contract dated 22.05.1999 was extended upto 30.11.1999 by various agreement, therefore, finding of the trial court is not in the fitness of factual matrix of the case.
5. In support of his case, leaned counsel for the appellant placed reliance in the matter of **Rathnavathi Vs. Kavita Ganshamdas** (Para 39 to 52) reported in **(2015) 5 SCC 223**.
6. Admittedly, the suit land is recorded in ownership of all four respondents namely, Premjit Singh, Kulwant Singh, Harjeet Singh & Smt. Jaswir as per Ex. P/6. The specific performance of the contract is executable only when all the four persons recorded as owner will sign in sale deed. In the present case, agreement (Ex. P/1) was executed by all the four recorded owners and as per Ex. P/1, the time for registration was fixed on 31st May, 1999. It is mentioned in the said agreement that the sale deed is to be executed upto 31st May, 1999, though another agreements Ex. P/2 & P/3 are executed for

extending the time for executing sale deed from 31st May, 1999 to 30 June, 1999 and again upto 30th November, 1999, but in the said agreements (Ex. P/2 & P/3), the respondent Jaswir Kour has not signed.

7. From evidence of both side, it is admitted position that the agreement (Ex. P/2 & P/3) for extension of period was not signed by Jaswir Kour and the same was not binding on her.
8. Now the point is whether the time is essence of the contract, looking to the rival submission made by both sides, it is admitted that three agreements were entered into by the parties and in first agreement date for executing sale deed was fixed upto 31st May, 1999 and it is extended by Ex. P/2 & P/3. In the last agreement (Ex. P/3), time was extended upto 30th November, 1999. Mentioning specific dates in all the three agreements shows that time was essence of the contract because if time was not essence of the contract, there was no need to mention last date for executing sale in every agreement. Fixing date for executing of sale deed is evidence of the facts that time was essence of the contract.
9. Respondent No. 4 Jaswir Kour did not enter into agreements (Ex. P/2 & P/3) and the same is not binding on her. She entered into only in the agreement Ex. P/1 by which last date for executing sale deed was fixed upto 31st May, 1999. After 31st May, 1999 she is not under obligation to execute the sale deed in favour of the appellant. When she is not legally bound to execute the sale deed after 31st May, 1999 and legally it was not possible to perform the contract specifically without her. The trial court is right in holding that the sale deed cannot be executed after 31st May, 1999.
10. The second question for consideration is whether the appellant is entitled to recover the amount of Rs. 30,000/- from the respondents which was paid on 29.12.1998 by him. The appellant entered into witness box as PW-1 and he

admitted in Para 11 that 'a to a part' Ex. P/1 was written in the same date and as per that part, the advance sum of Rs. 30,000/- will be lapsed if sale deed is not executed upto 31st May, 1999.

11. Looking to the admission of the appellant, it is concluded by the trial court that the appellant is not entitled to get the advance money as per Ex. P/1 and as per the statement of the appellant himself.
12. The finding arrived at by the trial court is based on proper appreciation of oral and documentary evidences and this Court has no reason to reverse the same.
13. Considering the facts and circumstances of the case and the material available on record, this Court is of the opinion that the case was not fit for grant of a decree on specific performance or any other relief and the trial court is right in deciding in favour of the respondent and the same is not liable to be interfered with invoking jurisdiction of the appeal.
14. Accordingly, the decree in favour of the respondent and against the appellant is passed on the following terms and conditions:
 - (i) The appeal is dismissed with cost.
 - (ii) Parties shall bear their own cost.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge