

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 219 of 2005**

Smt. Sobha Sedge, aged about 35 years, W/o Shri Subhash Sedge,
R/o Matrinagar, Danganiya, Raipur, Distt. Raipur (C.G). --- **Appellant**

Versus

1. Anil Nachrani aged about 40 years, son of late Mohanlal Nachrani
2. Sanjay Nacharani, aged about 35 years, son of Late Mohan Lal Nacharani
3. Smt. Chandradevi Nacharani, aged about 55 years, widow of Mohanlal Nacharani

All residents of behind Jaijawan Petrol Pump, Panchshil Nagar,
Raipur, Distt. Raipur (C.G) --- **Respondents**

For the Appellant : Mr. Raghavendra Verma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****26.11.2018**

1. The instant appeal is against the judgment and decree dated 20.04.2005 passed in Civil Suit No.93-A/2004 by the 10th Addl. District Judge, Raipur, Distt. Raipur (C.G) whereby the the suit for specific performance filed by the plaintiff was dismissed.
2. The suit was filed by one Smt. Shobha Sedge on 06.11.2003 pleading that she had purchased a Plot No.15 at Chingorabhata comprising of Kh.No.42 ad-measuring 1500 sqft. it was stated that the said purchase was made from seller Mohan Lal Nacharani who was father of defendant No.1 & 2 Anil Nachrani and Sanjay Nacharani and husband of defendant No.3 Smt. Chandra Devi Nacharani. The sale was made on 17.4.1996. It was pleaded by the plaintiff that while

the demarcation of plot no.15 was carried out, the plaintiff found that Plot No.16 of Kh.No. 42 which is adjacent to Plot No.15 was vacant. She therefore expressed her desire to purchase the same. It is further pleaded that Plot No.16 was agreed to be purchased @ Rs.42.50 per sqft., and an amount of Rs.15,500/- by cheque bearing No.12744 was paid as earnest money. The plaintiff further contended that the negotiation for purchase of plot was being made through a property dealer namely Rajeshwar Pandey and the seller Mohan Lal and Rajeshwar has entered into an agreement dated 12.07.1997, therefore, subsequently, an amount of Rs.25,000/- was paid to Rajeshwar Pandey in lieu of sale consideration from the prospective purchaser on 06.02.1998 and thereafter on different dates, the amounts were paid thereby total amount of Rs.55,500/- and the balance of Rs.8250/- remains to be paid as a sale price. The plaintiff pleaded that he is ready and willing to execute the sale deed, however, subsequently inflated the price to Rs.100/- per sqft and for some reason or the other the sale was denied. Consequently the civil suit was filed for specific performance of the land for permanent injunction.

3. The defendant denied all the plaint averments. It was specifically denied that the land was sold through the intervention of property dealer Rajeshwar Pandey. The defendant contended that the land of Plot No.15 of Kh.No.42 admeasuring 1500 sqft., was sold to the plaintiff on 03.04.1996 by Mohanlal Nacharani for Rs.22,500/- wherein the defendants 1 & 2 Anil Nachrani and Sanjay Nachrani also consented and only 1500 sqft., of land was sold.

4. The defendants stated that the plaintiff encroached upon the adjacent land over 1650 sqft of land, therefore, having known the fact a proceeding u/s 250 of the Land Revenue Code before the Tahsildar, Raipur was filed which was pending. It was further stated that the defendants had never authorised Rajeshwar Pandey to sell the land and the suit was not filed with clean hands, as such, prayer for dismissal of the suit was made.
5. On the basis of the pleading, the Court below has framed 4 issues and found that the plaintiff has failed to prove his case, therefore, eventually dismissed the suit. Hence this appeal.
6. Learned counsel for the appellant would submit that the trial Court has failed to appreciate the fact in proper perspective as the evidence would show that the amount was paid to the defendant for sale of the land and the sale of the land was negotiated through one Rajeshwar Pandey who died subsequently. It is stated that after death of Rajeshwar Pandey and the original owner Mohanlal, the defendants/ legal heirs refused to execute the sale deed having received the amount of Rs.55,000/- as sale consideration out of Rs.63,750/- thereby only amount of Rs.8,250/- remains to be paid, for which, the plaintiff was ready and willing to pay the same and get the sale deed executed. He submits that the trial Court therefore has failed to evaluate the facts and as such the impugned judgment requires interference by this Court.
7. No representation is made on behalf of the respondent despite pass-overs and frequent calls.

8. Perused the allegations on the plaint and also perused the documents.
9. The plaintiff on his behalf examined herself as P.W.1 namely Shobha Sedge. It is stated that the dispute is in respect of Plot No.16 admeasuring 1500 sqft., comprised in Khasra No.42 situated at Maitri Nagar. It is stated that in the year 1998, an amount of Rs.55,500 in three instalments was paid to seller Mohanlal Nacharani through Rajeshwar Pandey and the cost of the plot was Rs.42.50 per sqft, and 1500 sqft of land was agreed to be purchased. It is stated that an amount of Rs.15,500/- was paid to defendant No.1 Anil Nacharani by cheque which was received. However, even after receipt of maximum part of sale consideration, the defendant refused to execute the sale on the ground that certain ban has been imposed to execute the sale. Subsequently Mohanlal Nacharani and defendants legal heirs demanded Rs.100/- per sqft.
10. P.W.2 Shubhash Sedge husband of P.W.1 has made similar statement. It is stated that Plot No.15 admeasuring 1500 sqft, was already purchased and defendants have possessed a total land of 3000 sqft., out of which 1500 sqft., was registered and for the rest of land, the agreement to purchase the said land @ Rs.42.50 sqft was made. As per P.W.1 and P.W.2 the amounts were paid through Rajeshwar i.e., Rs. 25000/- on 06.02.1998, Rs. 15000/- on 19.03.1998 and Rs.15,500 by cheque on 26.5.1998. The receipts of the cash transactions are filed as Ex.P-1 & P-2. Ex.P-1 is of Deep Shikha Property Dealers showing the payment of Rs.15,000/- on 19.03.1998 and Ex.P-2 is of Shubh Property

Dealers for payment of Rs.25,000/-. The witness has stated that Mohan Lal Nacharani and Rajeshwar Pandey have entered into agreement that Rajeshwar Pandey may receive amount by sale of land and after going through the agreement, the said amount was paid to Rajeshwar Pandey. The witness further stated that Rajeshwar Pandey died in 1999 and Mohanlal Nacharani also died before registry could be made.

11. The plaintiff has further exhibited the documents i.e., notice sent to the defendants vide Ex.P-3 which was proved by postal receipts vide Ex.P-4 and acknowledgement receipt as Ex. P-5. In reply to such notice vide Ex.P-6 all the averments were denied by the defendants. No admission also made in the written statement. Therefore it was for the plaintiff to prove the facts beyond reasonable doubt. D.W.1 Anil Nacharani as against the version of P.W.1 & P.W.2 had stated that she is unable to say as to whose signatures the documents bear.
12. P.W.4 Dinesh Pandey who is brother of Rajeshwar Pandey has stated that his brother was doing the work of property dealer and an agreement was entered into with Mohan Lal Nacharani to purchase the land and plotting was done, which was scribed in a letter pad. However, the said letter-pad has not been placed on record. It is not clear as to whether the amount so paid for sale consideration vide Ex.P-1 & P-2 which is claimed to have been paid were passed on to the original seller. P.W.4 was also not confronted with such documents Ex.P-1 & P-2. Further it is also not clear that whether the payments so made vide Ex.P-1 & P-2 issued by

Deep Shikha Property Dealer and Shubh Property Dealer are respect of Plot No.16 of Khasra No.42 or whether it belonged to the land of Chingorabhata or any other place. P.W.2 Subhash Sedge stated in the cross examination that the agreement was entered with Rajeshwar in 1997 but no documentation was made. Thereafter, he met Mohan Lal Nacharani in 1998 and initially the sale of plot no.15 was made and at the time of registration of plot no.15, the papers of Plot No.16 were taken. There is no document on record to show that Rajeshwar Prasad was working as an agent or as Power of Attorney holder of the original land owner/seller and it is also not clear as to whether the signatures of Rajeshwar Pandey was made on Ex.P-1 & P-2. No endorsement was made by Mohan Lal Nacharani on Ex.P-1 & P-2 for the amount so paid. It is also not clear that whether Rajeshwar Pandey was authorized by Mohanlal Nacharani to receive the amount or not.

13. Defendant No.1 Anil Nacharani stated that he found that the plaintiff apart from his land purchased has encroached the considerable part of the land of Plot No.16, therefore, a proceeding u/s 250 of the Land Revenue code was commenced and subsequently the suit was filed. The evidence of D.W.1 Anil Nacharani & P.W.2 Subhash Sedge would show that after the demarcation of the land was made, a proceeding u/s 250 of the L.R. Code was commenced as apart from Plot No.15 of 1500 sqft., the plaintiff was found in possession of plot No.16 and considerable part of it. Admittedly, there is no agreement on record for sale of property for plot no.16. It is stated that the agreement was

made on 16.05.1996. The plaintiff has averred in his plaint that agreement was made on 26.05.1996 and the amount was paid. There is no agreement on record except the oral averments, therefore, under the circumstances, it is difficult to state that any agreement was ever entered into between the parties. The plaintiff has failed to prove the basic fact as to the existence of the agreement by proper evidence.

14. In view of the above discussion, the finding arrived at by the Court below cannot be faulted. In the result there is no merit in the appeal. The appeal fails and is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**