

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 24-7-2018

Judgment delivered on 27-8-2018

FA No. 219 of 2011

1. Ghulam Warsi S/o Saidu Mohammed, R/o Beedpara, Raigarh
2. Khalil Warsi S/o Saidu Mohammed, R/o Beedpara, Raigarh

---- Appellants

Versus

1. Mohammed Anwar s/o. Mohammad Khan aged 40 years, occupation Tailor, r/o. Beedpara, Raigarh (CG).
2. Roshan Ara W/o Late Ramjan Khan, R/o Mominpura, Ambikapur, Surguja
3. Ismat Ara W/o Mohammed Tahir, R/o Village Siyarpali, Tahsil and Distrit Raigarh (CG).

---- Respondents

For appellants	:	Mrs. Hamida Siddiqui, Advocate.
For respondent No.1	:	Mr. Abdul Wahab Khan, Advocate.
For respondents No. 2 & 3.	:	Mr. Rahul Tamaskar, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred by the appellants under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 27-10-2010 passed by 3rd Additional District Judge, Raigarh (CG) in Civil Suit No.3-A/07 wherein the said court decreed the suit filed by respondent No.1 for specific performance of contract relating to sale of land/house situated in Beedpara Colony on Nazool sheet No. 42, plot No.91/1, area 598 sq. feet as per agreement dated 28-2-2004

and also granted injunction in favour of respondent No.1 for land/house in question.

2) In the present case, disputed land is recorded in Nazool Sheet No.42 as plot No.91/1 area 598 sq in which the house is constructed. It is pleaded on behalf of the appellants that no contract was entered into for selling the house/land in question, but the same document was signed by them on account of money borrowed by them.

3) Learned counsel for the appellants submits as under:

i) In record of right, respondent No.2 Roshan Ara and respondent No.3 Ismat Ara are also owners of the land but they have not signed in the agreement, therefore, such agreement has no legal value.

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ii) The land is a Government land and lease was granted to appellants, Roshan Ara and Ismat Ara for the period upto 31-3-1992, therefore, legally no agreement could have been entered into by anyone for selling the same.

iii) The contract cannot be enforceable as it speaks about future uncertain action of getting the period of lease extended but as the period of lease is not extended, the contract cannot be specifically performed.

- iv) As the contract is not enforceable, possession be restored in favour of the appellants and respondent No.1 be ordered to deliver the possession.

4) On the other hand, learned counsel for the respondent No.1 would submit that he has paid full amount of consideration for purchasing the land in question, therefore, he cannot be evicted from the said property in question and decree is proper.

5) Learned counsel appearing for the respondents No. 2 and 3 submits that they are the party to contract.

6) I have heard learned counsel for the parties and perused the record/judgment and decree passed by the trial Court.

7) The first question for consideration of this court is whether the appellants are owners of the property in question. Ex.P/7 is the document of lease regarding suit property. As per Ex.P/7, lease was granted upto the period of 31-3-1992. The land was recorded in the name of the appellants and respondents No. 2 and 3. As per agreement Ex.P/1, only appellants have signed in the agreement, but the respondents No.2 and 3 have not signed in the agreement. As respondents No. 2 and 3 have not signed in the agreement, they are not under obligation to perform the contract because they were not party of the contract. Again, on the date of contract i.e., 28-2-2004 lease period was already terminated and the period was not extended

till date of entering into contract. The appellants had no right to enter into such agreement because they were not even lease holders on the date of agreement. The lease is not extended upto now and, therefore, contract is not enforceable. Even otherwise, lease is granted under certain conditions by the Government and lease holder is abide by the conditions and again during the lease period, property cannot be transferred against terms and conditions of the lease without seeking permission from the competent authority, therefore, it is not a case where contract was executable. The trial Court while passing the judgment and decree, has not considered these aspects of the matter and without proper appreciating the lease deed jumped into conclusion that contract is enforceable.

8) Considering all the facts and the material available on record, this court is of the view that the finding arrived at by the trial Court is not sustainable, therefore, finding of the trial Court is reversed and it is substituted that agreement entered into between the parties is not enforceable. As per record, the possession is delivered to respondent No.1 and he is in possession of the property. As the appellants are not lease holders of the property from 31-3-1992, no right is vested on them, and therefore, they cannot recover possession from respondent No.1.

9) It is settled law that possession can be recovered by a person who is having title over the property. As the appellants are not title

holders, no injunction can be granted in their favour. Judgment and decree passed by the trial Court is not sustainable and the same is hereby set aside.

10) Accordingly, the decree is passed on the following terms and conditions.

- I) Setting aside the decree passed by the trial Court, suit filed by respondent No.1 is dismissed with cost..
- ii) Parties to bear their own costs.
- iii) Counsel 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

Raju