

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 741 of 2000**

- Sharad Kumar Chauhan S/o Ramneek Lal Chauhan, Aged About 43 Years Businessman, R/o Narbadapara, Raipur, Distt. Raipur

---- Appellant**Versus**

Deleted (Satpal Punjabi) As Per Hon'ble Court Order Dated 06.03.2018, Chhattisgarh

1. Kunal Kumar Punjabi Aged About 19 Years R/o D-29, Sector- Three, Devendra Nagar, Raipur, Distt. Raipur M.P. Now Chhattisgarh
2. Jitendra Kumar Punjabi S/o Satpal, Aged About 17 Years R/o D-29, Sector- Three, Devendra Nagar, Raipur, Distt. Raipur M.P. Now Chhattisgarh
3. Smt. Indarjeet Kaur W/o Shri Amrik Singh Misson, Aged About 52 Years R/o Station Road, Raipur, Tehsil And Dist. Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
4. Shri Basant Manglani S/o Late Shri Gelaram Manglani, Aged About 38 Years R/o D-27, Sector-3, Devendra Nagar, Raipur, Tehsil And Distt. Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Shri B.D.Guru and Shri Aditya Bharadwaj, Advocates
For Respondents 2 and 3	:	Shri R.K.Pali, Advocate
For Respondent No.5	:	Shri Sunil Otwani, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****01/08/2018**

This appeal is directed against impugned judgment and decree dated 30/11/1999 passed by the Second Additional District Judge, Raipur in Civil Suit No.5-A/99 whereby, the learned Trial Court refused to grant relief of specific performance of contract to the appellant / plaintiff.

2. The relevant facts of this case are that the appellant / plaintiff filed a suit for specific performance of contract. The plaintiff claimed in the suit that defendant / Satpal Punjabi purchased a plot admeasuring 1500 sq. ft. in the name of his minor sons namely Kunal and Jitendra. Thereafter, defendant-Satpal entered into an agreement with the plaintiff to sell the property for a consideration of Rs.1,87,500/-. Pursuant to the agreement, an earnest money of Rs.20,000/- was given to the defendant. Thereafter, on different dates, certain amounts were paid and in all, Rs.1 lakh was received by the defendant. According to the plaintiff, defendant – Satpal was under an obligation to obtain no objection certificate from the authorities for execution of the sale deed. As the defendant failed to do so, a legal notice was served which he refused to accept. Thereafter, a notice was published by the plaintiff in the news paper expressing his willingness to execute the sale deed.

3. Defendant – Satpal filed a written statement before the Court below stating that according to the terms and conditions of the agreement, it was the plaintiff who was under an obligation to execute the sale deed and that the plaintiff had no sufficient means.

4. On the basis of pleadings of the parties, learned Trial Court framed an issue as to whether defendant – Satpal was under an obligation to obtain no objection certificate from the authorities? Another issue was also framed as to whether the plaintiff was ready and willing to perform his part of contract?

5. The only issue arising for consideration in this appeal is whether the plaintiff was entitled to a decree of specific performance when the property not only belongs to defendant No.1 but admittedly to his two sons i.e. defendants 2 and 3 namely Kunal and Jitendra.

6. Learned Trial Court, in para 12 of its judgment has held that the property belongs to Satpal Punjabi and his two minor sons. The finding of the Trial Court is that in view of the provisions contained in Section 8 (2) of the Hindu Minority and Guardianship Act, 1956 (for short “the Act of 1956”), the property of minor could not be sold without the permission of the Court and therefore, the agreement is voidable at the option of the proposed vendor.

7. Learned counsel for the appellant argued that the provisions of law as contained in the Act of 1956 as has been referred to the impugned judgment, does not *ipso facto* prohibits entering into an agreement to sell the property and once permission is obtained by the Court, specific performance of agreement could be granted. He would further submit that the bar is against sale and not against an agreement to sell the property.

The other submission is that infact, under the terms and conditions of the agreement and as was agreed to between the parties, it was the obligation of the proposed vendor to get appropriate orders from the Court and therefore, in such a situation, a decree could be granted which could be executed upon grant of permission by the jurisdictional court.

8. Learned counsel for the respondents oppose submission and submit that the decree of specific performance cannot be granted because no sale deed could be executed unless there is permission granted under Section 8 of the Act, 1956. He submits that even if it is assumed that there was an agreement between the parties to seek permission of the Court, it is not obligatory on the Court to necessarily grant permission. Therefore, in respect of such a contract, no specific performance could be granted in view of Section 14 of the Specific Relief Act, 1963 (for short “the Act of 1963”).

9. It is not in dispute that the property in dispute is jointly owned by the defendants. Satpal is the father and defendants 2 and 3 are minor sons. It is also not in dispute that on the date of execution of the agreement, defendants 2 and 3 were minor.

10. If for the sake of arguments, it is accepted that there was an agreement between the parties and the plaintiff was ready and willing to perform his part of contract and sell the property of his sons without the permission of the Court, performance of such condition by the act of parties is uncertain because even if the proposed vendor applies for grant of permission under Section 8 of the Act of 1956 before the jurisdictional court, permission may or may not be granted.

11. Certainly, no decree could be passed in a suit of specific performance for grant of permission through separate judicial proceedings because that is beyond the jurisdiction of the Court hearing the suit for specific performance.

12. Answer to this contingency lies in Section 14 of the Act of 1963, which reads thus -

“14. Contracts not specifically enforceable—

(1) The following contracts cannot be specifically enforced, namely:—

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:—

(a) where the suit is for the enforcement of a contract,—

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once:

Provided that where only a part loan has been advanced and the lender is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for,—

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in a firm;

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:—

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the

building is to be constructed or other work is to be executed.”

13. In the present case, provisions of Section 14 (1) (b) of the Act of 1963 would be applicable because from the very nature of the case, even if it is found by the Court that there was an agreement and the plaintiff was ready and willing to perform his part of contract, the Court cannot enforce specific performance of material terms of the agreement for want of judicial permission under Section 8 of the Act of 1963. It is not the case where after taking permission of the Court, the defendant entered into an agreement to sell the property.

14. Though learned Trial Court has dismissed the suit recording reason that the agreement is voidable at the option of the defendant, for the reason that no decree could be granted in view of the provisions contained in Section 14 of the Act of 1963, this Court is not inclined to grant any relief to the appellant / plaintiff.

15. In the result, the appeal fails and is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge