

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 20 of 2018**

Sagar Parakh S/o Padam Parakh Aged About 27 Years through Power of Attorney Padam Parakh S/o Shri Ghisulal Parakh, Aged About 53 Years, R/o Bramhanpara, Durg, Tahsil & District Durg, Chhattisgarh (Plaintiff).
--- Petitioner

Versus

1. Ashwani Kumar S/o Heeralal Aged About 35 Years R/o Village Mohlai, Tahsil & District Durg, Chhattisgarh,
2. Smt. Puniya Bai Wd/o Late Heeralal Aged About 55 Years R/o Village Mohlai, Tahsil And District Durg, Chhattisgarh.
3. Smt. Hirwantin Bai S/o Late Heeralal Aged About 63 Years R/o Village Mohlai, Tahsil And District Durg, Chhattisgarh (Defendants),

---- Respondent

For the Petitioner : Mr. Avinash Chand Sahu, Advocate
 For the Respondent : Mr. Prasoon Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Judgment on Board****22.11.2018**

1. The present appeal is against the order dated 21.11.2017 passed by the First Additional District Judge to the Court of Additional Judge, Durg, whereby the application filed under Order 39 Rule 1 & 2 of CPC was rejected.
2. The suit was filed by Sagar Parakh that he entered into agreement for purchase of certain part land bearing Kh.No.692 & 688 admeasuring 42.5 decimals. It was agreed to purchase the said land @ Rs.80 lakhs per acre. Out of the sale consideration, Rs.1 lakh by way of cheque and Rs.21,000/- in cash was paid as advance. Thereafter, on

different dates Rs.50,000/-, Rs.2 lakhs, and Rs.2 Lakhs total Rs.5,71,000 was paid. Subsequently on 20.06.2017 certain part of land admeasuring 3024 sqft., was sold to third party for Rs.8,48,000/- and thereafter the defendants refused to execute the sale deed for which a suit for specific performance was filed.

3. The defendants admitted the fact that initially the agreement of sale was executed on 19.10.2016 and an amount of Rs.1,21,000/- was paid. It was further stated that the parties have agreed to sell/purchase certain part of land therefore that part of the land would be sold and accordingly the amount of sale consideration would be paid and except Rs.1,21,000/- no amount was received.
4. After the said suit was riled, an application under Order 39 Rule 1 & 2 CPC was filed wherein the plaintiff prayed that in respect of the suit property no further alienation may be made. The learned court below dismissed the application. Hence the appeal.
5. Learned counsel for the applicant would submit that the agreement itself would show that initially Rs.1,21,000/- was paid on the date of agreement and subsequently on different dates, Rs.50,000/-, Rs.2 lakhs and Rs.2 lakhs were paid and thus a total amount of Rs.5,71,000/- was paid which is entered into agreement. He submits that further certain part of the property ad-measuring 3024 sqft., was also sold to third parties namely Sakun Bai Yadav and Puja Yadav and therefore total sum of Rs.14,19,800/- was paid in lieu of sale consideration. He submits that according to the agreement, after submission of the demarcation report the sale was to

take effect but this demarcation report was given on 15.07.2017 and the deadline in the agreement was of June 2017, therefore, the time was not essence of the contract. He further submits that despite receipt of the amount the defendant has denied to have received the amount which is matter of evidence and in the meanwhile if further alienation is made, the purpose of entire filing of the suit would be defeated.

6. Per contra, learned counsel for the respondent opposes the same and submits that in fact the plaintiff is working as a broker and the amount so received cannot be directly connected to the sale consideration of the agreement. It is also submitted that the entry made in the agreement would show that it is meant for another sale transaction which cannot be remotely connected to the suit property. He further submits that the receipt of amount in agreement do not show the signature of the respondent.
7. Perused the document. Copy of the agreement is also enclosed. A perusal of the agreement would show that initially Rs.1,21,000/- was paid by way of Cheque and Cash in the presence of witnesses and thereafter on 22.11.2016, Rs.50,000 in cash was paid. Subsequently on the backside of the agreement, it was written that on 27.02.2017 again a sum of Rs. 2 lakhs in cash was paid which bears the signature of recipient Ahshwini Kumar and thereafter it is written that on 25.04.2017 another Rs. 2 Lakhs by way of Cheque is said to have been paid, as such a total sum of Rs.5,71,000/- has been paid. Thereafter entry has also been made that a part of the land ad-measuring 3024 sqft., in

respect of the land of agreement deed entered into between the plaintiff and defendant was registered in favour of Shakun Bai and Puja Bai, for which a consideration of Rs.8,48,800 was paid by cheque to the seller, as such a total sum of Rs.14,19,800/- was received.

8. The submission made by the defendant that sale consideration has not been received is a matter of evidence. Prima facie, the entries in the agreement would show that the amounts so paid are of-course subject to proof. The agreement shows that after the demarcation report is received, the registration would be done only for the land available in demarcation. Therefore, if the agreement is considered as a whole, it also contains that the amount of part of sale consideration was paid by cheques which too is a matter of evidence. At this stage, it would not be proper to *prima faice* hold that the said sale consideration was not paid as it would amount to accepting the submission of the defendants by presumption by negating the entries in the agreement. After going through the contents of the agreement, it appears that prima faice evidence exists in favour of the plaintiff as also the balance of convenience lies in favour of the plaintiff as considerable sale consideration was paid. Therefore, in the meanwhile, if the defendants are allowed to execute the sale deed in the name of third party it would lead to irreparable loss to the plaintiff and multiplicity of suit. In such circumstances, I am inclined to allow the application filed under Order 39 Rule 1 & 2 of CPC. Accordingly, the application Under Order 39 Rule 1 & 2 of CPC is allowed.

9. The defendants are directed not to make any further alienation of the property till the disposal of the civil suit. The learned court below shall be obliged to decide the suit on merits within a further period of one year from the date of receipt of the certified copy of this order.
10. With the above observation/direction, this appeal stands disposed of.

**Sd/-
GOUTAM BHADURI
JUDGE**