

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 154 of 2002

Vijay Griha Nirman Sahakari Samiti Maryadit, Raipur, Through the President, Tej Kumar Bajaj, Vijay Griha Nirman Sahakari Samiti Maryadit, Raipur, Chhattisgarh

---- Appellant

Versus

1. Dayaram, S/o. Punau, R/o. Village Purena, Tahsil & District Raipur, Chhattisgarh
2. State of Chhattisgarh, Through the Collector, Raipur, Chhattisgarh

---- Respondents

For Appellant : Mr. B.D.Guru with Mr. Aditya Bhardwaj, Advocates

For Respondent No.1 : No representation, even in the second call.

For Respondent No.2 : Mr. D.R.Minj, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgment On Board

23.10.2018

Heard

1. This appeal is against the judgment and decree dated 25.06.2002 passed in Civil Suit No.7-A/2001 by the Third Additional District Judge, Raipur, whereby the suit filed by the appellant/plaintiff for specific performance was dismissed.
2. The brief facts of the case was that the suit was brought by Vijay Griha Nirman Sahakari Samiti Maryadit, Raipur, a registered Cooperative Society with the averments that the Society acquires the land and after carving out the plots, allot it to the members for construction of the house. Pursuant to such object, the Society on 26.11.1987 entered into the agreement with the defendant to purchase different lands bearing Khasra No.87/1, 87/2, 214/1, 214/2, 246 & 94/3 situated at village Purena, P.C. No.113, District

Raipur at the rate of 34,000/- per acre and took over the possession. It was further pleaded that the amount of Rs.4000/- was paid as an earnest money. Subsequently, after five years were passed, no sale deed was executed; thereafter, the plaintiff has served the defendant with a notice for specific performance, however, no sale deed was executed. Therefore, the civil suit was filed for specific performance of the suit along-with the prayer for permanent injunction.

3. The defendant denied the plaint allegation and stated that he has not received an amount of earnest money of Rs.4000/- by way of sale consideration. It was further stated that the defendant was an illiterate and villager, he was not able to sign even properly and in respect of same land ceiling case was pending. It was further contended that during such pendency of the ceiling proceeding, suit could not have been filed and the agreement dated 26.11.1987 was void ab-initio which cannot be enforced. It was further stated that there was non joinder of the parties, as such, the suit was liable to be dismissed.
4. The Court framed eight issues on the basis of the pleadings and during pendency of the suit, at the stage of evidence, the defendant failed to appear and therefore the Court proceeded ex-parte. The Court after evaluating the evidence dismissed the suit, therefore, the instant appeal.
5. Learned counsel for the appellant would submit that the learned Court below failed to appreciate the facts and evidence on record that the agreement dated 26.11.1987 was proved by Ex.P-1. He further submits that there is no ambiguity exists in respect of the agreement; consequently, the agreement so made was

necessarily required to be enforced and the plaintiff was ready and willing to execute the same. He further submits that the reasoning given by the learned Court below is completely without any substance or factual support and the Court has virtually failed to appreciate the facts in the proper perspective, therefore, the suit for specific performance should have been decreed. Accordingly, the appeal is also liable to be allowed.

6. Heard learned counsel appearing for the appellant at length and perused the Court.
7. Perusal of the record would show that the suit for specific performance was brought by the Cooperative Society styled as Vijay Griha Nirman Sahakari Samiti Maryadit through its President Tej Kumar Bajaj. The suit was brought for specific performance as also for injunction. Tej Kumar Bajaj, the President of the Cooperative Society was examined as PW-1. He has stated that the agreement dated 26.11.1987 was made and the sale consideration was Rs.34,000/- out of which Rs.4000/- was paid. He further stated that after that agreement, the plaintiff Cooperative Society came into possession of the land. With respect to the agreement, the reference was made that it was filed in a separate Civil Suit bearing No.58-A/1995 which was pending before the 12th Civil Judge Class-II, Raipur. The agreement was marked as Ex.P-1(c). Perusal of the agreement Ex.P-1(c) shows that six Khasra numbers were agreed to be purchased at the rate of Rs.34,000/- per sq.ft. Different area is also shown in hectares. There is serious inconsistency in the statement as to what was the rate of the land as at one point of time PW-1 has stated that it was Rs.34,000/- per acre and further it is stated that it was Rs.34,000/-

per sq.ft. Whether it was sq.ft. or per acre, it was also not clear, whereas Ex.P-1(c) shows that the agreement was of Rs.34,000/- per sq.ft. Therefore, ambiguity exists in respect of the agreement itself about the sale consideration.

8. The agreement Ex.P-1(c) further purports that some ceiling case was pending and it was agreed that after ceiling case is decided and after permission to sale is obtained within 90 days of such permission and sale deed would be executed to show the pendency of the ceiling case in respect of Khasra No.87/1. The document Ex.P-2 (c) is on record. It is not clear as to when such permission was given in respect of one land, whereas the agreement pertains to six land. Perusal of the plaint would show that the plaintiff pleaded that Khasra No.87/2 and 94/3 was sold to one Hardayal Singh by a sale deed dated 30.03.1994 and Khasra No.94/3 was sold to one Santosh & Others and cancellation of sale deed as void was prayed for. Both the said purchasers of two different land were not made party. There is no document on record to show on which date permission of ceiling was obtained ? The agreement was dated 24.11.1987 and subsequent two sales were made to different persons according to the plaintiff itself. Therefore, the factum that the possession were given which was en-grafted in the agreement appears to be also doubtful.
9. The agreement was of 1987 and the suit was filed for specific performance on 19.02.1999. Apparently, it was not brought within the period of three years and it is also not clear when the permission from the ceiling was given so as to enforce the sale deed within a further period of 90 days. The pleading and the evidence is completely vague and contradictory. Under the

circumstances, in such overlapping facts, which contradict to each other. The plaintiff further failed to prove that he was ready and willing to perform his part of contract from a particular date and the suit having been filed in the year 1999, *prima facie* it appears to be barred by time.

10. Under the circumstances, I do not find any reason to set aside the judgment and decree. Accordingly, the appeal is dismissed.

Sd/-
(Goutam Bhaduri)
Judge