

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 57 of 2008**

Smt. Namita Chaturvedi, W/o Vinod Kumar Chaturvedi, aged about 41 years,
R/o Avanti Vihar Colony, Raipur, District – Raipur (CG)

---- Appellant

Versus

1. Sardar Vikkar Singh S/o Late Visakha Singh R/o Shyamnagar (Opposite Matha Bagicha)
2. Smt. Mahinder Kaur W/o Shri Sardar Vikkar Singh, R/o Shymanagar, Opposite Matha Bagicha Gurudwara Road District - Raipur CG
3. The State Of Chhattisgarh Through The Collector, Mahasamund, District - Mahasamund C.G.
4. Naresh Kumar Agrawal S/o Gopiram Agrawal, aged about 48 years, R/o Village Sankara, Tahsil and District – Mahasamund (CG)

---- Respondents

For Appellant	:	Shri A.K.Prasad, Advocate
For Respondent No.1	:	Shri Avinash K. Mishra, Advocate
For Respondent No.4	:	Shri Akhand Pratap Pandey, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Order On Board****02/07/2018**

1. This appeal is directed against impugned judgment and decree dated 30/01/2008 passed by the First Additional District Judge, Mahasamund, District – Mahasamund in Civil Suit No.2-A / 2006, by which, the appellant / plaintiff's appeal has been dismissed.

2. The plaintiff filed a suit praying for decree of Specific Performance of Contract on the pleadings *inter alia* that defendant No.1 – Sardar Vikkar Singh was in need of

money and therefore, in order to generate fund, he agreed to sell the property in dispute to the plaintiff for a consideration of Rs.10,51,000/- and an advance of Rs.51,000/- was also paid on 04/08/2005. According to the plaintiff, an agreement was executed on 04/08/2005 which was signed by defendant No.1 – Vikkar Singh containing recital that he would be selling the property to the plaintiff for Rs.10,51,000/- as agreed to between the parties. Further pleadings were that under the agreement, the defendant was required to get the property in dispute duly measured and marked which was not completed despite repeated request made by the plaintiff. When the defendant failed to perform the part of contract and neither got the land measured nor came forward to execute the sale deed by receiving the balance amount, notice was issued to the defendant through the lawyer. In reply to the notice, the defendant denied having executed any agreement to sell the property by stating that whatever amount was received, was only towards loan borrowed by him and he never executed any such agreement. Therefore, a cause of action arose for the plaintiff to file the suit for reliefs as stated therein.

3. The case of the defendants in their written statement was that the defendant No.1 was in need of money. He, therefore, contacted Vinod Kumar Chaturvedi (husband of the plaintiff). Though, Vinod Kumar Chaturvedi agreed to advance loan of Rs.50,000/-, he gave Rs.25,000/- only and in order to secure repayment of loan, signatures of defendant No.1 were obtained on blank stamp papers. He never intended to sell his property to the plaintiff and therefore, the suit is liable to be dismissed.

4. On the basis of the pleadings of the parties, learned Trial Court framed as many as five issues. Learned Trial Court framed an issue as to whether there was an agreement to sell the property in dispute between the plaintiff and the defendant and whether defendant No.1 and defendant No.2 had executed the agreement

dated 04/08/2005 taking advance of Rs.51,000/-. Learned Trial Court also framed an issue as to whether the agreement dated 04/08/2005 was a forged one.

5. Learned Trial Court held that the circumstances in which the so called agreement dated 04/08/2005 (Ex.P/2) is said to have been executed, renders it highly suspicious and it appears to be only a security towards repayment of loan amount. The suit was, therefore, dismissed.

6. Assailing correctness and validity of impugned judgment and decree, learned counsel for the appellant argued that the learned Trial Court, on untenable grounds, even after having held the agreement executed, proceeded to dismiss the suit. He contends that the learned Trial Court committed an error of law in holding that as there was no specific pleading in the plaint that Shyamlal scribed the agreement dated 04/08/2005 and he was one of the witnesses, his evidence was liable to be disbelieved because there is no such requirement of pleading. It is next submitted that as far as the agreement (Ex.P/2) is concerned, execution has been duly proved from the evidence of plaintiff witness – Motiram Yadav (PW2) and further, defendant No.1 has admitted having signed the said document. Therefore, once execution of agreement is proved, the burden was heavy on the defendant to prove otherwise. The defendant No.1 had the authority from his wife (defendant No.2), as deposed by her in her evidence, to deal with the property. Therefore, the defence that defendant No.1 signed on a blank piece of paper is highly improbable as defendant No.1 is a literate person. Learned counsel for the appellant further argued that the defendant No.1 has admitted having received an amount of Rs.25,000/- whereas the evidence on record, as relied upon by learned Trial Court itself proves that the plaintiff had paid and defendant No.1 received Rs.51,000/- as advance. Therefore, dismissal of the suit was bad in law. In support of his submission, learned counsel for the

appellant places reliance upon decision of the Supreme Court in the cases of **Martin Cashin and ors. v. Peter J. Cashin, AIR 1938 PC 103, Ramkishorelal and anr. v. Kamalnarayan, AIR 1963 SC 890 and Biswanath Ghosh (Dead) by Legal Representatives and ors. v. Gobinda Ghosh @ Gobindha Chandra Ghosh and ors. (2014) 11 SCC 605.**

7. Per contra, learned counsel for the respondent / defendant would argue that the entire case of the plaintiff is shrouded in mystery. The circumstances which have been taken into consideration by the learned Trial Court are that neither the plaintiff nor defendant No.2 who is stated to be party to the agreement, has signed the document, though according to the plaintiff and his witness, both of them were present. At the time of preparation and execution of the agreement dated 04/08/2005 (Ex.P/2), the plaintiff – Namita has not even entered the witness box. She has failed to prove that there was an agreement between her and defendant for purchase of defendant's property. As she has not entered the witness box, Vinod Chaturvedi (PW1) stating that she had sufficient fund available cannot be accepted so as to say that she was ready to perform her part of contract. There is no proof of fact that she was all through willing to perform her part of contract. Plaintiff's case of execution of agreement to sell has rightly been disbelieved because out of two witnesses, only one of them i.e. Motiram Yadav (PW2) has been examined and he admits that he was working in the Pump House under control and supervision of Vinod Chaturvedi (husband of Namita). Therefore, the signature of defendant No.1 alone would not be sufficient to hold that the document was scribed in his presence and according to his instructions by the said witness and then he put his signature on the same.

8. We have considered the submission of learned counsel for the parties and perused the records.

9. Following point arises for consideration in this appeal -

Whether defendant No.1 – Sardar Vikkar Singh agreed to sell the property in dispute holding jointly by him and his wife to plaintiff – Namita and towards the same, executed agreement dated 04/08/2005.

10. Pleadings of the plaintiff has been that there was an agreement between the plaintiff – Namita, defendant No.1 – Sardar Vikkar Singh and his wife/ defendant No.2 – Smt. Mahinder Kaur. According to the plaintiff, defendant – Vikkar Singh signed the agreement which was prepared on his instructions by Motiram Yadav (PW2) and he received Rs.51,000/-. However, in order to prove this most important fact that there was an agreement between the plaintiff and defendant No.1 and defendant No.2, the plaintiff herself has not entered the witness box. In order that a person could get a decree of specific performance, the *sine qua non* is an agreement between the parties. It is not a case where the defendant has admitted that there was an agreement to sell the property in dispute but the plaintiff having failed to perform her part of contract, she was not entitled to decree. Present is a case where the defendants have completely denied the plaintiff's case that there was any agreement to sell the property. Therefore, the plaintiff is required to prove that there was any agreement to sell the property in dispute. The plaintiff was the most important witness to prove this fact that she had entered into an agreement with the defendants but then she herself has not entered the witness box.

11. Learned counsel for the respondent brought to the notice of this Court that the Power of Attorney (Ex.P/1) was executed by the plaintiff before the notary in the Court premises itself. This is also clear from the recital of the said document. Even then, she has chosen not to enter the witness box. Therefore, the best evidence, though available, was not led by the plaintiff by examining herself that there was an

agreement between the plaintiff and defendant, under which, the defendant agreed to sell the property to the plaintiff.

12. Agreement dated 04/08/2005 (Ex.P/2) contains recital to the effect that the defendant – Sardar Vikkar Singh is the owner of the property in dispute and he has agreed to sell the same to Smt. Namita Chaturvedi for a consideration of Rs.10,51,000/-.

It has been pleaded by the plaintiff and not disputed by the defendant that the property in dispute was jointly owned by defendant No.1 with his wife / defendant No.2. The document, however, does not refer to this fact but only mentions that the property was owned by defendant – Sardar Vikkar Singh.

13. According to the plaintiff's pleading and evidence led by her, at the time of preparation of the agreement and its execution, the plaintiff – Namita and defendant No.2 – Smt. Mahinder Kaur, both were present. Curiously enough, the place where the agreement is said to have been executed, as stated by Motiram Yadav (PW2) is Nal Ghar (pump house). Motiram Yadav (PW2) who is examined as plaintiff witness has stated in para 3, 4 and 5 of his affidavit under Order 18 Rule 4 of CPC that Vikkar Singh, stating himself to be authorised by his wife, entered into an agreement with Smt. Namita Chaturvedi and this was in the name of his wife. He, then, states that in his presence, Namita paid Rs.51,000/- to Sardar Vikkar Singh. This witness claims that agreement was scribed by him and in his presence, defendant – Vikkar Singh signed the document, whereafter, he and another witness – Shyamlal Yadu signed the document. Thus, even this witness states that an agreement was arrived at between Shri Vinod Chaturvedi i.e. husband of the plaintiff that an agreement was made in the name of his wife. This witness, in his cross examination, has admitted that in the agreement (Ex.P/2), name of wife of Vikkar Singh has nowhere been

written. We also find in the agreement that there is no recital that defendant No.1 – Vikkar Singh received Rs.51,000/- from Smt. Namita said to be present at the time of execution of agreement. This renders the case of the plaintiff doubtful in so far as plaintiff's claim that there was an agreement to sell the property is concerned.

Plaintiff's witness – Motiram Yadav (PW2) admits that he was engaged in the work of boring and accepts tender work from the Corporation and in that connection, he goes to the Pump House where plaintiff's husband- Vinod Chaturvedi is posted as Engineer as he is well known to him.

Plaintiff's witness- Vinod Chaturvedi (PW1) has appeared as witness of the plaintiff to depose as Power of Attorney holder that his wife – Namita entered into an agreement with defendants. In para 3 of his affidavit, he states that the defendant entered into an agreement with his wife which followed execution of agreement dated 04/08/2005. It would thus appear that the evidence of Vinod Chaturvedi (PW1) and Motiram Yadav (PW2) are contradictory with regard to the agreement between the parties. While Motiram (PW2) states in his affidavit that Vinod Chaturvedi entered into the agreement on behalf of his wife, Vinod Chaturvedi himself states that his wife entered into an agreement. Plaintiff – Namita has not entered the witness box.

14. Defendant No.1- Vikkar Singh has not only pleaded but emphatically stated in his evidence that there was no agreement to sell the property between him and the plaintiff – Namita. According to him, he needed some money and borrowed loan from Vinod Chaturvedi, who was working as Engineer. Only by way of some security, his signatures were obtained. This witness states that he can neither read nor write Hindi. His signature on the disputed agreement dated 04/08/2005 are in English. The evidence of this witness that he can neither read nor write Hindi has remained uncontroverted in his cross examination. Therefore, when the defendant

No.1 has emphatically pleaded and stated before the Court that he never entered into any agreement with the plaintiff, the plaintiff herself having not entered the witness box, renders the case of the plaintiff highly doubtful. We also find that Vinod Chaturvedi (PW1) – husband of the plaintiff has admitted in his cross examination that he received Rs.25,000/- from Vikkar Singh. According to him, he received the amount against payment of tractor but no documentary evidence in this regard has been placed before us to inspire confidence that receipt of Rs.25,000/- from Vinod Chaturvedi was in respect of some other transaction and not the present one. According to defendant No.1- Vikkar Singh, he had taken loan of Rs.25,000/- by Vinod Chaturvedi. Admission on the part of this witness - Vinod Chaturvedi of having received Rs.25,000/- by him, further renders the case of the plaintiff doubtful that the parties had entered into an agreement of sale of property and it was not a loan transaction. There is no recital either in the agreement (Ex.P/2) that contents of the same were read over and explained to defendant – Vikkar Singh and only thereafter, he had signed the document.

15. Grant of relief of decree of specific performance is a discretionary relief. After having examined the evidence on record and particularly taking into consideration that the plaintiff herself did not enter the witness box, that the agreement is said to have been executed between the plaintiff and defendant No.1 and defendant No.2, plaintiff and defendant No.2 had not signed the document, attesting witness – Motiram Yadav (PW2) is a close associates of Vinod Chaturvedi, husband of the plaintiff and the other attesting witness has not been examined to prove the fact of agreement between the parties, in our considered opinion, plaintiff's case that it was an agreement to sell the property appears to be improbable and that Vikkar Singh had borrowed Rs.25,000/- appears to be more probable and therefore, plaintiff is not entitled to a decree of specific performance. Accordingly, we find no reason to

interfere with the impugned judgment and decree. The appeal fails and is accordingly dismissed. Appellate decree be drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge