

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 69 of 2013

Ashok Tripathi S/o Harishankar Tripathi Aged About 45 Years R/o Gitanjali Nagar, Kashyap Colony, Bilaspur, Tah. And Distt. Bilaspur C.G., Chhattisgarh

---- Appellant

Versus

1. Devari Lal Sahu S/o Guharam Aged About 70 Years R/o Sendri, P.S. Koni, Tah. And Distt. Bilaspur C.G., Chhattisgarh
2. Pyarelal Sahu S/o Guharam Aged About 68 Years R/o Sendri, P.S. Koni, Tah. And Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh
3. Itwari Lal Sahu S/o Guharam Aged About 65 Years R/o Sendri, P.S. Koni, Tah. And Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh
4. Arjun Lal Sahu S/o Itwari Lal Sahu R/o Sendri, P.S. Koni, Tah. And Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh
5. State Of Chhattisgarh Thru- The Collector, Bilaspur, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Awadh Tripathi, Advocate
For Respondents	:	None appears

Division Bench : Hon'ble Mr. Justice Manindra Mohan Shrivastava
Hon'ble Mrs. Justice Rajani Dubey

Judgment On Board

30/07/2018

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the impugned judgment and decree dated 22.1.2013 passed by learned Fourth Additional Judge to the Court of First Additional Judge in Civil Suit No.13A/2012 by which plaintiff/appellant's suit for grant of decree of specific performance has been dismissed.

2. The appellant/plaintiff filed a suit seeking decree of specific performance on the pleadings, inter alia, that the appellant/plaintiff was looking out for some property and he came in contact with defendant No.5 Arjun Lal Sahu who expressed that he and other members of his family are willing to sell a joint family property. It was further pleaded that the land in dispute was shown at the spot by Arjun Lal Sahu and Rs.10,000/- was paid by the plaintiff to Arjun on 27.1.2007 vide Ex.P-2. It was also pleaded that later on, on 31.1.2007, the other co-owners of the property entered into an agreement of sale of the property with the plaintiff for a consideration of Rs.9,10,000/- and on that day, Rs.1 lakh was also paid to the defendants. Under the agreement, the sale deed was required to be executed within a period of 90 days from the date of demarcation. However, despite repeated efforts made by the plaintiff, the defendant avoided to execute sale deed or to take any other steps in the matter and finally, a legal notice was sent by the plaintiff to defendant on 18.8.2009 vide Ex.P-3 and when even after that, no sale deed was executed, the plaintiff filed suit.
3. The defendants filed their written statement disputing the transaction and stand taken was that there was no agreement of sale of the property and that property belongs to bigger family and other members of the family have not consented. However, thereafter, the defendants remained ex-parte. The learned trial Court framed following issues:-

- “1. क्या दिनांक 30.01.2007 को वादी और प्रतिवादी क्रमांक 01 से 03 एवं 05 के मध्य वादग्रस्त भूमि के संबंध में पक्का सौदा निष्पादित किया गया ?
2. क्या वादी प्रतिवादी क्रमांक 01 से 03 ने बतौर अग्रिम सौदा राशि एक लाख रुपए प्राप्त किया ?
3. क्या प्रतिवादी क्रमांक 01 से 03 को वादग्रस्त भूमि का विक्रय पत्र निष्पादित करना चाहिए ?
4. सहायता एवं वाद व्यय ?”

4. The learned trial Court, upon assessment of oral and documentary evidence, raised a doubt with regard to transaction and dismissed the suit.

5. Assailing correctness and validity of the impugned judgment and decree, learned counsel for the appellant/plaintiff argues that the plaintiff proved the execution of agreement between the parties by not only producing the original agreements (Ex.P-1 & P-2) but also its due execution from the evidence of the witnesses to the document, even then, the learned trial Court on a very trivial discrepancy with regard to sale consideration amount, has disbelieved the case of the plaintiff. He would submit that it was under some misconception of facts that in the affidavit filed under Order XVIII Rule 4 CPC, the amount of sale consideration was stated as Rs.9,51,000/- whereas actually both in the pleadings as well as in the agreements (Ex.P-1 & P-2) as also in notice (Ex.P-3), it would clearly state that the agreed consideration was Rs.9,10,000/-. It is next submitted that the other finding of the trial Court that there is discrepancy with regard to receipt of advance amount, this is again not a discrepancy because from the recital of Ex.P1, it is clear that a total amount of Rs.1 lakh was paid on 31st January 2007 though on the same date amount of Rs.1 lakh was paid in two parts firstly Rs.49,000/- and then another amount of Rs.51,000/-. As far as advance of payment of Rs.10,000/- is concerned, this fact is also proved from Ex.P-2 which states that Rs.10,000/- was paid to Arjun Lal who is none other than the son of Itwari. Thus the agreement was fully proved.
6. Learned counsel for the appellant would further submit that learned trial Court ought to have appreciated that once the agreement was proved and the appellant had not only pleaded but led specific evidence of his readiness and willingness, a decree of specific performance of contract ought to be granted in favour of the appellant/plaintiff.
7. We have heard learned counsel for the appellant. In appellate proceedings also, respondents have remained ex-parte.
8. In the plaint, the plaintiff has pleaded that there was an agreement entered into between the plaintiff and defendants (except the State) by which the parties had agreed for sale consideration of Rs.9,10,000/-. According to plaintiff, on 27th January 2007, an amount of Rs.10,000/- was paid to Arjun Lal and thereafter on 31.1.2007, the total amount of Rs.1 lakh was paid to

defendant and on that date, the agreement of sale was executed.

9. Ashok Tripathi (PW1), the plaintiff himself has deposed that on 22.1.2007, he met Arjun Lal and thereafter on 27.1.2007, he paid Rs.10,000/- to Arjun. Thereafter, in para-4 of his evidence, this witnesses states that on 31.1.2007, the parties had agreed that the land in dispute would be sold for consideration of Rs.9,51,000/-. It has been further stated that on that date Rs.51,000/- was paid. When the defendant insisted for some more money, another Rs.49,000/- was also paid on the same date.
10. In order to prove the two agreements, the plaintiff has examined two witnesses namely Naval Sharma (PW2) and Neelam Tiwari (PW3). Naval Sharma (PW2) in his evidence under Order XVIII Rule 4 CPC has stated that on 31.1.2007, an agreement was executed between the plaintiff and defendants in respect of the land in dispute and that the agreement was for payment of Rs.9,51,000/- and an advance of Rs.1 lakh was received. He has proved his signature in the said document. He further states that the defendant Dewari Lal Sahu, Pyarelal Sahu, Itwari Lal Sahu and Ashok Tripathi they all came together and then Arjun Lal Sahu and Sukhnandan Sahu and others signed and affixed their thumb impressions. He has also stated that at that time, Neelam was also present as witness to the said transaction. This witness has proved his signature in Ex.P-1 agreement dated 31.1.2007.
11. The other witness Neelam Tiwari (P.W.3) in his affidavit under Order XVIII Rule 4 CPC has stated on similar lines as stated by other witness Naval Sharma that the parties had agreed for sale for consideration of Rs.9,51,000/- and an advance of Rs.1 lakh was received by defendant and thereafter they had signed the document or affixed their thumb impression. According to this witness, the other witness Naval Sharma was also present. This witness has also proved his signatures in Ex.P-1.
12. We find that as far as execution of the agreement is concerned, learned trial Court has found the same as not proved mainly because of two discrepancies.

Firstly that there is discrepancy with regard to sale consideration. While in the plaint, documents, and notice (Ex.P-3) case as set up is that the sale consideration agreed was for Rs.9,10,000/-, in the affidavit of all the witnesses including plaintiff himself, the sale consideration is stated to be Rs.9,51,000/-.

The other reason why learned trial Court has not found agreement proved is that there is discrepancy with regard to receipt of the advance amount because in the plaint, it has been averred that Rs.10,000/- was paid on 27.1.2007 and upon receipt of Rs.1,10,000/- defendant agreed to sell the land whereas in the agreement Rs.51,000/- and Rs.49,000/- are stated to have been paid on 31.1.2007.

Learned trial Court having recorded finding on these two issues, has not considered any other issue including issue No.3.

13. We find that the plea as set up in the plaint and documents are at variance with the evidence led before the trial Court. Even if we except that the plea and evidence with regard to payment of advance of Rs.10,000/- and subsequently payment of Rs.1 lakh cannot be said to be at variance with the evidence led as a whole, the difference of the amount of sale consideration as pleaded in the plaint, agreement and as deposed before the Court appears to be completely different. There is vast difference between the two amounts what has been pleaded and what has been sought to be proved. The pleadings and recitals of the agreement and the notice do not make out a case of there being a deal between the parties for sale of the property in dispute for an amount of Rs.9,10,000/- whereas in the affidavits of all the witnesses of the plaintiff which includes plaintiff and two of his attesting witnesses, each one of them has emphatically stated that deal was struck for consideration of Rs.9,51,000/-. Thus, there is a difference of Rs.40,000/- in the sale consideration. Thus, pleading and evidence are at variance with each other.

14. Learned counsel for the appellant strenuously urged before the Court that the application for amendments in the affidavit filed under Order XVIII Rule 4 CPC may be allowed because what was stated in the affidavit was only a

typographical mistake which occurred due to inadvertent mistake.

15. It is not a case where in one of the affidavits, the witness stated different amount. In all the three affidavits filed by the plaintiff, the sale consideration stated as Rs.9,51,000/-. Affidavit under Order XVIII Rule 4 CPC is in the shape of evidence which has been made a basis for trial Court to doubt the genuineness of the transaction. At the appellate stage, we cannot allow such kind of correction to be made which would amount to changing evidence led before the trial Court. We, therefore, find that the learned trial Court has recorded a finding creating a doubt on the transaction itself because of the discrepancies found hereinabove.
16. We have gone through the records of the case and we find that even on the aspect of readiness and willingness, there is no clinching evidence led by the plaintiff. There is no specific issue framed by learned trial Court in this regard as to whether the plaintiff was ready and willing to perform the part of contract. However, having held that because of discrepancy in the evidence and the pleadings and documents, the trial Court has found the transaction itself to be a doubtful, with which we are in agreement and taking into consideration that the grant of relief under the Specific Relief Act is discretionary, when transaction itself appears to be doubtful, we are not inclined to grant any relief to the appellant.
17. The appeal is therefore dismissed. Let appellate decree be drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge