

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 177 of 2013

- Topendar Singh S/o Shri Nandram Aged About 20 Years, caste Satnami, resident of village Nawapara, Bhondu, Tahsil Lormi, Distt. Bilaspur, (Presently Civil and Revenue District Mungeli CG)

---- Petitioner

Versus

1. Bodhram Bharte S/o Sadashiv Bharte, Aged About 40 Years, Caste Satnami, R/o Village Sakri, Daldalihapara, Tahsil Takhatpur, Distt. Bilaspur Chhattisgarh
2. State Of Chhattisgarh Through The District Collector, Bilaspur (Presently Mungeli)

---- Respondent

FA No. 78 of 2014

- Hem Singh S/o Nandram Aged About 25 Years, Caste Satnami, R/o Navapara (Bhodu), Tahsil Lormi, Distt. Bilaspur Chhattisgarh

---- Petitioner

Versus

1. Bodhram Bharte S/o Sadashiv Bharte Aged About 40 Years R/o Sakri, Daldalihapara, Tah. Takhatpur, Distt. Bilaspur Chhattisgarh
2. State Of Chhattisgarh Through Collector, Bilaspur Chhattisgarh

---- Respondent

For Petitioners	Mr. AK Bhakta and Mr. Vivek Bhakta, Advocates
For Respondent /State	Mr. Anand Dadariya, Dy. GA

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra

Hon'ble Mrs. Justice Vimla Singh Kapoor

Order On Board By**Hon'ble Mr. Justice Prashant Kumar Mishra****30/11/2018**

1. Since both the appeals involve similar question of law and fact, they are being heard and disposed of by this common order.
2. These two appeals have been preferred by the defendants assailing the legality and validity of the impugned judgment and decree, whereby, the trial Court has allowed the plaintiff's respective suits for specific performance of agreements dated 22.9.2008.
3. In FA No.177 of 2013, the agreement was for selling 5.18 acres of land, whereas, in FA No.78/2014, the land involved is 1.90 acres, both situated at Nawapara Lormi, Tehsil and District Bilaspur.
4. Both the agreements were executed by two real brothers namely Topendar Singh and Hem Singh, both Sons of Nandram, by caste Satnami. In the sale agreement- ExP/1, they agreed to sale the subject area @ 1 lakh per acre and received an advance amount of Rs.50,000/- on the date of agreement itself. The sale-deed was to be executed within 2 months upon payment of the balance sale consideration. When the defendants failed to execute the sale-deed, despite repeated requests, the plaintiff served legal notices to both the brothers but when the defendants denied having executed any sale agreement, the present suits were filed.

5. While the plaintiff has examined both the attesting witnesses, the defendants have examined themselves as well their father Nandram to prove that it was not an agreement to sale but they had obtained a loan of Rs.50,000/-. However, the plaintiff agreed to advance loan on the condition that the defendants shall execute a sale agreement by way of security for refund of the loan amount.
6. The trial Court has decreed the suit on the finding that the agreement was in fact a sale agreement and the plaintiff was always ready and willing to perform his part of the contract and it is the defendants, who have failed to execute the sale-deed in terms of the agreements.
7. The evidence available on the record would establish that on the date of the agreements, the prevailing market rate of the land in the concerned area was Rs.2.55 lakhs per hectare, which is approximately very near to the rate at which the sale agreement was executed i.e. Rs. 1 lakh per acre. Therefore, there is no substance in the objection raised by the defendants that the agreements were executed at a substantially lower rate than the market value.
8. The agreements contain a clause that the vendor would execute the sale-deed in favour of the purchaser or in favour of any other person indicated by the purchaser. Such term in the agreement is usually included when the purchaser is not interested in purchasing the property and subsequently arranges some other person, who is in a position to pay the sale

consideration for purchase of the property. The persons who usually enter in agreement containing such stipulation are those who deal in real estate.

9. This Court in the matter of **Sanjay Maheshwari Vs. Punaram Sahu and others** (FA No.82 of 2013, decided on 25.8.2017), relying on the judgment passed by the Supreme Court in the matter of **N.P. Thirugnanam (Dead) by LRs. V. Dr. R. Jagan Mohan Rao and others, (1995) 5 SCC 115**, has held that when the very contract is speculative in nature, the plaintiff, who has entered into the contract and has been dabbling in real estate transactions without the means to purchase a substantial immovable property like the suit property, is not entitled for decree of specific performance.
10. To prove his readiness and willingness, the plaintiff would state in his affidavit under Order 18 Rule 4 of CPC that on the defendant's assurance, he visited the office of Sub-Registrar on 19.11.2008 and thereafter, on 18.12.2018, ready with cash for execution of the sale-deed. However, the defendants did not turn up.
11. The plaintiff's statement appears to be false for the simple reason that it is common knowledge and judicial notice can be taken note of the fact that 18th of December being birthday of the Guru of the members of Satnami Community, is always celebrated as 'Guru Ghasidas Jayanti'. The said day is always declared a Gazetted Holiday by the State Government and the office of the Sub-Registrar never opens on the said date since

after creation of the State of Chhattisgarh w.e.f. 1.11.2000. In fact, the plaintiff himself being a member of Scheduled Caste Satnami community, also knows that 18th of December is a holiday yet he is making such statement on oath in his affidavit under Order 18 Rule 4 CPC, which ought not to have been stated. Moreover, payment of Rs.4,68,000/- lakhs could not have been made in cash even in the year 2008. Any payment of an amount over Rs.20,000/- by way of sale consideration for execution of the sale-deed is to be paid either by way of cheque or Demand Draft. For this reason also, the plaintiff's case that he had gone to the office of Sub-Registrar on 19.11.2008 and 18.12.2008 ready with cash does not appear to be true.

12. In view of the above, even if the subject agreements are agreements to sale, the plaintiff having failed to establish and he having made false statement about his appearance before the Sub-Registrar on a Gazetted Holiday, he is not entitled for decree of specific performance of the contract.

13. Mr. Bhakta learned counsel appearing for the appellant in FA No.177 of 2013 and appearing on behalf of Anurag Jha, Advocate in FA No.78 of 2014, would submit that the defendants having received Rs.50,000/- at the time of execution of the agreements-Exp/1, they are ready to return the amount to the plaintiff along with interest @ 6% per annum.

14. In view of the statement made, the impugned decree is modified in the following manner:

(i) Both the judgment and decree for specific performance of contract are set-aside;

(ii) The defendants in both the appeals shall return the amount of Rs.50,000/- with interest @ 6% per annum to the plaintiff within a period of 3 months from today, failing which, the amount shall carry interest @ 12% per annum.

15. Both the first appeals are accordingly allowed

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Vimla Singh Kapoor)

Judge

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