

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 264 of 2015**

- Smt. Sharda Sharma W/o D. P. Sharma, Aged About 62 Years R/o M-44, Yadunandan Nagar, Tifra, Thana Sirgitti, Tahsil And District Bilaspur Chhattisgarh

---- Appellant**Versus**

1. Kamlesh S/o Milap Shriwas, Aged About 44 Years R/o Gram Nayapara, Bodri, Tahsil - Bilha, Thana Chakarbhata, District Bilaspur Chhattisgarh
2. Harnarayan S/o Late Milap Shrivwas, Aged About 40 Years R/o Gram Nayapara, Bodri, Tahsil - Bilha, Thana Chakarbhata, District Bilaspur Chhattisgarh
3. State Of Chhattisgarh Through Collector, Bilaspur Chhattisgarh

---- Respondent

For Appellant : Shri Ali Asgar, Advocate.
 For Respondents 1 & 2 : Shri Rishi Rahul Soni, Advocate.
 For Respondent/State : Smt. Astha Shukla, Panel Lawyer.

**Hon'ble Shri Prashant Kumar Mishra &
 Hon'ble Smt. Vimla Singh Kapoor, JJ**

Judgment On Board By Prashant Kumar Mishra, J**14/12/2018 :**

1. The appellant would assail the legality and validity of the impugned judgment and decree passed by the trial Court dismissing her suit for specific performance.
2. Plaintiff Sharda Sharma entered into an agreement with deceased Milap on 13.6.2011 for purchasing 1.56 acres of land bearing Khasra No.246, PH No.1, RI Circle Belha, Village Bodri, Tehsil Belha, District

Bilaspur. On the date of agreement, Milap received Rs.5 lakhs towards advance, however, Milap died on 19.7.2011 without executing the sale deed in favour of the appellant. The names of the present defendants were mutated in the Revenue Records after the death of Milap. Kamlesh received a sum of Rs.1,50,000/- on 26.10.2012 and Rs.20,000/- on 25.11.2012. Thus he ratified the agreement which was otherwise signed by him as consenter at the time of agreement. On failure of the legal heirs of Milap to execute the sale deed, the plaintiff served legal notice dated 31.3.2014 and thereafter the present suit was instituted on 10.9.2014.

3. The respondents/defendants contested the suit on allegations that Milap was in need of money, therefore, he approached Shailesh Agrawal for sale of part of the property but Shailesh Agrawal told him that he would purchase the property only when the entire area is sold. Under this condition Milap executed the subject agreement but immediately thereafter Milap fell ill and was admitted to the hospital. At this point of time, the defendants requested the plaintiff to pay some additional amount as advance but the same was not honoured due to which the defendants could not make proper arrangement for treatment of Milap and eventually he died. According to the defendants, they have never met the plaintiff Sharda Sharma and that whatever negotiation was entered in respect of the present transaction was with Shailesh Agrawal.
4. The trial Court has dismissed the suit for the reason that directing specific performance after the death of Milap when the property is

jointly owned by the defendants would create complication. Therefore, discretion for allowing specific performance is not to be exercised in favour of the plaintiff.

5. We have gone through the records, particularly the statements of the plaintiff's witnesses namely, Sharda Sharma (PW-1), Panchram (PW-2), Mahavir Ojha (PW-3) and for the defendants, Kamlesh (DW-1), Vishnu Sahu (DW-2) and Mewalal (DW-3).
6. A close scrutiny of their evidence would reveal that Panchram (PW-2) is a property dealer. He admits this fact in para-9 of his statement. Plaintiff Sharda Sharma has purchased one property from Ram Bahadur through her power of attorney holder and son Ashish Sharma vide Ex.-P/33. She has purchased another property from the same Ram Bahadur again through her power of attorney holder and son Ashish Sharma. There is another sale deed in favour of the plaintiff Sharda Sharma, which is available at page 35 of the paper book. This property has been purchased by plaintiff Sharda Sharma for Rs.1,53,59,000/-. Other properties have also been purchased by paying hefty amount of Rs.92,41,000/- and the present agreement is also for Rs.50 lakhs. The plaintiff has not disclosed as to her source of income or her income tax return to demonstrate her potency to purchase huge properties in quick succession.
7. Although the sale deeds have been submitted by the plaintiff to prove her capacity to purchase the property, however, no documents have been filed to prove her present capacity or by showing availability of funds either in the bank account or Fixed Deposit or

otherwise. The agreement contains a clause providing that Milap would execute sale deed in favour of the plaintiff or in favour of any other person indicated by the plaintiff. Ordinarily such recital in the agreement is inserted when the plaintiff is not in a position to purchase the property or even if he has means to purchase the property, he wants to sell it off to some other person.

8. In the light of these evidence, we are of the considered opinion that the defendants' case that negotiation was in fact entered with some other person cannot be lightly ignored. Jurisdiction to grant specific performance of agreement is equitable jurisdiction the exercise of which is to be guided by such judicial conscience which balances the rights of the parties to the proposed agreement. A slightest doubt or suspicion in the mind of the Court that the real beneficiary of the agreement is some other person would not persuade the Court to exercise jurisdiction in favour of the plaintiff.
9. The trial Court has assigned one reason for denying the decree for specific performance. However, we have our own reasons, as discussed above, in addition to the reasons assigned by the trial Court, to refuse the decree for specific performance.
10. In the result, the Appeal fails and is hereby dismissed.

Sd/-
Judge

(Prashant Kumar Mishra)

Sd/-
Judge

(Vimla Singh Kapoor)