

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 23-7-2019

Judgment delivered on 30-8-2019

FA No. 179 of 2005

- Manas Kumar Rai s/o. Late Shri Baleshwar Rai, aged 39 years, r/o. Kanchan Ganga, Phase-2, Raipur, Tahsil and Dist. Raipur (CG).

---- Appellant/plaintiff

Versus

- Smt.Gargi Devi Verma widow of late Shri Janak Ram Verma, aged 65 years, r/o. LIG 286, HUDCO, Bhilai, Dist. Durg (CG).

---- Respondent/defendant

For appellant : Mr. B.P. Gupta, Advocate.

For respondent : Mr. A.K. Prasad, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 12-7-2005 passed by 5th Additional District Judge, Raipur (CG) in Civil Suit No.174-A/2003 wherein the said court decreed the suit filed by the appellant/plaintiff partly and ordered to refund earnest money to the tune of Rs.15,000/- with interest.

2. The appellant/plaintiff filed a civil suit against the respondent/defendant for specific performance of contract submitting that respondent agreed to sell the land situated at

village Daganiya, Patwari Halka No. 104, Khasra No. 69/51, area 3500 sq.ft., amounting to Rs.1,05,000/- . The agreement was executed on 27-6-1997 and in the agreement it was specifically mentioned that respondent will get no objection certificate and inform the appellant thereafter. The sale deed shall be executed by getting rest of the consideration amount. When the respondent did not inform the appellant nor contacted him till July 1998, then appellant himself contacted the defendant but she did not reply satisfactorily. Thereafter, appellant served legal notice to respondent on 5-8-1998 which was received by her on 10-8-1998 but she did not reply the same. Again, respondent assured the appellant that she will get no objection certificate within eight months and thereafter execute the sale deed in favour of the appellant, but she failed to do so. Again the appellant served a notice to the respondent on 18-11-1999 but no sale deed was executed. When Urban Ceiling Act was abolished, the appellant again served notice to respondent on 20-7-2001 but she failed to execute the sale deed that is why suit was filed. Decree of specific performance ought to have been passed, but the trial court has passed the decree against facts and legal aspects of the matter.

3. Learned counsel for the appellant submits as under.

i) It is admitted by the respondent that

agreement was executed between the parties. The appellant was always ready and willing to perform his part of contract and he served notice to respondent for execution of sale deed in the year 1998, 1999 and 2001 which shows that he was always ready and willing to perform his part of contract.

- ii) It is pleaded on behalf of the respondent that the appellant cancelled the agreement, but same is not substantiated by any document and when the appellant is regularly serving notice to respondent for execution of sale deed, there was nothing on record that agreement was cancelled, therefore, finding of the trial court on this count is perverse.
- lii) The appellant was having sufficient fund and his statement was not rebutted.
- iv) The respondent did not enter into witness box to rebut the version of the appellant, therefore, version of the appellant is unrebutted, finding of the trial court is not sustainable.

He placed reliance in the matter of **Janki Vashdeo Bhonjwani and another vs. Indusind Bank Ltd. and others¹**,

Aniglase Yohannan vs. Ramlatha and others² Silvey and others vs. Arun Varghese and another³, M/s. Fabril Gasosa vs. Labour Commissioner and others⁴Roop Kumar vs. Mohan Thedant⁵ and Krishi Utpadan Mandi Samkiti, Sahaswan vs. Bipin Kumar and another⁶.

4. On the other hand, learned counsel appearing for the respondent submits that the contract was terminated by the appellant, therefore, he is not entitled for decree. He further submits that the finding of the trial court is based on proper marshalling of the evidence which is not liable to be interfered with while invoking jurisdiction of the appeal. He placed reliance in the matter of **Padmakumari and others⁷, I.S. Sikandar (dead) by LRs vs. K. Subramani and others⁸ Kalawati (dead) through Legal Representatives and others vs. Rakesh Kumar and others⁹, Man Kaur (dead) by LRs vs. Hartar Singh Sangha¹⁰ and S. Kesari Hanuman Goud vs Anjum Jehan and others¹¹.**

¹AIR 2005 SC 439

²2005 AIR SCW 4789

³AIR 2008 SC 1568

⁴AIR 1997 SC 954

⁵2003 AIR SCW 24r25

⁶AIR 2004 SC 2895

⁷(2015) 8 SCC 695

⁸(2013) 15 SCC 27

⁹(2018) 3 SCC 658

¹⁰(2010) 10 SCC 512

¹¹2013 SAR (civil) 503

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. Appellant/plaintiff side adduced evidence of Manas Kumar Rai (PW/1) and produced documents (Ex.P/1 to P/9). As against this, respondent/defendant side adduced evidence of Anand Kumar Verma (DW/1). From the evidence of Manas Kumar Rai (PW/1) and Anand Kumar Verma (DW/1), it is established that both parties entered into agreement for sale of land in question @ Rs.30/- per sq.ft. Earnest money to the tune of Rs.15,000/- was paid and rest of the amount was to be paid at the time of execution of sale deed.

7. It is contended on behalf of the respondent that the appellant was not willing to perform his part of contract. From the evidence it is clearly established that both parties have entered into agreement to sell the land in question. The agreement dated 27-7-1997 (Ex.P/1) was executed by both sides and it is signed by them. It is clear from the averment of Ex.P/1 (para 4) that respondent was under obligation to get "No Objection Certificate" from the competent authority and will inform the appellant regarding certificate and after getting certificate sale deed was to be executed within three months from the said date. Admittedly, no notice was served by the respondent to appellant regarding receiving of no objection certificate. It is the appellant who served

notice to respondent on 5-8-1998 as per Ex.P/2 and then again on 18-11-1999 as per Ex.P/4, but no sale deed was executed. Again notice was served to respondent on 20-7-2001 as per Ex.P/7, even then sale deed was not executed that is why suit was filed before the trial Court on 14-8-2001. From the agreement (Ex.P/1), no date was fixed for getting no objection certificate from the competent authority. It is only when certificate is obtained, sale deed was to be executed within three months. The information regarding no objection certificate was to be supplied by the respondent to appellant, but that is not supplied. Issuance of notices to respondent shows that the appellant was always ready and willing to perform his part of contract. From the plaint statement (para 11) it is clearly pleaded that appellant is always ready and willing to perform his part of contract which is supported by all the notices issued by him to the respondent. The trial court has ignored pleading of the plaint (para 11) and did not see all the notices issued to respondent, therefore, finding of the trial court on this count is not sustainable.

8. It is contended on behalf of the respondent that the appellant cancelled the agreement, therefore, he is not entitled for decree of specific performance. Respondent side examined Anand Kumar Verma (DW/1) who is son of the respondent. As per version of this witness (para 4) the appellant came to his house and cancelled the

agreement in the month of July 1998. The point for consideration of this court is whether version of this witness is acceptable in the facts and circumstances of the case. The appellant issued notice to respondent for execution of sale deed on 5-8-1998, 18-11-1999 and 20-7-2001. When all the notices were not responded by the respondent then only suit was filed against her. From the averment of Ex.P/1, it is clear that the respondent was under obligation to inform the appellant regarding obtaining no objection certificate, but she did not inform the appellant. Again she did not reply to any of the notices issued to her. Issuing of notice shows that the appellant has never cancelled the agreement, therefore, oral statement made by Anand Kumar Verma (DW/1) is contrary to all the written notices and looking to the entire facts and documents, it cannot be held that appellant ever cancelled the agreement. Finding on this count by the trial court is also not sustainable.

9. On an overall assessment of the entire record, the argument advanced on behalf of the respondent is not sustainable. Reasoning of the trial Court is also not sustainable. When appellant has proved his readiness and willingness to perform his part of contract, the respondent is under obligation to execute sale deed in his favour for land in question for which the both parties have entered into contract. The decree passed by the trial Court is liable to be and is hereby set aside. The case laws cited by learned

counsel for the respondent do not help to him as the same are clearly distinguishable from the facts and circumstances of the present case.

10. Accordingly, the appeal is allowed and decree is passed in favour of the appellant and against the respondents as under:

- i) The respondent to execute sale deed in favour of the appellant for land Survey No. 69/51, area 3500 sq.ft., Patwari Halka No. 104 situated at village Daganiya, Tahsil and District Raipur after getting bank draft of Rs.90,000/- from the appellant within two months. If respondent fails to execute the sale deed in favour of the appellant, the trial court shall execute the sale deed in favour of the appellant when bank draft/all the expenses of the registration of sale deed as mentioned above is submitted.
- ii) The cost of execution of sale deed shall be borne by the appellant.
- lii) After execution of sale deed, possession

shall be handed over to the appellant.

- iv) Parties to bear their own costs.
- v) Pleader's fee, if certified, as per schedule or whichever is less.
- vi) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju