

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 8--02-2019

Judgment delivered on 29-03-2019

FA No. 485 of 1999

1. Bahadur Yadav aged about 38years.
2. Amarjeet Yadav aged about 36 years.

Both sons of Heeralal Ahir and r/o village Akharadand, Tahsil Manendragarh, Dist. Surguja (MP now CG).

---- Appellants/Defendants No. 2 and 3.

Versus

1. Sunder Ram Ahir aged about 51 years.
2. Samesar Ahir aged about 53 years.

Both sons of Bachu Ahir and r/o. Village Akharadnand, Tahsil Manendragarh, Dist Sarguja (MP).

3. Sukhal Ahir aged about 58 years, s/o. Late Ladgu Ahir r/o. Village Shankerpur, Tahsil Manendragarh, Dist. Surguja (MP now CG).
4. The State of MOP(now CG) through Collector Surguja now present Dist. Korea.

---- Respondents

For appellants : Mr. Nishikant Sinha, Advocate
For Respondent No.1 : Ms. Sharmila Singhai, Advocate
For respondent No.4/ : Mr. Ravish Verma, Govt. Advocate
State. and Mr. V.B. Singh PL

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 13-8-1999 passed by the Additional District Judge, Manendragarh, Dist. Korea (CG) in Civil Suit No.10-A/96 wherein the said court decreed

the suit for specific performance of contract filed by the respondents No. 1 and 2/plaintiffs against the appellant/respondent and for injunction regarding the land bearing Khasra No.77, 87, 88, 94, 96, 102, 106 area 0.56, 0.57, 0.13, 0.04, 0.06, 0.80, 0.35 total 2.9 acres situated at village Akharadnand.

2) As per version of the plaint, appellants and the respondents No. 1 and 2 entered into agreement for sale of land in dispute for cash consideration of Rs.60,000/-. One agreement was executed on 21-4-1995 and Rs.17000/- was paid to respondent No.3. Rs.30,000/- was to be paid within three months and rest of Rs.13,000/- at the time of execution of sale deed. Respondent No.3 did not execute the sale deed in favour of respondents No. 1 and 2 in spite of their readiness and willingness to perform their part of contract and both respondents objected in the office of Sub Registrar for stopping the respondent No.3 to execute the sale deed in favour of others, but on 18-1-1996 respondent No.3 executed sale deed in favour of the appellants that is why suit was filed because the appellants are not bona fide purchasers. The trial Court decreed the suit as mentioned above.

3) Learned counsel for the appellant would submit as under:

- i) Pleading in the plaint does not show readiness and willingness on the part of the respondents No. 1 and 2 and same is not confirmed to the requirements

prescribed in Form 47 & 48 of the first Schedule, therefore, finding of the trial Court is not sustainable.

- ii) Respondents No. 1 and 2 did not pay Rs.30,000/- which was to be paid within a period of three months from the agreement dated 21-4-1995 which shows that they were not ready and willing to perform their part of contract.
- iii) Respondents No. 1 and 2 gave up their claim as they had no money to perform their part of contract. No agreement was subsisting on the date of sale deed executed in favour of the appellant by the respondent No.3.
- iv) Appellants had no knowledge about contract between respondents No. 1 and 2 with respondent No.3. Respondents No. 1 and 2 were not in possession of land in question, therefore, finding of the trial court in this regard is not proper.

4) On the other hand, learned counsel for the State would submit that the finding of the trial court is based on proper marshalling of the evidence which does not call for any interference by this court while invoking jurisdiction of the appeal.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) The first question for consideration of this court is whether respondent No.3 entered into agreement with respondents No. 1 and 2 to sell the land in question for cash consideration of Rs,.60,000/. From the oral evidence adduced by both sides and agreement to sell of land (Ex.P/2), it is established before the trial Court that there was an agreement between the parties. Sukhal Ahir/respondent No.3 (DW/1) deposed before the trial Court that (para 10) that not only he entered into agreement to sell, but also delivered possession of land to respondent No.1 Sunder RamAhir who was cultivating e same land. Looking to the entire evidence, the trial court is right in holding that there was contract between respondent No.3 Sukhal Ahir and respondents No.1 and 2 to sell the land in question.

7) From the evidence of respondents No. 1 and 2 side, it is established that one notice was given to Sub Registrar dated 12-1-1996 that respondents No. 1 and 2 are willing to pay the entire sum to Sukhal Ahir for execution of sale deed and sale deed should not be executed for some other persons. It is further pleaded in that the respondents No. 1 and 2 were willing to deposit the entire sum for execution of sale deed. No notice was served by Sukhal Ahir to respondents No. 1 or 2 before execution of sale deed in favour of

the appellant which is expected before coming out of the contract already took place between the parties. Again, from the evidence of Sukhal Ahir (para 12), it is established that the appellant No.2 Akarjeet Yadav advised respondent No.3 Sukhal Ahir not to sell the land to Sunder Ram Ahir because he is ready to give more price. Looking to the entire evidence, the trial Court opined that respondents No. 1 and 2 were willing to perform their part of contract and the appellants are not bona fide purchasers because they had knowledge regarding previous contract and they instigated Sukhal Ahir to sell the land in their favour for more price, therefore, argument advanced on behalf of the appellants that they are bona fide purchasers is not sustainable.

8) From the evidence of respondent No.3 Sukhal ahir (para 10) it is clear that after entered into agreement with respondents No. 1 and 2, possession of land was handed over to Sunder Ram and Sunder Ram was cultivating the land, it means Sunder Ram was cultivating the land since the date of agreement i.e., 21-4-1995 and Sunder Ram was in possession of the land while sale deed was executed in favour of appellants on 18-1-1996 on that date Sukhal Ahir was not in possession of the said land, therefore, he was not able to deliver possession of the land in dispute to appellants. As per Section 54 of the Transfer of Property Act, 1882 sale completed only when seller delivered his possession to the buyer

or person engaged by him. In the present case, Sukhal Ahir was not in possession of land on the date of sale i.e., 18-1-1996, therefore, he was not able to deliver possession to the appellant. It means, possession of land is not delivered to the appellant and sale is incomplete and their title is also not completed. When purchaser, in the present case, is not bona fide purchaser, he cannot take help of Section 19 (b) of the Specific Relief Act, 1963. Argument advanced on behalf of the appellants is not sustainable.

9) After re-assessing the entire evidence adduced by appellant side, this court has no reason to substitute contrary finding. The appeal is liable to be dismissed.

10) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondents No. 1 and 2 and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellants to bear the cost of respondents No. 1 and 2 through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE