

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 30 of 2007**

1. Seema Devi, Wd/o Gopal Singh, aged about 37 years, Taraud, Tahsil-Janjgir, District-Janjgir-Champa,
2. Mamita Singh, [wrongly name mentioned in the plaint and judgment as Mamta Singh], aged about 17 years, D/o Gopal Singh, R/o village Taraud, Tahsil-Janjgir, District-Janjgir-Champa,
3. Jainendra Singh, S/o late Gopal Singh, aged about 15 years, R/o village Taraud, Tahsil-Janjgir, District-Janjgir-Champa,
3. Swarnanita Singh, D/o late Gopal Singh, aged about 11 years, R/o village Taraud, Tahsil-Janjgir, District-Janjgir-Champa,
5. Manuraj Singh, S/o late Gopal Singh, aged about 08 years, R/o village Taraud, Tahsil-Janjgir, District-Janjgir-Champa,

All son and daughters of late Gopal Singh, represented through natural guardian and mother Seema Devi Wd/o late Gopal Singh.

---- Appellants/Defendants in the Trial Court**Versus**

1. Hari Singh Chandel, son of Late Shri Bharat Singh Chandel, aged about 50 years, R/o village Taraud, Tahsil Janjgir, District Janjgir-Champa (C.G.) (Plaintiff)
2. The State Of CG, Through Collector, Janjgir Champa, (Defendant)

---- Respondents

For Appellants	:	Shri Malay Kumar Bhaduri, Advocate
For Respondent No.1	:	Shri Vimlesh Bajpai, Advocate.
For Respondent No.2/State	:	Smt. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Sanjay Agrawal**Judgment on Board****18.01.2019**

1. This First Appeal has been preferred under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the legality and validity of the judgment and decree dated 31.01.2007 passed by the

Additional District Judge, Janjgir, District Janjgir-Champa in Civil Suit No. 71-A/2005 whereby the suit for specific performance of contract has been decreed.

2. Briefly stated the facts of the case are that the plaintiff Hari Singh Chandel instituted a suit for specific performance of contract by submitting, inter alia, that an agreement to sell dated 14.04.2001 has been executed by one Rambha Devi, mother-in-law of defendant No.1 Seema Devi with regard to the suit property described in plaint para 1 situated at village Taraud, Tahsil Janjgir, District Janjgir-Champa. It is pleaded in the plaint that at the time of execution of the alleged agreement to sell, a sum of Rs.31,000/- has been paid by him as earnest money and said Rambha Devi has agreed to execute the registered deed of sale in his favour for a consideration of Rs.85,000/- whenever it will be demanded by him and will receive the rest of the sale consideration at the time of its registration.
3. According to further averments made in the plaint, the plaintiff requested said Rambha Devi orally in the month of April 2002 for execution of the sale deed, who in turn, assured to execute the same. It is put forth in the plaint that said Rambha Devi had expired on 13th August, 2002, and therefore, a similar request was made to her daughter-in-law, namely, Seema Devi, defendant No.1, for execution of the registered deed of sale in pursuance of the alleged agreement to sell in the month of January 2003 and again in the month of April 2004 and on both occasions, he was assured by said Seema Devi to execute the registered deed of sale. When the registered deed of sale was not executed, a registered notice was issued on 30.06.2004, however, it was refused. The plaintiff has, therefore, been constrained to file the suit in the instant nature praying for execution of registered deed of sale and, in alternative prayed for refund of his earnest amount of Rs.31,000/- with interest

@ 12% per annum.

4. The defendants have contested the aforesaid claim and denied the execution of alleged agreement to sell, and, pleaded further that the plaintiff was neither ready and willing to perform his part of the contract nor had ever requested either to said Rambha Devi or to her (Seema Devi), as alleged by the plaintiff. It is contested further on the ground that since plaintiff was never ready and willing to perform his part of the contract, therefore, he is not entitled to get a discretionary relief, as claimed. It is contested further that said Rambha Devi alone had no alienable interest over the suit property.
5. In order to establish the claim, the plaintiff has examined himself as well as two of his witnesses while defendant No.1 Seema Devi has examined herself in order to counter the claim of the plaintiff.
6. After considering the documentary as well as oral evidence led by the parties, the trial Court has come to the conclusion that the alleged agreement to sell was executed on 14.04.2001 by said Rambha Devi for alienating the suit property for a consideration of Rs.85,000/-, after receiving earnest amount of Rs.31,000/- from the plaintiff. It held further that the plaintiff was ready and willing to perform his part of the contract and that by holding further that the suit as framed is within time, decreed the suit, as claimed by the plaintiff.
7. Being aggrieved, the defendants have preferred this Appeal. Shri Malay Kumar Bhaduri, learned counsel for the appellants submits that the judgment and decree as passed by the Court below holding that the plaintiff was ready and willing to perform his part of the contract is apparently contrary to law. According to him, the burden was heavily upon the plaintiff to establish this fact as per the provisions prescribed under clause (c) of Section 16 of the Specific Relief Act, 1963 (for brevity, Act of 1963), however, he failed

completely to prove the same. He invited the attention of this Court with regard to the pleadings made by the plaintiff in paragraphs 5 & 6 of his plaint and submitted that a bare perusal of those averments would show that the plaintiff was never ready and willing to perform his part of the contract else he would have approached immediately to said Rambha Devi for its execution within the considerable period from the date of execution of alleged agreement. He submits further that the plaintiff has neither approached said Rambha Devi even during her lifetime, nor had made any request to defendant No.1 and the averment as made in this regard is, in fact, a false one. As such, the plaintiff is not entitled to get the discretionary relief of specific performance of contract as granted by the trial Court. The judgment and decree of the trial Court is, therefore, liable to be set aside.

8. On the other hand, Shri Vimlesh Bajpai, learned counsel for respondent No.1/plaintiff submits that the judgment and decree as passed by the trial Court holding that the plaintiff has always been ready and willing to perform his part of the contract was based upon due and proper appreciation of oral and documentary evidence, therefore, the findings so recorded do not require to be interfered.

9. I have heard learned counsel for the parties and perused the entire record carefully.

10. A suit for specific performance of contract was made by the plaintiff on 20.11.2004 based upon an agreement to sell dated 14.04.2001. The alleged agreement was executed with regard to the property in question described in plaint para 1 by said Rambha Devi, mother-in-law of defendant No.1 for a sale consideration of Rs.85,000/- upon receiving the earnest amount of Rs.31,000/-. In order to obtain a decree for specific performance of contract,

the plaintiff is required to establish the fact that he has always been ready and willing to perform his part of the contract as provided under clause (c) of Section 16 of the Act, 1963, which reads as under:--

“16. Personal bars to relief.--- Specific performance of a contract cannot be enforced in favour of a person---

(a) xxxxx xxxxx xxxxxx xxxxxx xxxxxx

(b) xxxxx xxxxx xxxxxx xxxxxx xxxxxx

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.--- For the purposes of clause (c),---

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by court;
- (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

11. A bare perusal of the aforesaid provision would show that in order to obtain a decree for specific performance of contract, the plaintiff is not only required to plead his readiness and willingness to perform his part of the contract but has to establish the fact by way of cogent and reliable evidence that he was always ready and willing to perform his part of the contract. Section 16 (c) of the Act of 1963 mandates readiness and willingness on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is, thus, a *sine qua non* for obtaining such a decree. The plaintiff is, therefore, required to establish the said fact by adducing cogent and reliable evidence as the burden of proof is heavily upon the plaintiff in order to obtain such a discretionary relief.

12. For proving the said fact, it has been pleaded by the plaintiff in his plaint at

para 4 that he approached Rambha Devi in the month of April 2002 for execution of the registered deed of sale in pursuance of the alleged agreement to sell and was assured by her for its execution. Further averment in this regard as pleaded at paragraphs 5 & 6 would show that said Rambha Devi had expired on 13.08.2002 and after her death, the plaintiff requested her daughter-in-law, namely, Seema Devi (defendant No.1), in the month of January 2003, and thereafter again in the month of April 2004 and on both occasions, said Seema Devi had assured him to execute the sale. All these requests for execution of sale were made orally, as reflected from these plaintiff averments. Further averment as made in paragraph 7 would show that a registered legal notice was issued by him on 30.06.2004 and when it was refused to receive, the plaintiff has instituted the suit on 20.11.2004.

13. In order to ascertain the fact as to whether the plaintiff was ever ready and willing to perform his part of the contract in strict compliance of clause (c) of Section 16 of the Act of 1963, it is necessary to examine the conduct of the plaintiff. However, perusal of the aforesaid averments itself would demonstrate the facts that plaintiff was never ready and willing to perform his part of the contract. The alleged agreement to sell was executed on 14.04.2001, however, he requested orally to said Rambha Devi only for the first time in the month of April, 2002, i.e., after passing of more than the period of a year. Even upon the death of said Rambha Devi, he did not approach to her legal representatives immediately thereafter and instead requested orally to her daughter-in-law, namely, Seema Devi (defendant No.1) only in the month of January 2003 and thereafter in the month of April 2004. Why the plaintiff has not approached the executor Rambha Devi immediately after the execution of alleged agreement to sell during her lifetime, has not been explained by him. Although it is stated by him in his statement that he had requested as such,

but in absence of proof of the said fact by cogent and reliable evidence, it cannot be held that plaintiff was ever ready and willing to perform his part of the contract. Contrarily, it appears that a false plea of oral request in this regard was made by him mala fidely in order to fill up such a long gap, which lead to an irresistible conclusion that he was never ready and willing to perform his part of the contract.

14. At this juncture, the principles laid down in the matter of *Lourdu Mari David and others v. Louis Chinnaya Arogiaswamy and others* reported in (1996) 5 SCC 589 are to be noted where the Supreme Court has observed that a person who has come to court with a false plea is not entitled to the equitable relief of specific performance. Besides, by virtue of clause (c) of Section 16 of the Act, 1963, the plaintiff was not only required to put forth his plea regarding his readiness and willingness, but has to prove the same as well in its strict sense by way of producing cogent and reliable evidence. However, he failed completely to establish the same.

15. Not only this, a suit for specific performance of the contract was instituted based upon the aforesaid plea only on 20.11.2004, i.e., after passing of more than 3 years and 7 months from the date of execution of alleged agreement to sell. However, the plaintiff should have approached the court within a reasonable time in order to obtain a discretionary relief of specific performance of contract as provided under Section 20 of the Act of 1963. Having failed so, the plaintiff can not be held to be entitled to such a discretionary relief. In the matter of *Manjunath Anandappa urf Shivappa Hanasi vs. Tammanasa and others*, reported in (2003) 10 SCC 390, the Supreme Court in such a similar situation has observed at paragraph 30 as under:--

“30. There is another aspect of the matter which cannot be

lost sight of. The plaintiff filed the suit almost after six years from the date of entering into the agreement to sell. He did not bring any material on record to show that he had ever asked Defendant 1, the owner of the property, to execute a deed of sale. He filed a suit only after he came to know that the suit land had already been sold by her in favour of the appellant herein. Furthermore, it was obligatory on the part of the plaintiff for obtaining a discretionary relief having regard to Section 20 of the Act to approach the court within a reasonable time. Having regard to his conduct, the plaintiff was not entitled to a discretionary relief.”

16. Considering the conduct of the plaintiff, as observed herein above, vis-a-vis, the observations made in the aforesaid judgment, it is difficult to hold that the plaintiff was ever ready and willing to perform his part of the contract. As such, the finding as recorded by the trial Court in this regard is, therefore, liable to be and is hereby set aside. However, in so far as the grant of relief of refund of earnest amount of Rs.31,000/-, deserves to be upheld but with modification of 6% interest per annum instead of 12% per annum and the said amount of Rs.31,000/- shall carry interest at the rate of 6% per annum from the date of execution of agreement till its realisation.

17. Consequently, the finding recorded by the Additional District Judge, Janjgir, District Janjgir-Champa in Civil Suit No. 71-A/2005 in its judgment and decree dated 31.01.2007 is hereby set aside in so far as the grant of decree for execution of registered deed of sale in pursuance of the alleged agreement to sell is concerned. Rest of the findings as recorded by the trial Court are not required to be interfered except with the aforesaid modification.

18. The appeal is, accordingly, allowed in part with the aforesaid observation. The impugned judgment and decree dated 31.01.2007 passed by the learned Additional District Judge, Janjgir, District Janjgir-Champa in Civil Suit No. 71-

A/2005 is accordingly modified and the plaintiff shall be entitled to a decree for refund of earnest amount of Rs.31,000/- only with 6% interest per annum till its realisation from defendants No. 1 to 5/appellants instead of a decree for execution of a registered deed of sale. No order as to costs.

19. A decree be drawn accordingly.

Sd/-

(Sanjay Agrawal)
Judge