

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 16-4-2019

Judgment delivered on 09-05-2019

FIRST APPEAL No. 171 of 2005

- Smt. Pratibha w/o. Shri Vinod Kumar Sanghani, resident of Gitanjali Nagar, House No.256, Sector No.1, Raipur (CG).
---- Appellant/defendant

Versus

- Tej Kumar Bajaj, s/o. Late Shri9 Choith Ram Bajaj, resident of Katora Talab, Raipur

– Respondent/plaintiff

For appellant : Mr. B.D. Guru, Advocate

For respondent : Mr. Ashish Shrivastava, 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 6-8-2005 passed by 3rd Additional District Judge, Raipur (CG) in Civil Suit No.20-A/2005 wherein the said court decreed the suit filed by the respondent for specific performance of contract for land bearing Survey No. 395/1 area 0.114 hectares, situated at village Tikrapara, Tahsil and Distt. Raipur (CG).

2) Both sides entered into agreement for sale of land in question vide agreement dated 7-8-2003. The amount of consideration was Rs.4,00,000/- and the appellant received Rs.1,17,000/- as advance

upto 2-10-2003. Despite notice issued by the respondent, appellant did not execute the sale deed that is why suit was filed which was decreed as mentioned above.

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

- i) There was no stipulation in the contract regarding demarcation of the land. The trial Court erred in deciding that time was not essence of the contract.
- ii) When respondent had not paid balance amount within one month from the date of contract he was not entitled to obtain decree for specific performance.
- iii) The respondent was short of money and was not in a position to make payment of consideration, therefore, his assertion that he was always ready and willing to perform his part of contract, is not acceptable, therefore finding of the trial court is liable to be set aside. He placed reliance on the decision of Hon'ble Supreme Court in the matter of **Janardhanam Prasad vs. Ramdas, reported in (2007) 15 SCC 174.**

4) On the other hand, learned counsel for the respondent would submit that respondent/plaintiff issued notice to appellant as per Ex.P/1, P/2 and P/3 which shows the willingness and readiness to perform his part of the contract. When the sale deed was not

executed the suit was filed within nine months of the denial. The suit property is still in possession of the appellant/defendant and the decree passed by the trial Court is executable. He would further submit that the finding of the trial court is based on proper marshalling of the evidence which is not liable to be interfered 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) Respondent/plaintiff adduced evidence of PW/1 Tej Ram Bajaj and produced documents Ex.P/1 to P/4. Document (Ex.P/2) goes to show that respondent issued notice to appellant for execution of sale deed but the appellant refused to take the said notice. When notice was issued to appellant for execution of sale deed, he was under obligation to respond the same, but he has not responded, therefore, it cannot be said that the respondent was not ready and willing to perform his part of contract. Argument advanced on behalf of the appellant that time was essence of the contract, is not acceptable. The agreement was entered into by both parties on 7-8-2003 and some part of the consideration was taken by the appellant on 2-10-2003 as per Ex.P/1. Taking Rs.1,00,000/- against the said contract after one month by the appellant proves that one month time of execution of sale deed was not essence of contract. When the area of survey number of

the land in question is clear, there is nothing to be demarcated, therefore, appellant was under obligation to honour the contract entered into between the parties.

7. The trial Court has elaborately discussed the entire evidence elaborately and recorded the finding in favour of the respondent. Finding of the trial court is based on proper marshalling of the evidence and after re-assessing the evidence, this court has no reason to substitute contrary finding. The case law cited by learned counsel for the appellant does not help to him as the same is distinguishable from the facts of the present case.

8) 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 respondent and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of the respondent 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