

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 183 of 2004****Order Reserved on 25.1.2019****Order Delivered on 22/2/2019**

1. Rajendra Bhure, son of Late Nagdev Bhure, aged about 35 years, resident of Quarter No.EWS-1142, Adarsh Nagar, MP Housing Board Colony, Nandini Road, Bhilai, District Durg.
2. Ku. Ragini Bhure, daughter of Shri Rajendra Bhure, aged about 05 years, a minor thorough her natural guardian father Shri Rajendra Bhure, resident of Quarter No.EWS-1142, Adarsh Nagar, MP Housing Board Colony, Nandini Road, Bhilai, District Durg

---- Appellants**Versus**

- Ramesh Kumar Namdeo, son of Shri Hemdas Namdeo, aged about 42 years, resident of Quarter No.EWS-1140, Adarsh Nagar, MP Housing Board Colony, Nandini Road, Bhilai, District Durg

---- Respondent

For Appellants	:	Shri Sameer Oraon, Advocate under the authority of Shri B.P. Sharma, Advocate
For Respondent	:	None.

Judgment passed by Hon'ble Shri Justice Parth Prateem Sahu**C A V Order****22/02/2019**

1. By this appeal the appellants have challenged the legality and propriety of the judgment and decree dated 13.8.2004 passed by the learned District Judge, Durg in Civil Suit No.6A/2004 thereby dismissing the suit of the plaintiffs/appellants herein filed for grant of decree of specific performance of contract.
2. Brief facts relevant for disposal of this appeal are that the plaintiffs/appellant herein filed a civil suit for grant of decree of specific performance of contract against the defendant/respondent herein stating that on 8.2.1999 Smt. Sushma Bhure, wife and mother of the appellants herein respectively, entered into an agreement with the defendant under

which the defendant has sold the house bearing number EWS-1141 situated at Adarsh Nagar Housing Colony, Nandini Road, Bhilai, District Durg (for short 'the said house') for a total sum of Rs.67,000/-. Sale consideration was paid and possession of the said house was delivered to said Smt. Sushma Bhure on the date of execution of agreement itself, but the sale deed could not be executed by the defendant in her favour for want of 'no-objection certificate' from the Housing Board. During the subsistence of agreement, said Sushma Bhure died on 26.2.2000. It has been further pleaded in the plaint that despite issuance of 'no-objection certificate' by the Housing Board on 29.5.2000, the defendant/respondent avoided execution and registration of the sale deed in favour of the plaintiffs for one reason or another. The plaintiffs through their advocate served legal notice dated 12.6.2000 on the defendant calling upon him to execute and register the sale deed in their favour, but the same has also fetched no result. Therefore, the civil suit has been filed on 20.12.2001.

3. On filing of suit, the Court below issued summons to the defendant/respondent herein, which was shown to be served on him, and the defendant appeared before the Court below. Presence of the defendant was also recorded by the trial Court in the order sheets dated 6.8.2002 & 26.8.2002, which also bears signature of the defendant. After some dates of hearing, the defendant stopped appearing and therefore the Court below proceeded ex-parte against him and passed the decree of dismissal of suit on the ground that the suit for specific performance of contract is not maintainable because the documents as placed on record i.e. Ex.P-1, though titled as 'agreement' but the conditions of the document show that it is in the nature of sale deed for the reason that not only the entire consideration has been paid but possession has also been

delivered and it does not speak about anything to be done further.

4. Learned counsel for the appellant submitted that the suit for specific performance of contract is maintainable in the facts and circumstances of the case. He submitted that the plaintiffs were always ready and willing to get the sale deed executed and registered in their favour, however, on account of failure on the part of the defendant in obtaining 'no objection certificate' from the housing board, which was necessary for the purpose of selling the said house, and therefore the sale deed could not be registered on the day and date fixed in this regard. From the document i.e. no-objection certificate, it is clear that the same has been issued on 29.5.2000. He further submits that the only remedy available with the plaintiffs/appellants was to file the civil suit which they have rightly filed before the Court below.
5. I have heard learned counsel for the appellants and perused the record of the Court below.
6. The appellants in support of their pleadings in the plaint have placed on record the copy of agreement Ex.P-1, which is a hand written document titled as 'agreement, valued at Rs.67,000/-'. This document was written on a stamp paper of Rs.20/- and signed by the purchaser, seller and witnesses. Perusal of the conditions of this document would show that the defendant has been shown as 'seller', whereas Smt. Sushma Bhure (wife & mother of appellants) has been shown as 'purchaser' of the property mentioned therein i.e. the said house. Recitals of the document would further show that out of total cost of Rs.67,000/-, a sum of Rs.12,500/- has been deducted towards the instalment of said house, water taxes, electricity charges, amount of registration etc. and remaining amount has

been paid to the defendant in cash. So-called agreement is unregistered document but the contents of this agreement would clearly demonstrate that the seller of the said house i.e. defendant herein, had sold the said house and in turn received the agreed consideration. Ex.P-2 is the no-objection certificate dated 29.5.2000 issued by the office of Housing Board, Bhilai in favour of the defendant/respondent on the basis of application submitted by him. A glance of this certificate would reveal that the permission to sell the said house to the plaintiff No.1 has been granted to the defendant. Ex.P-3 is the death certificate of Smt. Sushma Bhure, wife of appellant No.1. Ex.P-5 to Ex.P-8 are the receipts issued by different offices showing deposits of water charges, taxes etc. from the year 2001-2003. Ex.P-9 is the legal notice issued to the defendant/respondent on 12.6.2000 calling upon him to execute and register the sale deed in favour of plaintiff No.1/appellant No.1 herein.

7. Plaintiff No.1 has examined himself as PW-1 and deposed in his statement that the transaction of sale and purchase of the said house took place on 8.2.1999 and on the same date the document of Ex.P-1 was executed. He has further stated that after deducting arrears of instalment of said house, water tax, electricity charges etc., balance consideration of Rs.54,500/- has been paid in cash to the seller-defendant. The document of Ex.P-1 was executed in presence of the witnesses and after its execution, the possession of the said house was also delivered to the plaintiff and presently they are in possession of the same. He has further stated that he was ready and willing to get the sale deed registered in his favour but the defendant on one pretext or other has avoided the same. Version of the plaintiff No.1 gets corroboration from the statement of Laxmi (PW-2), who is one of the witnesses of document Ex.P-1. He has clearly

stated that the document dated 8.2.1999 (Ex.P-1) was executed in his presence and all the parties have signed in his presence. This witness has categorically stated that after deducting arrears towards instalment, electricity charges, water tax etc., Rs.54,500/- was paid in cash to the defendant. He has further stated that possession of the house has also been delivered on the same date in which the plaintiffs are residing.

8. Thus, the plaintiffs/appellants have been able to establish the execution of document of Ex.P-1 according to which, on the date of agreement itself i.e. 8.2.1999, after deducting the dues payable to government offices, the balance amount of consideration has been paid to the seller in cash and who, in turn, has delivered possession of the said house to the purchaser.
9. Document Ex.P-1 is though unregistered but it can be adduced in evidence before the Court below by exhibiting it. The trial Court has neither objected exhibition of such document nor considered it to be admissible in evidence and thereby not committed any illegality.
10. Though the execution of agreement (Ex.P-1) and its contents have been proved by the plaintiffs, but the suit has been dismissed by the trial Court only on the ground that nothing is left in the document Ex.P-1 to be complied with in future and therefore the suit for specific performance of contract is not maintainable and no relief as claimed by the plaintiffs could be granted in the suit for specific performance of contract. Learned trial Court has considered the document to be one in the nature of unregistered sale deed as the record shows that not only the entire sale consideration has been paid but the possession has also been delivered on the date of execution of Ex.P-1 itself to the purchaser i.e. plaintiffs, who are legal heirs of signatory of Ex.P-1 as purchaser of the said house.

11. No doubt the plaintiffs have proved the execution of document Ex.P-1 and therefore the only question which arises for consideration of this Court is whether in the given facts and circumstances of the case the suit for specific performance of contract would lie or the plaintiffs would have to avail any other remedy available to them under the law for getting the sale deed executed in their favour?

12. Sale of immovable property has been defined under Section 54 of the Transfer of Property Act, 1882 which reads thus;-

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.”

13. A bare reading of the above quoted provision will make it clear that ownership of any immovable property is being transferred for a price paid

or promised or part-paid or part-promised. It further says that if the value of property is more than Rs.100/- then the sale can be made only by a registered instrument. In the case in hand, from the contents of Ex.P-1 it is clear that sale consideration/price of the said house has been paid to the seller and there is nothing remaining for him to be received as sale consideration from the purchaser of the said house. Section 54 of the Act, 1882 also casts a duty upon the parties entering into sale and purchase of property to get the transaction of sale registered. In the case in hand, document Ex.P-2 clearly demonstrates that on 29.5.2000 i.e. after about one year from the date of execution of Ex.P-1, MP Housing Board, Bhilai had granted no objection certificate to the defendant to sell the said house to the plaintiff No.1 and thereafter vide legal notice (Ex.P-10) the plaintiffs have called upon the defendant to execute and register the sale deed in their favour, which has not been replied by the defendant.

14. In the matter of **Kalavakurti Venkata Subbaiah v. Bala Gurappagari Guruvi Reddy** reported in **(1999) 7 SCC 114** while dealing with almost identical issue as to whether the suit for specific performance of contract would be maintainable if on the basis of unregistered document the seller has accepted the total sale consideration but for want of one or other reason avoided execution and registration of sale deed under the Registration Act, the Hon'ble Supreme Court has held thus:-

“10. The difference of opinion amongst the various High Courts on this aspect of the matter is that Section 77 of the Act is a complete code in itself providing for the enforcement of a right to get a document registered by filing a civil suit which but for the special provision of that Section could not be maintainable. Several difficulties have been considered in these decisions, such as, when the time has expired since the date of the execution of the document whether there could be a decree to direct the Sub-Registrar to register the document. On the other hand, it has also been noticed that an agreement for transfer of

property implies a contract not only to execute the deed of transfer but also to appear before the registering officer and to admit execution thereby facilitating the registration of the document wherever it is compulsory. The provisions of the Specific Relief Act and the Registration Act may to a certain extent cover the same field but so that one will not supersede the other. Where the stage indicated in Section 77 of the Act has reached and no other relief except a direction for registration of the document is really asked for, Section 77 of the Act may be an exclusive remedy. However, in other cases it has no application, inasmuch as a suit for specific performance is of wider amplitude and is primarily one for enforcement of a contract and other consequential or further relief. If a party is seeking not merely the registration of a sale deed, but also recovery of possession and mesne profits or damages, a suit under Section 77 of the Act is not adequate remedy.

11. The analysis of the provisions of Section 77 of the Act made by us above would indicate that it would apply only if a matter is pertaining to registration of a document and not for a comprehensive suit as in the present case where the relief prayed for is directing the defendant to register the sale deed dated July 2, 1979 in favour of the plaintiff in respect of the plaint schedule property and if he so fails to get a registration in favour of the plaintiff for permanent injunction or in the alternative for delivery of possession of the plaint schedule mentioned property. The document has not been presented by the respondent to the Sub-Registrar at all for registration although the sale deed is stated to have been executed by the appellant as he refuses to cooperate with him in that regard. Therefore, various stages contemplated under Section 77 of the Act have not arisen in the present case at all. We do not think, in such a case when the vendor declines to appear before the Sub- Registrar, the situation contemplated under Section 77 of the Act would arise. It is only on presentation of a document the other circumstances would arise. The First Appellate Court rightly took the view that under Section 49 of the Act the sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property. The said Court noticed that there was an agreement to transfer the immovable property in the suit by the defendant to the plaintiff on the terms stated in the sale deed. Such an agreement to sell the immovable property in suit could be specifically enforced under the provisions of the Specific Relief Act. Therefore, the First Appellate Court was of the opinion that the plaintiff was alternatively entitled to base his claim of specific performance on the pleaded oral agreement to sell and, inasmuch as there are further reliefs sought for, it was a comprehensive suit including a relief for specific performance of a contract contained in the sale deed executed, but not registered and, therefore, held that such relief for specific performance could be granted.

12. In the circumstances, we are of the opinion that the First Appellate Court and the High Court were justified in upholding

the claim of the plaintiff. Thus we find no merit in the appeal and the same, therefore, stands dismissed with costs throughout.”

15. In the above judgment the Hon'ble Supreme Court has held that provisions of Sections 72 to 77 of the Registration Act, 1908 are of different line of action and it comes into play only when the Sub Registrar refuses to get a sale deed registered after filing of an application before him. It has been further held that as the document of sale agreement though unregistered but in view of the conditions incorporated therein could be admissible in evidence and the suit for specific performance of contract would lie.
16. If the facts of the present case are considered in the light of above law laid down by the Hon'ble Supreme Court, it is clear that the parties have entered into an agreement for sale of house, total agreed sale consideration was paid on the date of execution of agreement itself in presence of the witnesses as also the execution of Ex.P-1 was validly proved before the Court below by placing on record the original of Ex.P-1 and examining one of the witnesses of the said document. The only thing remained to be done is getting the sale deed registered. The material available on record would show that it could not be registered immediately for want of no objection from the office of MP Housing Board. Getting the no objection and appearing before the Registrar for getting the sale deed registered is a duty cast upon the seller of the property especially when he received full sale consideration as agreed between the parties. Therefore, in the considered opinion of this Court, the suit for specific performance of contract of the appellants is very much maintainable and the trial Court has erred in dismissing the suit by holding it to be not maintainable on the ground that there remains nothing in the agreement to be acted upon.

Said finding of the trial Court is not sustainable and liable to be set aside.

17. In consequence of the above discussions, the appeal succeeds. Impugned judgment and decree is hereby set aside and the suit of the appellant for specific performance of decree is hereby decreed. Defendant / respondent herein is directed to execute and register the sale deed in favour of the appellants in respect of the house in question i.e. EWS-1141 situated at Adarsh Nagar Housing Colony, Nandini Road, Bhilai, District Durg, within a period of three months from date of passing of this judgment. On failure of the defendant to execute the sale-deed, the Court will get the sale deed executed in favour of the plaintiff at the cost of the plaintiff.
18. Respondent shall bear the costs of litigation of himself and that of the appellants. Counsel's fee as per the Schedule, if certified.
19. Decree be drawn-up accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

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