

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.1 of 2008Judgment reserved on: 3-10-2019Judgment delivered on: 14-10-2019

Rampyare, S/o Itwari, Caste Kurmi, Aged about 60, R/o Village
Barbaspur, Tah. Janjgir, Distt. Janjgir-Champa (C.G.)

(Plaintiff)
(Appellant in first appeal)
---- Appellant

Versus

1. Ramnath, S/o Adhin, Aged 49 years, Caste Kurmi,

2. Sukh Sagar, S/o Sadhuran, aged 44 years,

Both are agriculturist and R/o Village Barbaspur, Tah. Janjgir, Distt.
Janjgir-Champa

3. State of Chhattisgarh, Through Collector, Distt. Janjgir-Champa (C.G.)
(Defendants)
(Respondents in first appeal)
---- Respondents

For Appellant: Mr. Malay Shrivastava, Advocate.

For Respondent No.3 / State: -

Mr. Sanjeev Kumar Agrawal, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V Judgment

1. Heard on admission and formulation of substantial question of law for determination in the second appeal preferred by the plaintiff.
2. Mr. Malay Shrivastava, learned counsel for the appellant / plaintiff, would submit that the trial Court is absolutely unjustified in dismissing the suit of the plaintiff for specific performance of contract and the first appellate Court is also unjustified in holding that the plaintiff is not entitled for specific performance of contract and entitled for only refund of ₹ 500/- from the defendants by

recording a finding which is perverse to the record and as such, the appeal deserves to be admitted by formulating substantial question of law.

3. I have considered the submission of learned counsel for the appellant / plaintiff and went through the record with utmost circumspection.
4. Sole plaintiff Rampyare filed suit for specific performance of contract stating inter alia that defendants No.1 & 2 entered into agreement to sale for alienating the suit land and kachha house constructed thereon, on 14-3-2002 for a consideration of ₹ 45,500/- and obtained ₹ 500/- and further promised to get the sale deed executed after getting the amount of ₹ 45,000/-, but the defendants failed to perform their part of contract which necessitated the filing of suit for specific performance which the defendants refuted and setup a plea that the plaintiff has failed to perform his part of contract, as it was only agreed that within four days from 14-3-2002, the amount of ₹ 20,000/- was promised to be paid and remaining amount was promised to be paid at the time of registration.
5. The trial Court upon appreciation of oral and documentary evidence on record dismissed the suit holding that the plaintiff has failed to perform his part of contract by making payment of ₹ 20,000/- within four days from 14-3-2002 and further failed to make payment of remaining amount as such, he is guilty of breach of the terms of contract and he was not ready and willing to perform his part of contract which was affirmed by the first appellate Court.
6. The trial Court as well as the first appellate Court both have held

that the plaintiff and defendant No.1 agreed on 14-3-2002 to make payment of ₹ 20,000/- within four days from the date of agreement (14-3-2002) looking to the necessity of the plaintiff, but the plaintiff failed to perform his part of contract and did not make payment of ₹ 20,000/- within four days from 14-3-2002 and thereby defendant No.1 has entered into contract with defendant No.2 on 2-6-2002 after obtaining ₹ 24,000/-. The finding of fact recorded by the two Courts below that the plaintiff has not performed his part of contract and was not ready and willing to perform his part of contract is a finding of fact based on the evidence available on record which is neither perverse nor contrary to record. I do not find any perversity or illegality in the said finding. I do not find any merit much less substantial question of law for determination in this appeal. The appeal deserves to be and is accordingly dismissed in *limine* leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge