

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 16-01-2019

Judgment delivered on 31-01-2019

FA No.37 of 2006

- Laxminarayan Gupta s/o. Shri Ram Kumar Gupta, aged about 22 years, r/o.; village Gudi, Tahsil Maasturi, District Bilaspur (CG).

---- Appellant

Versus

1. Shri Vijay Kumar Suryavanshi s/o. Shri Puriram Suryavanshi, aged about 23 years.
2. Shri Sanjay Kumr aged 12 years.
3. Shri Shiv Kuamr aged 8 years.

Both No. 2 and 3 are minor through their father Shri Puri Ram.

All are the r/o. Village Gudi, Tahsil Masturi, Dist. Bilaspur (CG).

4. Shri Puriram s/o. Shri Deendayal Suryavanshi, aged about 50 years, r/o. Vilalge Gudi Tahsil Masturi, Dist. Bilaspur (CG).
5. State of Chhattisgarh through Collector, Bilaspur (CG).
6. Smt.Satya Devi Shrivass w/o. Shri Gopal Prasad Shrivass, r/o. Village Gudi, Tahsil Masturi, Dist. Bilaspur (CG).

---- Respondents

For Appellant : Mr. Sanjay Patel, Advocate

For respondent/State : Mr. Ravish Verma, G.A.

For other respondents ; None

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 8-11-2005 passed by 3rd Additional District Judge, Bilaspur in Civil Suit No.31/A of 2002 wherein the said court dismissed the suit filed by the appellant/plaintiff for specific performance of contract on the basis of agreement dated 4-9-1999 (Ex.P/1).

2. As per version of the appellant respondents No. 1 to 3 owned land survey No.496, 2036/3, 2004, 2005 area 0.28, 0.45, 0.35 and 0.12 acres respectively. Respondents No. 1 to 4 entered into agreement on 4-9-1999 to sell the suit land to the appellant for cash consideration of Rs.80,000/- and as per agreement, appellant paid Rs.58,000/- on the date of agreement. As per terms of agreement balance amount was to be paid within six months and thereafter sale deed was to be executed. Appellant was always ready and willing to perform his part of contract and he requested the respondents to execute the sale deed, but they did not follow it. Notice dated 11-9-2000 was served on them and thereafter suit was filed. As per pleading of respondents No. 1 to 4, they borrowed a sum of Rs.50,000/- from the appellant. As per version of respondent No.6, she had purchased the land bearing survey No. 2004 and 2005 area 0.47 acres for cash consideration of Rs.27,000/- on 8-11-2000 and she is in possession of said land as bona fide purchaser.

3. Learned counsel for the appellant would submit that the trial Court has not evaluated the evidence in its true perspective and came to wrong conclusion that the agreement in question is not proved. As the appellant was always ready and willing to perform his part of contract, the trial Court ought to have passed the decree in favour of the appellant.

4. On the other hand, learned counsel for the respondents supporting the judgment and decree would submit that the finding is based on factual and legal aspect of the matter and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the court below in which judgment and decree is passed.

6. The first question for consideration of this court is whether specific relief as pleaded by the appellant can be granted in his favour. The appellant deposed before the trial Court as PW/1. He admitted that there was a house of respondent Vijay Kumar in Survey No. 496 which is subject matter of agreement. He is unable to say whether value of the said house is to the tune of Rs. 2 lakhs or 3 lakhs. From his evidence, it is clear that he has not seen the land in question and never visited the house which is situated in Survey No. 496 which is subject matter of sale deed.

He is also unable to speak whether the house is consisted of ten rooms. Hari Prasad (PW/7) is also unable to say regarding valuation of the house which is situated in the land mentioned in the agreement. When the witnesses have not seen the land in which the house is situated, the trial court opined that Ex.P/1 is not the document agreed for selling of the house and specific relief cannot be granted in favour of the appellant. In view of this Court when the house is not the subject matter of agreement, decree for survey No. 496 in which the house is situated cannot be granted. In view of this court when specific relief is sought on the basis of agreement, land or house mentioned in the agreement should be demarcated before the agreement otherwise, any decree passed by the court shall stand rendered unexecutable and court should not pass any decree which is unexecutable. As no agreement was arrived at by the parties for the house which is situated in the land in question, the trial Court was not in a position to grant decree in favour of the appellant.

7. After re-assessing the evidence, this court has no reason to substitute contrary finding. Argument advanced on behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

8. Accordingly, judgment and decree is passed against the appellant and in favour of the respondents as under:

- I) Appeal is dismissed.
- II) Appellant to bear the cost of the respondents through out.
- lii) Pleaders' 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

Raju