

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 6-5-2019

Judgment delivered on 25-06-2019

FA No. 162 of 2007

- Shri Rudra Narayan Gupta S/o Late Shri Sadharam Gupta, Aged About 61 Years S/o Late Shri Sadharam Gupta R/o Kilaward, Juna Bilaspur, Chhattisgarh .

---- Appellant/plaintiff

Versus

1. Mrs. Ratna Chaqurwarthy W/o Manish Chaqurwarthy, Aged About 65 Years 78/4, R.K. Chatterjee Road, Kolkata West Bengal 700042, West Bengal
2. Anil Valecha S/o Holaram, Aged About 54 Years R/o Chakarbhata, Tah. Bilha, Distt. Bilaspur, Chhattisgarh.
3. Smt. Komal Valecha W/o Shri Anil Valecha, Aged About 50 Years R/o Chakarbhata, Tah. Bilha, Distt. Bilaspur, Chhattisgarh.
4. Umesh Valecha S/o Shri Anil Valecha, Aged About 24 Years R/o Chakarbhata, Tah. Bilha, Distt. Bilaspur, Chhattisgarh .

---- Respondents/defendants

For appellant : Mr. Shreekumar Agrawal, Sr. Advocate
with Mr. Anad Kumar Gupta, Advocate.

For respondent 1. : None
For respondents No. : Mr. Sunil Otwani and Mr. Yash Mourya,
2 to 4 Advocates.

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 31-8-2007 passed by 9th Additional District Judge (FTC) Bilaspur, (CG) in

Civil Suit No. 53-A/2005 wherein the said court dismissed the suit filed by the appellant/plaintiff for specific performance of contract for land situated at village Kranti Nagar, Juna Bilaspur, Survey No.073/3 in diversion sheet No.23, Plot No. 131 area 2700 sq.ft, but ordered refund of earnest money to him against respondent No.1 to the tune of Rs.50,000/- with interest.

2) As per version of appellant/plaintiff, he entered into agreement with respondent No.1/defendant for purchase of land as mentioned above on 7-7-2003 for cash consideration of Rs.7,01,000/- and Rs. 50,000/- was paid as earnest money and rest of the money was to be paid at the time of execution of sale deed. Appellant demarcated the land in question and it is found that the said land is 45 x 40 sq.ft ie., 1800 sq.ft of land in total, that is why he did not pay the balance amount to respondent No.1, but proposed amount for 1800/- sq.ft which was not acceptable to her that is why suit was filed and after hearing both parties, the trial Court dismissed the same.

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

- i) It is not disputed that the Patwari had measured the land and area was found to be 1800 sq.ft and price was to be paid @ Rs.260/- per sq.ft., therefore, the trial Court ought to have decreed the suit for specific

performance of contract.

- ii) The area was not 2700 sq.ft on the spot, therefore, the appellant was not under obligation to pay the balance amount which is mentioned in agreement as Rs.7,01,000/-.
- iii) Vendor cannot pass more title than that he possess, therefore, respondent No.1 was not entitled for the amount which is mentioned in agreement. It was found that 900 sq.ft of the land was adjoining to road which was recorded in the name of Sushila Devi, therefore, that portion of land cannot be sold by respondent No.1. Finding of the trial Court is liable to be set aside.

4) On the other hand, learned counsel for respondents No. 2, 3 and 4 would submit that as per version of Rudra Narayan Gupta (PW/2), Vinod Kumar Gupta (PW/3), Ratna Chakravarty (DW/1) and Anand Chatterjee (DW/2), agreement is Ex.P/3 and as per Ex.P/3 there was an agreement for 2700 sq.ft of land and consideration for the said property was received Rs.7,01,000/-. There is no mention in the agreement that property shall be sold @

Rs.260/- per sq.ft. It is not clear as to who made an application of demarcation. When consideration amount of area of property is already settled between the parties, the appellant cannot travel beyond the agreement. No one is claiming 900 sq.ft of land which is adjoining to property in question, therefore, appellant tried to tender less amount for sale deed and wanted to grab 2700 sq.ft of land (1800 sq.ft+ 900 sq.ft) which is not permissible. He would further submit that the appellant is not willing to perform his part of contract, therefore, the trial court is right in holding that it is not a case where decree of specific performance of contract cannot be granted. He placed reliance on the decision of Hon'ble the Supreme Court in the matter of **Coromandel Indag Products (P) Ltd. vs. Garuda Chit and Trading Co. (P) Ltd**¹, **Syed Dastagir vs. T.R.Gopalakrishna Setty**², **Kamal Kumar vs. Premlata Joshi**³, **R.C. Chandlok & another vs. Chuni Lal Sabharwal and others**⁴, **Kalawati (D) through LRs vs. Rakesh Kumar**⁵, **Gurdial Kaur (D) through LRs vs. Piara Singh (D) through LRs**⁶ and **A.C. Arulappan vs. Smt. Ahalyaa Naik** ⁷.

4) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

¹(2011) 8 SCC 601

²(1999)6 SCC 337

³(2019) 3 SCC 704

⁴1970 (3) SCC 140

⁵(2018) 3 SCC 658

⁶2008 (14) SCC 735

⁷(2001) 6 SCC 600

5) The ground of the appellant is based on agreement Ex.P/3. In the said agreement there is no mention that parties are agreed to sell the land in question @ Rs.260/- per sq.ft. The agreement is binding on both sides because both have agreed as per terms of the agreement. In the said agreement area of land is mentioned as 2700 sq.ft and consideration amount is also mentioned as Rs.7,01,100/-, therefore, argument advanced on behalf of the appellant that sale deed was to be executed @ Rs.260/- per sq.ft., is not sustainable. Both sides ought to have demarcated the land before entering into agreement but that is not done and without demarcating the land they entered into agreement for 2700 sq.ft. Parties have fixed the consideration amount and also fixed the area to be sold, therefore, they should not have kept any lacunae regarding area in the agreement. In case of specific performance of contract, terms should be clear and there should not be any incomplete work to be done after signing the agreement.

6) In the present case, when one side i.e., appellant is insisting that sale deed should be executed as per area of 1800 sq.ft., other side is insisting that sale deed should be executed as per agreement i.e., 2700 sq.ft of land. Demarcation of land is not acceptable to respondent No.1 because she is saying that there is 900 sq.ft of land which is left and which is also part of her property. Whether the land adjoining to the land which is

demarcated owned by respondent No.1 or not is to be decided on merit but that was not issue before the trial Court and the respondent No.1 is insisting that adjoining land is also her property. She cannot be compelled to get less amount than what is recorded in the agreement.

7) The trial court had discussed the entire evidence at length and recorded finding that in the facts and circumstances of the case, it is not a fit case to grant decree of specific performance of contract. Decree of specific performance of contract is discretionary relief and looking to the issue regarding area of land in question which is a complicated issue, the trial Court was right in holding that decree of specific performance of contract would not be proper. 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. Argument advanced on behalf of the appellant is not sustainable.

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 respondents and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.

- (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

Raju