

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 15.02.2019

Judgment delivered on : 26.04.2019

FA No. 48 of 2008

- Anandkumar Jajodia S/o Late Badriprasad Jajodia, Aged About 57 Years
R/o Juni Line Bilaspur, Tahsil And Distt. Bilaspur,
ChhattisgarhPlaintiff

---- Appellant

Versus

- Ram Kishan Jajodia Dead Through Lrs
A) Rajul Jajodiya , aged about 45 years, S/o Late Ramkishan Jajodia
B) Ravikant, aged about 43 years, S/o Late Ramkishan Jajodia
Both R/o Jajodia Bhavan, Marwadi Line, Khaparganj, Bilaspur, Tahsil And
District Bilaspur, ChhattisgarhDefendants

---- Respondents

For Appellant : Shri Ramkumar Tiwari, Advocate

For Respondents : Shri Anand Kumar Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

CAV Judgment

1) Appellant/plaintiff by way of this instant appeal has challenged the impugned judgment and decree dated 24.10.2007 passed by learned 9th Additional District Judge (FTC), Bilaspur in Civil Suit-46A of 2005 whereby the suit filed by appellant for specific performance of contract was dismissed.

2) Brief facts for disposal of this appeal are that appellant /plaintiff and respondents/defendant belong to same family but of different branches. Case of appellant before learned trial Court was that in the year 1956-57 father of appellant submitted one filled up word puzzle of Dharmyug weekly magazine in the name of appellant, which won first prize of

Rs.30,000/-. This amount of Rs.30,000/- was taken by late Vasudev for smooth functioning of firm in the name and style Bakshiram Gurumukh Rai Jajodiya (for short, 'family firm'). When the ancestral property was partitioned between family members, at that relevant time, repayment of outstanding dues of loan taken from different persons also noted down including loan/advance amount given by Badri Prasad Jajodiya, father of appellant. It has been mentioned in pleadings that at the relevant time of partition ie 14.02.1966, loan amount of Rs.30,000/- increased to Rs.52,628.97ps with interest. Elder members of family late Radhavallabh and Shankarlal promised to give 20,000sqft land from Khasra No.116/1 situated near Sando Ice factory in lieu of loan amount and they also agreed to get name of appellant mutated in revenue records.

3) It was further pleaded in suit that as contract was between family members, therefore, they had not executed any document to this contract. On the basis of agreement and the consent given by elder members of family, appellant erected boundary wall and was in possession since 1966 as owner of land in question. Showing faith on elder family members, appellant did not initiate any proceeding or made pressure for mutation of his name in revenue records.

4) Late Ramkishan Jajodiya, defendant was *karta* (head) of joint family and he was taking care of joint family property recorded in the name of family members since long. Out of Khasra No.116/1, about 0.75 acres was sold by late Ramkishan Jajodiya to Ms Amrit Kaur vide registered sale deed dated 14.05.2003, knowledge of which gathered by appellant only when a banker's cheque of Rs.45,000/- was handed over to him as his

share of sale price. When execution of that sale deed was objected by the appellant, then the defendant again agreed to give 20,000 Sqft land out of Khasra No.476 Rakba 1.04 acres situated at Imlipara, Bilaspur, but, it was stated at that time that the sale deed could be executed only after 5-6 months. It was alleged that subsequently when defendant refused to execute the sale deed and mutate the name of plaintiff in records, only thereafter under compulsion, he issued notice through his advocate for specific performance of contract and subsequently, suit was filed for getting the sale deed executed of aforementioned land situated at Imlipara, Bilaspur along with other ancillary reliefs. Cause of action pleaded as 14.02.1966, 14.05.2003 and lastly 16.09.2004. Defendant filed written statement to the plaint and denied the fact of winning first prize for word puzzle by father of appellant and giving the prize money of Rs.30,000/- on loan to family firm. The other pleading with respect to loan amount on the date of partition ie 14.02.1966, which increased to Rs.52,628.97ps with interest was also denied. In fact, all the allegations levelled by the appellant with respect to the loan and any kind of agreement (oral) for giving 20,000 Sqft land to him and also getting his name mutated in revenue record, were denied. It has also been pleaded that as the land in dispute was recorded in the name of so many family members jointly, the defendant alone was not having any right to give commitment or to enter into agreement to execute the sale deed and to mutate name of appellant. It was specifically pleaded that there was no agreement /contract between the parties of any nature, therefore, no question arises for performance of contract. It was also pleaded that on the date of alleged agreement (oral), the defendant was not owner of the

property, therefore, he was not having any right to enter into any contract or agreement with respect to the disputed property.

5) Learned trial Court after conclusion of the trial, decided issue No.1 and 2 ie with respect to giving loan of Rs.30,000/- to family firm and amount due with interest on 14.02.1966 in favour of appellant. Other issues with respect to agreement by late Radhavallabh and Shankarlal regarding land of 20,000sqft and mutating name of appellant, along with more other issues were decided as not proved. Issue No.6 has been framed that whether defendant had violated the contract; this issue was decided against the appellant, giving raise to dismissal of suit.

6) Learned counsel for the appellant argued that learned trial Court committed an error in dismissing the suit even after holding that an amount of Rs.30,000/- was taken from his father and invested in family firm by late Vasudevhlal in the year 1956-57; the said amount was not paid to appellant back with interest, but agreed to give some land. He further argued that looking to the close relationship of appellant and his late father with Radhavallabh and Shyamlal being members of same family, they have not executed any agreement to sale or any other document but have relied on the commitment given by elder members of the family. He further argued that in the year 2003 part of land agreed to transfer in name of appellant was sold to Smt Amrit Kaur. At that relevant time when appellant objected, defendant gave assurance and agreed to mutate 20,000 sqft of land out of Khasra No.476 Rakba 1.04 acres. It is also argued that learned trial Court had not considered the entire evidence available on record and dismissed the suit.

7) During the pendency of appeal, original defendant died and his legal heirs were brought on record as respondents.

8) Learned counsel for the respondents submitted that appellant failed to prove any contract or agreement between the parties. He also submitted that there was no agreement of any nature as alleged by appellant and even otherwise he failed to prove the same. He further argued that defendant was not the only sole owner of property in dispute, therefore, he alone cannot enter into any agreement to transfer the land in dispute. The land was recorded in joint name of all family members and was a joint property. He also submitted that learned trial Court has rightly dismissed the suit for the reasons mentioned therein.

9) I have heard learned counsel for the parties and perused records.

10) Appellant/plaintiff in support of his case, produced about 11 documents marked as Ex.P/1 to P/11, contents of which are given below:

“1- Notice, 2- Acknowledgement of notice, 3- Registered notice, 4- copy of B-1, 5- Khasra Panchshala, 6- News paper cutting, 7- News paper cutting, 8- certified copy of sale deed, 9- copy of registered notice sent by Anand Kumar Jajodiya through his advocate, 10- receipt of sale deed, 11- un-served registered notice”

11) Appellant examined himself as PW-1, Awadh Jajodiya as PW-2 (brother of appellant) and Mangatrai Agrawal as PW-3, in support of his case. On behalf of defendant, late Ramkishan Jajodiya, defendant himself was examined before learned trial Court.

12) On perusal of evidence of PW-1, plaintiff himself, it is evident that he has admitted the fact that no promise was given to execute sale deed of 20,000 sqft out of Khasra No. 116/1; only there was discussion with regard to it and further it is admitted that he does not know as to what discussion took place between his father and his grand father. It was further stated that whatever his father told him he pleaded in his plaint. He also admitted that in 1956-57, he was aged about 5-6 years and he became major only in the year 1969. Other witness Awadh Jajodiya PW-2 (brother of plaintiff) stated in his evidence that in lieu of loan amount, Late Radha Vallabh gave 20,000 sqft land to appellant. In his cross examination, he only admitted that loan amount was invested by his father in their family firm which he only heard through his father and on that basis he is making statement. Both the witnesses further stated that partition between family took place in the year 1966 and since then, all of them were having their separate business, house and kitchen. Awadh Jajodiya also admitted in his evidence that after partition, elder male member of each family is 'karta' of his own family. Mangatrai Agrawal PW-3 is not direct witness of any transaction between the parties of suit but he stated that he heard from his father that late Badriprasad Jajodiya won Rs.30,000/- in word puzzle in the name of appellant, which was deposited in their family firm, when late Vasudev Lal Jajodiya was head of the family. He stated that he heard from his father that land situated at Dayalband was given in lieu of that loan amount to appellant. He also admitted that partition took place in the year 1966 and since then, they were residing separately. He also stated that he saw the property in dispute which is an open plot and joint property.

13) From perusal of above evidence it is clear that there is no direct witness of any transaction pleaded in the plaint with respect to transaction of 1956-57 and partition dated 14.02.1966. None of the witnesses was witness to the discussion between late Badriprasad Jajodiya and his brothers- Radhavallabh, Vasudevlal, Shankarlal and Lalchand Jajodiya. Even plaintiff himself has specifically admitted that what discussion took place between his father and grand father, he is not aware and what was stated by him was as informed by his father to him, and same was pleaded in the plaint.

14) It is clear from above that there is no agreement between the parties for specific performance of contract. Even from the evidence of appellant himself, there was no discussion with regard to the execution of any sale agreement but only given some assurance for giving of land in lieu of money given for business. The said oral assurance as stated by appellant could not be proved by reliable piece of evidence.

15) For attracting specific performance of contract, there should be a valid and enforceable agreement between the parties, which is *Sine qua non* which is lacking in the instant case.

16) Hon'ble Supreme Court in the matter of **Mayawanti Vs Kaushalyadevi** reported in 1990 (3)SCC 1 held as under:

“8. In a case of specific performance it is settled law, and indeed it cannot be doubted, that the jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. The Law of Contract is based on the ideal of freedom of contract and it provides the limiting principles within which the parties are free to make their own contracts.

Where a valid and enforceable contract has not been made, the court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the court will be there even though the contract is otherwise valid and enforceable and it can pass a decree of specific performance even before there has been any breach of the contract. It is, therefore, necessary first to see whether there has been a valid and enforceable contract and then to see the nature and obligation arising out of it. The contract being the foundation of the obligation the order of specific performance is to enforce that obligation.”

17) No doubt the oral agreement can also be enforceable but the plaintiff should prove that there was consensus *ad idem* between parties.

18) Hon'ble Supreme Court in the matter of **K.Nanjappa (Dead) by legal representatives Vs RA Hameed alias Ameersab (Dead) by legal representatives and another** reported in 2016 (1) SCC 762 held as under:

“21. There is no dispute that even a decree for specific performance can be granted on the basis of oral contract. Lord Du Parc in a case (AIR 1946 PC 1997) observed, while deciding a suit for specific performance, that an oral contract is valid, binding and enforceable. A decree for specific performance could be passed on the basis of oral agreement. This view of a Privy Council was followed by this Court in the case of Koillipara Sriramulu vs. T. Aswatha Narayana, AIR 1968 SC 1028, and held that an oral agreement with a reference to a future formal contract will not prevent a binding bargain between the parties.

22. However, in a case where the plaintiff come forward to seek a decree for specific performance of contract of sale of immoveable property on the basis of an oral agreement or a written contract, heavy burden lies on the plaintiff to prove that there was consensus *ad idem* between the parties for the concluded agreement for sale of

immoveable property. Whether there was such a concluded contract or not would be a question of fact to be determined in the facts and circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immoveable property were concluded between the parties.”

19) In the case at hand there is no clinching and reliable piece of evidence was placed on record by the plaintiff. He only examined himself and his brother who is an interested witness. The family of plaintiff is a huge family which is also evident from the names mentioned jointly of all members in revenue records of the land in question. Plaintiff failed to bring any other member of the family of different branch whose name is jointly recorded in revenue record to prove his case or contention. The plaintiff not stated and proved that any oral agreement as asserted by him took place before other member also. As held by Hon'ble Apex Court in the aforementioned judgment the burden of proving that there was consensus *ad idem* between the parties for the concluded agreement was much more on plaintiff in a case where suit is based on oral agreement. The plaintiff could not able to place any material or evidence before this Court to discharge his burden to prove the alleged agreement between the parties.

20) Other cause of action shown with regard to some agreement between the parties to execute sale deed in favour of appellant regarding 20,000sqft land out of Khasra No.476 Rakba 1.04 acres situated at Imlipara. Once again there was no written deed of the said agreement between the parties. The plaintiff again failed to prove a valid and enforceable agreement between the parties and even otherwise, this

alleged agreement was with defendant only in lieu of sale of some part of land at Khasra No.116/1, measuring 0.75 acres to Amrit Kaur and others which was said to have been agreed by the grand father of appellant with his father to transfer the said land in the name of appellant. Appellant could not able to prove this fact also by reliable piece of evidence. Plaintiff (PW-1) in his evidence stated that in discussion Ramkishan agreed to give disputed land against land bearing Kh No.116/1 in front of PW-2 (brother of PW-1). PW-2 though supported the evidence but there is no independent witness to the discussion between Ramkishan with PW-1 and PW-2. The property in dispute is recorded in joint name of all the family members including plaintiff but they did not bothered to join other members to the discussion as pleaded and stated by plaintiff. There is categorical admission of plaintiff that property in question is recorded in joint name of all family members and is a joint property. Plaintiff appellant not produce any other family member whose name is jointly recorded as witness particularly when the dispute is within family members and plaintiff knows each of of the family members personally.

21) For the aforementioned discussion, it is clear that appellant/plaintiff failed to prove existence of valid and enforceable contract between the parties to invoke discretionary relief of specific performance of contract.

22) As this Court held that appellant failed to prove existence of valid and enforceable contract or any agreement between the parties, I am not dealing with other issues discussed by learned trial Court.

23) The appellant/plaintiff failed to make out any case calling interference in the impugned judgment and decree passed by learned trial Court. The appellant failed to point out any perversity or illegality in the finding recorded by learned trial Court. The appeal, therefore, being devoid of any substance is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
JUDGE