

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 16-8-2019

Delivered on 30-8-2019

FA No. 197 of 2009

1. Prem Lal Lodhi S/o Late Shri Nohari, through Power Of Attorney Holder Dasrath Lal, s/o Shri Prem Lal Verma, r/o Village Tekahardi, tahsil Dingargaon, district Rajnandgaon (died- deleted) through following LR's.

1(a) Budhkumar Bi w/o. Late Premlal aged about 75 years.

1(b) Dashrath Lal s/o. Late Prelal aged about 55 years.

1(c) Fagni Bi w/o. Late Dhanush, aged about 50 years.

1(d) Chetan s/o. Late Dhanush, aged about 28 years.

1(e) Hiralal s/o. Late Dhanush, aged 35 years.

1(f) Ashwani s/o. Late Dhanush, aged about 33 years.

All residents of village Takahardi, Tahsil Dongargaon, District Rajnandgaon.

---- appellants/plaintiffs.

Versus

1. Dukhni Bai Wd/o late Shri Chowa Ram, aged about 62 years, r/o. Village Renga Kathera, Tahsil and District Rajnandgaon (CG).
2. Mahavir Singh S/o Late Shri Dhur Singh aged about 65 years, ,r/o Village Teka, post Bankal, Tahsil Dongargaon, Distt.-Rajanndgaon (CG).
2. State Of C.G. Through Collector, Rajnandgaon (CG).

---- Respondents/defendants

For appellant : Mr. Shreyankar Nandy Advocate
appears on behalf of Mr. Anup
Majumdar, Advocate.

For respondents ; None.
No. 1 and 2

For respondent No.3/ : Mr. Pawan Kesharwani, PL.
State

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 29-10-2009 passed by the First Additional District Judge, Rajnonggaon (CG) in Civil Suit No. 12-A/2008 wherein the said court denied the decree for specific performance but ordered in favour of the original appellant/plaintiff namely Prem Lal and against respondent No.1 to repay the amount of earnest money to the tune of Rs.61,000/- with interest.

2. Original appellant/plaintiff filed a suit before the trial Court for specific performance of contract for land bearing survey No. 487/2 area 1.20 acres on the ground that respondent No.1 entered into agreement with him to sell the land in question for cash consideration of Rs.61,000/- on 6-9-1998. It is pleaded that respondent No.1 handed over possession of land to appellant but did not execute the sale deed in his favour despite several requests made by him. It is further pleaded that on 13-2-2001 respondent No.1 sold the land in question to respondent No.2 who tried to possess the land that is why suit was filed. After hearing both parties, the trial court did not grant decree for specific performance but ordered for refund of earnest money as mentioned above.

3. Learned counsel for the appellant would submit that respondent No.1 received consideration amount and handed over possession to him, therefore, decree of specific performance ought to have been passed by the trial court. He would further submit that there was willingness and readiness on the part of original appellant but the trial court has overlooked this aspect of the matter. Proviso to Section 53-A of the Transfer of Property Act, 1882 is available to the original appellant, therefore, finding of the trial court is liable to be reversed.

4. I have heard learned counsel for the appellant and perused the record of court below including the judgment and decree.

5. The question for consideration of this court is whether decree of specific performance could be granted in favour of original appellant (present appellants are legal representatives of said Premlal). The alleged agreement is Ex.P/2 which is filed before the trial court. In the said agreement it is mentioned by respondent No.1 that she has relinquished her right in favour of original appellant Premlal. From bare perusal of the agreement it is nowhere mentioned that the parties have entered into contract to sell the land in question. Time of execution of sale deed is also not mentioned in the said agreement. It is not clear how the contract shall be complied by either side. The document is neither sale deed nor it is an agreement to sell the land in question. It is only

mentioning of relinquishing the right of respondent No.1. The document is unregistered. Right of the property which valued at Rs.61,000/- can be extinguished by registered instrument as per Section 54 of the Transfer of Property Act, 1882 and Section 17 of the Indian Registration Act, 1908., therefore, this document is legally not a document of relinquishing the right. Suit of specific performance can only be filed when the party under obligation has refused to perform its part of contract. In the present case from the agreement it is not clear as to what part was to be performed by respondent No.1.

6. The trial Court after evaluating the entire evidence recorded finding that it is not an agreement to sell, therefore, decree of specific performance cannot be passed. After reassessing the entire evidence, this court has no reason to take a contrary view what is recorded by the trial court. The trial court already granted decree of refund of earnest money which is proper relief in the facts and circumstances of the case. Argument advanced on behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

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

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

- iii) Pleader's fee, if certified, as per schedule or
whichever is less.
- iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju