

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 19-8-2019

Delivered on 18-9-2019

FA No. 44 of 2009

1. Mohan S/o Buhur Ram Sahu, aged 40 years.
2. Thakur Ram s/o. Bahur Ram Sahu aged 37 years.
3. Dharam Singh s/o. Bahur Ram Sahu aged 35 years.
4. Yashoda Bai w/o. Of Bahur Ram Sahu aged 60 years.
5. Bahur Ram Sahu s/o Budhram aged 65 years.

All residents of village Bhatgaon, Tahsil and District Dhamtari (CG).

6. Govind Ram s/o. Guhri Ram Sinha, aged 43 years, r/o village and Post Bhatgaon, Tahsil and District Dhamtari (CG).

---- Appellants/defendants.

Versus

1. Yuneshwar Kumar s/o. Sohan Lal Sahu, r/o. Village and Post Bhatbgaon, Tahsil and District Dhamtari (CG) .

--- Respondent/plaintiff

2. State of Chhattisgarh through Collector, Dhamtari, District Dhamtari (CG).

---- Respondent/defendant No.7.

For appellants : Mr. H.B. Agrawal, Sr. Advocate with
Smt. Prabha Sharma, Advocate.

For respondent No.1 : Mr. D.N. Prajapati, Advocate.

For respondent No.2/ : Mr. Afroj Khan, 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 5-2-2009 passed by the Additional District Judge, Dhamtari (CG) in Civil Suit No.2-A of 2008 wherein the said court decreed the suit filed by the respondent No.1/plaintiff for specific performance of contract regarding land bearing survey No.858/1 area 0.31 acres (0.14 hectares) situated at village Bhatgaon, Patwari Halka No. 18, Revenue Circle, Tahsil and District Dhamtari, CG.

2. The property in question is owned by appellants No.1 to 4/defendants. Respondent No.1/plaintiff entered into agreement for purchase of the said land @ Rs.2,00,000/- per acre and in advance a sum of Rs.5000/- was paid to appellants No. 1 to 4/defendants and appellant No.5 received Rs.53,500/- on different dates on behalf of appellants No.1 to 4/defendants. The balance amount was Rs.3,500/-. The sale deed was to be executed upto December, 2007 as per Ex.P/1 but before the expiry of the said period, sale deed was executed by the appellants No. 1 to 3 in favour of appellant No.6 on 8-11-2007. As per plaint averment of respondent No.1/plaintiff, appellant No.6 had knowledge about prior agreement but he purchased the land which is not bonafide transaction on his part. A suit was filed for specific performance of contract by respondent No.1/plaintiff and for cancellation of sale deed executed in favour of appellant No.6. After recording

evidence of both sides and hearing the parties, the trial court decreed the suit as mentioned above.

3. Learned counsel for the appellants submits as under.

- i) The amount of Rs.53,500/- is received by Bahur Ram Sahu, therefore, appellants No.1 to 4 are not under obligation to execute the sale deed in favour of respondent No.1. When amount is received by Bahur Ram Sahu who is not owner of the property, therefore, no cause of action arises for execution of sale deed in favour of respondent No.1 and there is no cause of action for cancellation of sale deed.
- ii) Agreement Ex.P/1 is not written in stamp paper and same was not registered, therefore, same is not to be acted upon.
- lii) The trial court has not evaluated the entire evidence in its true perspective, therefore, finding of the trial court is liable to be reversed.

4. On the other hand, learned counsel appearing for the respondent No. 1/plaintiff would submit that the amount was given to the person named in the agreement of proposed sale and appellants No. 1 to 4 have signed in the agreement and Bahur

Ram Sahu being father of appellant No.1 to 3 and husband of appellant No.4 received the amount on behalf of appellants No. 1 to 4, therefore, appellants No. 1 to 4 are under obligation to execute the sale deed in favour of respondent No.1/plaintiff. Subsequent purchaser namely Govind Ram /appellant No.6 who has been informed about the agreement and got executed the sale deed in his favour having knowledge about prior agreement, is not bona fide purchaser. He would further submit that the land in question is handed over to respondent No.1/plaintiff on the date of agreement ie., 16-1-2006 and it was not handed over and could not be handed over to appellant No.6 Govind Ram after alleged sale deed, therefore, transaction between appellant No.6 and appellants No. 1 to 3 is a sham transaction and no title is passed to appellant No.6. The trial court has evaluated the entire evidence in its true perspective and same is not liable to be interfered with while invoking jurisdiction of the appeal

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

6. The first question for consideration of this court is whether appellants No. 1 to 5 received amount to the tune of Rs.58,500/- on account of agreement to sale of the land in question. Admittedly, appellants No. 1 to 3 are recorded owners of the property as per Ex.D/10. It is not seriously disputed by both sides because

appellants No. 1 to 3 have executed the sale deed of land in question in favour of appellant No.6. Looking to the oral and documentary evidence, it is established that appellants No. 1 to 3 are recorded owners of the property in question. From the evidence of both sides, it is established that Ex.P/1 was executed by appellant Nos. 1 to 3 in favour of respondent No.1 to sell the property in question. The date of agreement is 16-1-2006 and sale deed was to be executed upto month December, 2007. It is also clear from the sale deed (Ex. D/5) that sale deed was executed in favour of appellant No.6 on 8-11-2007 which is the period before expiry of term of agreement. Looking to the entire evidence it is clear that the appellants No. 1 to 3 are owner of the property and they entered into agreement to sell the same in favour of respondent No.1. From the oral and documentary evidence, it is clearly established that Rs.5000/- was given on the date of agreement as earnest money on 16-1-2006 and Rs.53,500/- was received by appellant No.5 Bahur Ram Sahu on various dates right from 12-9-2006 to 17-10-2007. Though Bahur Ram Sahu (DW/1) deposed before the trial court that he has not received the amount, but his mere denial is not sufficient to rebut the fact that he has received the amount looking to the oral and documentary evidence of respondent No.1/plaintiff side and document Ex.P/1.

7. The trial court has elaborately discussed the entire evidence and recorded finding that amount is received by appellants No. 1 to 5 as consideration amount for sale of the property in question. After re-assessing the entire evidence, this court has reason to record a contrary finding.

8. The second question for consideration of this court is whether appellant No.6 is bona fide purchaser. Pachkod Sahu (DW/4) Bhushan Dewangan (DW/5) are witnesses of the appellants side. DW/4 Pachkod Sahu admitted (para 9) that agreement was shown to appellant No.6 Govind Ram before registration of sale deed and he was aware of the fact that appellants have already entered into agreement with respondent No.1. Bhushan Dewangan (DW/5) deposed in same line (para 7) that appellant No.6 Govind Ram had knowledge of prior agreement, even though he got registered the sale deed. Looking to evidence of both sides, it is clear that agreement between appellants No. 1 to 5 and respondent No.1 was within the knowledge of appellant No.6, therefore, appellant No.6 cannot be termed as bona fide purchaser.

9. The total amount of consideration according to agreement is Rs.62,000/- out of which respondent No.1 paid Rs.58,500/- and only balance of Rs.3500/- was to be paid before execution of sale deed. It means almost all consideration amount was received by appellants No. 1 to 3 from respondent No.1 even though they

executed sale deed in favour of appellant No.6 Govind Ram which is not the bona fide act on their part.

10. The next question for consideration of this court is whether sale deed is completed in favour of appellant No. 6 Govind Ram as defined under Section 54 of the Transfer of Property act, 1882. Section 54 of the said Act may be read as under.

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property”.

11. As per law, sale is completed only when the seller places the buyer or such person as he directs in possession of the property. The point is whether appellant No.6 placed in possession after alleged sale deed. The witnesses of the appellants/defendants side namely Pachkod Sahu (DW/4) admitted that there is dispute between respondent No.1 and appellant No.6 reading possession. The other witness of appellants/defendants side namely Vasudeo Yadav (DW/6) deposed before the trial court that from the last three years respondent No.1 is sowing the crop in the field in question.

12. From the evidence of appellants/defendants side it is established that respondent No.1 is in possession of the land in question. It means, he was in possession since the date of agreement ie., on 16-1-2006. When respondent No.1 was in possession of land since 16-1-2006, it is not possible for appellants No. 1 to 3 to deliver possession to appellant No. 6 Govind Ram on 8-11-2007 which is the date of alleged sale deed, therefore, a sale in favour of appellant No.6 Govind Ram is not completed and the trial court is right in holding that the said sale deed is illegal. When property is delivered to respondent No.1 in consequence of agreement and almost all consideration amount is received from him, appellants No.1 to 4 are under obligation to execute the sale deed in favour of respondent No.1. Argument advanced on behalf

of the appellants is not sustainable. The decree passed by the trial court is not liable to be interfered with.

13 Accordingly, while dismissing the appeal decree is passed in favour of respondent No.1 and against appellants No. 1 to 4 as under:

- i) The appeal is dismissed with cost.
- ii) Appellants shall bear cost of litigation through out of respondent No.1
- 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