

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25-09-2019

Judgment delivered on 24-10-2019

FA No. 396 of 2017

- Nitin Sinha S/o Late Rajeev Sinha, Aged About 36 Years
R/o 31, State Bank Colony, Sundar Nagar, Raipur, District
Raipur, Chhattisgarh.

---- Appellant/plaintiff

Versus

1. G.P.Iyer S/o Late Ganpati Iyer Aged About 65 Years R/o 43,
Keshar Nagar, Rajnandgaon, District Rajnandgaon,
Chhattisgarh.
2. Raja Deewan S/o J. D. Deewan, R/o Sundar Nagar, Raipur,
District Raipur, Chhattisgarh.

---- Respondents/defendants

For appellant : Mr. Manoj Paranjpe, Mr. Ankur
Agrawal and Mr.Shubhank Tiwari,
Advocates.

For respondents : Mr. Prateek Sharma and Mr.
Ravindra Sharma, 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 10-07-
2017 passed by 8th Additional District Judge, Raipur (CG) in
Civil Suit No. 11-A/2009 wherein the said court dismissed the suit

filed by the appellant for specific performance of contract and permanent injunction.

2. Claim of the appellant/plaintiff was based on the ground that respondent No.1/defendant No.1 is owner of the property in question which is House No. 31 of State Bank Colony, Sundar Nagar, Raipur. The property was let out to father of the appellant in the year 1989 on rent of Rs.850/- per month as per Ex.D/21. After passing of father of the appellant, he came into possession of the house. As per the appellant, his father entered into an agreement for purchase of the property in question with respondent No.1 on 21-6-1992 for cash consideration of Rs.2,00,000/- and Rs.5000/- was paid as earnest money but sale deed was not executed that is why suit was filed on 18-10-2004 which is dismissed by the trial court as mentioned above.

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

- i) No evidence is adduced by respondent No.1 to prove that agreement dated 21-6-1992 is a forged document, therefore, agreement is binding on respondent No.1.
- ii) The amount of part performance was paid to respondent No.1, therefore, decree of specific performance ought to have been

passed.

- iii) The time was not essence of the contract, therefore, the trial court has not evaluated the evidence in its true perspective.

4. On the other hand, learned counsel for the respondents would submit that the finding arrived at by the trial court is based on proper marshaling of the evidence 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 the court below including the judgment and decree.

6. The first question for consideration of this court is whether the parties entered into an agreement for sale of the property in question on 21-6-1992. The said agreement is Ex.P/1 and two persons namely Suresh Kumar Vagodia and S. Javed Ali are attesting witnesses of the said agreement. In the said agreement some part was typed while some part was hand written. Earnest money part is hand written. Attesting witness S. Javed Ali (PW/2) deposed before the trial court that contents of the document were not directed to be written by respondent No.1. The trial court opined that there is no explanation about writing regarding advance sum which ought to have been typed as the other part is

typed by scribe. Parties entered into contract on 21-6-1992 and rent of Rs.850/- per month was sent by the respondent to appellant No.1 as per Ex.P/9 in the month of August 2004 which shows that the appellant was tenant of respondent No.1 upto August 2004. The appellant has not served any notice to respondent for execution of sale deed from 21-6-1992 to 2001.

7. Looking to the entire evidence, it is clear that the appellant was sitting idle for the last nine years which shows that he was not ready and willing to perform his part of contract. As per Section 16(c) of the Specific Relief Act, 1963, it is obligatory on the proposed purchaser to be ready and willing to perform his part of contract but looking to the gap of nine years it cannot be inferred that the appellant was ready and willing to perform his part of contract, therefore, the trial court is right in holding that whatever amount paid by the appellant to respondent No.1 since 1992 to 2004 is amount of rent and same is not amount paid in relation to agreement.

8. After re-assessing the entire evidence, this court has no reason to record a contrary finding. Admittedly, property is sold to respondent No.3 and the said agreement between the appellant and respondent No.1 is not executable. In view of the above, argument advanced on behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

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

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of respondents through out.
- (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