

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 198 of 2011**

- Smt. Hemlata Namdeo, W/o R.K. Patkar, Aged About 38 Years R/o Village Hasda, P.S. Magarload, Tehsil Kurud, Distt. Dhamtari, ChhattisgarhPlaintiff,

---- Appellant**Versus**

1. Bisahu Ram Sahu, S/o Ram Lal Sahu, Aged About 40 Years R/o Village Hasda, P.S. Magarload, Tahsil Kurud, District Dhamtari, Chhattisgarh,
2. State Of Chhattisgarh, Through The Collector, Dhamtari, Chhattisgarh,
3. Smt. Nutan Sahu, W/o Manharan Sahu, Aged About 50 Years R/o Village-Hasda, Post Hasda, Tahsil Magarlod, Civil And Revenue District Dhamtari, ChhattisgarhDefendants,

---- Respondents

For Appellant	:	Shri V.K.Sharma, Advocate
For Respondents No.1 & 3	:	Shri Raj Kumar Pali, Advocate
For Respondent No.2/State	:	Shri Devendra Pratap Singh, Dy. A.G.

Hon'ble Shri Justice Sanjay Agrawal**Judgment on Board****22.01.2019**

1. This First Appeal has been preferred under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the legality and validity of the judgment and decree dated 27.08.2011 passed by the Additional District Judge, Dhamtari, Dist. Dhamtari in Civil Suit No. 6-A/2011 whereby the plaintiff's suit for specific performance of contract has been dismissed.
2. Briefly stated the facts of the case are that plaintiff Smt. Hemlata Namdeo instituted a suit claiming specific performance of contract by submitting, inter

alia, that an agreement to sale dated 30.05.2005 (Ex.P.4) was executed by defendant No.1 Bisahu Ram Sahu in her favour. According to the plaint averments, the plaintiff has paid the entire sale consideration of Rs.65,000/- on the date of execution of alleged agreement to sale and, pleaded further that despite issuance of legal notice on 08.01.2008, the registered deed of sale has not been executed by defendant No.1. The plaintiff has, therefore, been constrained to file the suit in the instant nature.

3. The aforesaid claim has been contested by defendant No.1 by denying very specifically the execution of alleged agreement to sale dated 30.05.2005. It is contested further on the ground that the alleged amount of Rs.65,000/- was taken by him towards loan amount and not for execution of the alleged agreement to sale, as alleged by the plaintiff. It is pleaded further that the entire suit is based upon a forged document, therefore, liable to be dismissed.
4. In order to establish the claim, the plaintiff has produced herself and three more witnesses while defendant No.1 has produced himself and one of his witnesses Mahesh Ram in order to disprove the plaintiff's claim.
5. After considering the documentary as well as oral evidence led by the parties, the trial Court, while entertaining the issue No.1, has come to the conclusion that no agreement to sale as such was executed on 30.05.2005 and, held further that although the alleged amount of Rs.65,000/- was paid by the plaintiff to defendant No.1 Bisahu Ram Sahu, but the same was not in pursuance of the alleged agreement to sale. In consequence, the trial Court has dismissed the plaintiff's claim while entitling him to get the said amount of Rs.65,000/- with 6% per annum from the month of January 2005 till its realisation.

6. Being aggrieved, the plaintiff has preferred this appeal. Shri V.K.Sharma, learned counsel for the appellant submits that the judgment and decree as passed by the Court below is apparently contrary to law. He submits further that from the documentary evidence, marked as Ex.P.1 to P.4, it is evident that the plaintiff has paid the entire sale consideration. However, the said documents have not been considered in its proper perspective, and thereby the Court below erred in dismissing the plaintiff's claim for specific performance of contract.
7. On the other hand, Shri Raj Kumar Pali, learned counsel for respondents No. 1 & 3, while supporting the impugned judgment and decree, submits that after considering the entire documentary evidence, the trial Court has rightly come to the conclusion that though the amount of Rs.65,000/- was paid by the plaintiff to defendant No.1 Bisahu Ram Sahu but it was not in pursuance of the alleged agreement to sale. As such, the judgment and decree passed by the Court below does not require to be interfered.
8. I have heard learned counsel for the parties and perused the entire record carefully.
9. A suit for specific performance of contract has been made on 09.05.2008 based upon an agreement to sale dated 30.05.2005 (Ex.P.4), purported to have been executed by defendant No.1 Bisahu Ram Sahu, in favour of plaintiff Smt. Hemlata Namdeo in relation to the property in question bearing Kh.No.139/1 admeasuring 0.75 acres of land situated at village Hasda, Tahsil Kurud, Dist. Dhamtari for a consideration of Rs.65,000/-. According to the plaint averments, the entire sale consideration was paid on the date when the alleged agreement to sale was executed. However, from perusal of the documentary evidence, marked as Ex.P.1 to Ex.P.3, it is difficult to hold that

the plaintiff has paid this much of amount in pursuance of the alleged agreement to sale on 30.05.2005. Ex.P.1 is the sale receipt, which shows that on 14.02.2005, a sum of Rs.25,000/- was paid. Likewise, as contained therein, a sum of Rs.20,000/- was made on 03.05.2005 and Rs.10,000/- on 06.05.2005. It, therefore, shows very specifically that all these amounts of Rs.55,000/- paid on different dates were much prior to the execution of the alleged agreement to sale. In such circumstances, it cannot be held that these amounts were given by the plaintiff to defendant Bisahu Ram Sahu in pursuance of the alleged agreement to sale, which was executed on 30.05.2005. Perusal of document Ex.P.1 would show further that a sum of Rs.10,000/- was paid on 07.06.2005, much after the execution of the alleged agreement to sale. It, therefore, appears from a bare perusal of documentary evidence that none of the amounts were paid on the date when the alleged agreement to sale was executed. Besides, it has not been mentioned anywhere either in the plaint or in the alleged agreement to sale dated 30.05.2005 (Ex.P.4) that this much of amount was paid in the aforesaid manner. The plaintiff is, however, not only required to plead all these material facts but is also required to prove the same as required under Clause (c) of Section 16 of the Specific Relief Act, 1963 in order to get the discretionary relief of specific performance of contract. Pertinently to be noted here further that although there is a reference of issuance of legal notice dated 08.01.2008, as pleaded in plaint paragraph 6, but the said notice itself was not produced by the plaintiff.

10. Considering all the aforesaid material facts, it is difficult to hold that the alleged agreement to sale was executed by defendant No.1 in favour of the plaintiff for execution of registered deed of sale. As such, the findings so recorded by the trial Court based upon due and proper appreciation of evidence led by the

parties do not require to be interfered.

11. In view of foregoing discussions, I do not find any substance in this appeal.

The appeal is, accordingly, dismissed. No order as to costs.

12. A decree be drawn accordingly.

Sd/-

(Sanjay Agrawal)
Judge

“16. Personal bars to relief.--- Specific performance of a contract cannot be enforced in favour of a person---

(a) xxxxx xxxxx xxxxxx xxxxxx xxxxxx

(b) xxxxx xxxxx xxxxxx xxxxxx xxxxxx

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.--- For the purposes of clause (c),---

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by court;
- (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”