

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 39 of 2019**

1. Smt. Manju Yadav W/o Shri Sanjay Yadav Aged About 37 Years R/o- Mangla, Tahsil and District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
 2. Jagdish Singh S/o Shri Jagat Pal Singh Aged About 48 Years R/o- Yadunandan Nagar, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.
- Appellants**

Versus

1. Bidrichand Gupta S/o Late Shri Uma Prasad Gupta R/o- Nehru Nagar, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.
 2. Mukesh Kumar Goel S/o Shri Balvir Prasad Goel R/o- Minocha Colony, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.
 3. Kanhaiyalal Aged About 58 Years (Now Dead) Through Legal Heirs
 - 3A. Raju Patel S/o. Late Shri Kanhaiyalal, aged about 40 years,
 - 3B. Ramayan Patel, S/o. Late Shri Kanhaiyalal, aged about 35 years,
 - 3C. Ravi Patel, S/o. Late Kanhaiyalal, aged about 30 years,
- All Residents of Dhuripara Road, Mangla, Tahsil and District Bilaspur, CG.
4. Bhagwat Prasad S/o Faguaram Aged About 48 Years R/o- Village Mangla, Tahsil And District- Bilaspur, Chhattisgarh.
 5. State Of Chhattisgarh Through- Collector, Bilaspur, District- Bilaspur, Chhattisgarh.
- Respondents**

For Appellants : Shri V.V.S. Murty, Senior Advocate with Shri Ramkumar Tiwari, Advocate

For Respondents No. 1 & 2 : Shri Rupesh Shrivastava, Advocate

For Respondent/State : Shri Anmol Sharma, PL

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

Per Manindra Mohan Shrivastava, J.

25/11/2019

Heard.

2. This appeal arises out of order dated 25.10.2018 by which the learned executing Court has rejected the objection to execution of decree filed by the appellant herein.

3. Respondents No. 1 and 2 herein (plaintiffs) had filed suit seeking decree of specific performance of contract against Kanhaiya Lal and Bhagwat Prasad on the strength of an agreement of sale. The trial Court dismissed the suit. In appeal, the High Court decreed the suit holding that the plaintiffs Bidrichand Gupta and Mukesh Kumar Goel were entitled to decree of specific performance of contract.

4. In execution of decree however, the present appellants had filed objection stating that earlier an agreement was executed prior to filing of this suit on the basis of which, a sale deed was executed in favour of objectors way back on 21.05.2007. Therefore, the objectors are in possession of the property in dispute and, therefore, the plaintiffs are not entitled to possession on the strength of the judgment and decree passed by the High Court in First Appeal No. 163 of 2008. The said objection was rejected giving rise to this appeal.

5. Learned counsel for the appellants would argue that the learned executing Court fell in serious error while rejecting objection, relying upon observations made by the High Court in para 16 of his judgment in First Appeal No. 163 of 2008. According to learned Senior Counsel, the sale deed may have been executed subsequently on 21.05.2007, during the pendency of the suit filed by the plaintiffs, nevertheless, an agreement was already executed, sanctity of which could not be impeached. Therefore, the plaintiffs were not entitled to

execution of decree in respect of the property of which the appellants herein are the bonafide purchaser on the strength of the sale deed.

6. On the other hand learned counsel for the respondent made a short submission by submitting that the objection is nothing but an attempt to go behind the judgment and decree passed by the High Court. He would submit that the issues which are now being raised by the appellants herein, could be decided only in the civil suit and all such objections were open to be taken either by the defendants therein or by any other party including purchasers like the appellants. He would submit that in the light of the judgment of the High Court in First Appeal No. 163 of 2008, the objection has been rightly rejected.

7. We have heard learned counsel for the parties and also gone through the record.

8. The plaintiffs Bidrichand Gupta and Mukesh Kumar Goel were granted decree of specific performance of contract vide judgment decree dated 04.05.2012 passed by this Court in First Appeal No. 163 of 2008.

9. The objection to execution of decree has been filed by the present appellants on the strength of a sale deed which was executed on 21.05.2007 i.e. long after filing of the suit on 01.02.2007. Irrespective of legality and validity of an agreement of sale between the defendants of the civil suit and the present appellant Jagdish, the purchasers of the disputed property during the pendency of the suit are definitely bound by the judgment and decree. The objection appears to be more an appeal in disguise to assail correctness and validity of judgment and decree passed by this Court in First Appeal

No. 163 of 2008. Therefore, this appeal is sans merit and liable to be accordingly dismissed. Record of the Court below be sent back forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Pawan