

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 210 of 2015**

- Dr. B. P. Baghel S/o Guhira Satnami, Aged About 59 Years R/o Bhogahapara Shivrinarayan Tah. Navagarh P. S. Shivrinarayan Distt. Janjgir - Champa, Chhattisgarh

---- Appellant**Versus**

1. Dinesh Kumar S/o Late Bhikham Das, Aged About 34 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
2. Suresh Kumar S/o Late Bhikham Das, Aged About 32 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
3. Kisan Kumar S/o Late Bhikham Das, Aged About 30 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
4. Vijay Kumari W/o Late Bhikham Das, Aged About 61 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
5. Kishore Das S/o Late Arjun Das, Aged About 41 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
6. Butanbai D/o Late Arjun Das, Aged About 42 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
7. Chandra Mani S/o Late Muktamani, Aged About 61 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
8. Madhuresh S/o Late Muktamani, Aged About 26 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
9. Rituraj S/o Late Muktamani, Aged About 22 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh

10. Bhagwati Bai W/o Late Muktamani, Aged About 46 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
11. Haripriya D/o Late Muktamani, Aged About 28 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
12. Satyendramani S/o Late Taksardas, Aged About 56 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
13. Divya Mani S/o Late Taksardas, Aged About 51 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
14. Harsh Mani S/o Late Taksardas, Aged About 48 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
15. Bharat Mani S/o Late Taksardas, Aged About 46 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
16. Kasturi D/o Late Taksardas, Aged About 36 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
17. Savitry D/o Late Taksardas, Aged About 76 Years R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
18. Smt. Manju W/o Jiwan, Aged About 44 Years D/o Late Arjundas, R/o Bhogha Para Shivrinarayan P. S. Shivrinarayan Tah. Nawagarh Dist. Janjgir - Champa, Chhattisgarh
19. State Of Chhattisgarh Through Collector Janjgir, Dist. Janjgir - Champa

----- Respondent

For Appellant : Shri Ravindra Sharma, Advocate.

For Respondents 1, 2, 4, 5, 7 to 10, 12, 13, 15 & 17 : Shri Malay Shrivastava,
Advocate

For Respondent/State : Shri H.S. Ahluwalia, Deputy AG.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Smt. Vimla Singh Kapoor, JJ**

Judgment On Board By Prashant Kumar Mishra, J

03/01/2019 :

1. This is the plaintiff's First Appeal assailing the legality and validity of the judgment and decree passed by the trial Court dismissing his suit for specific performance in relation to the land bearing Khasra No.685/1, area 0.87 acre situate at village Bhoghapara, RI Circle Shivrinarayan, District Janjgir Champa.
2. The appellant/plaintiff, a doctor, runs a small hospital/clinic at Shivrinarayan town. The original proposed vendor Arjun Das, son of Jhadu Das was his patient. In course of his treatment, Arjun Das used to visit appellant's clinic. According to the plaintiff, in course of his visits to the clinic, Arjun Das proposed to sell the suit land and executed an agreement (Ex.-P/1) dated 24.6.2006 agreeing to sell the land to the plaintiff for Rs.6,25,000/-. Arjun Das thereafter executed another agreement on 21.7.2007 vide Ex.-P/2 and thereafter third agreement on 18.8.2008 vide Ex.-P/3. In the second and third agreement, he mentioned about execution of previous agreement(s).
3. Arjun Das died on 8.10.2008 without executing any sale deed in favour of the plaintiff. Legal notice was served on Bhikham Das and Kishore Das, both sons of Arjun Das, on 14.5.2009 vide Ex.-P/8. However, the notice remained unanswered, therefore, the plaintiff preferred the

present suit on 24.6.2009. The plaintiff pleaded that he was always ready and willing to perform his part of the contract and had in fact paid advance amount of Rs.76,000/- in installments to late Arjun Das. The plaintiff thus pleaded his readiness and willingness at all points of time to purchase the property.

4. The legal heirs of Arjun Das and his real brother Taksar Das were arrayed as defendants in the suit and have filed separate written statement except Butan Bai, who admits the plaintiff's claim in her separate written statement. According to them, Arjun Das had never executed any agreement in favour of the plaintiff and further that the suit property is a joint family property, therefore, Arjun Das alone could not have executed any agreement in favour of the plaintiff.
5. Based on the evidence on record, the trial Court has found that on the date of agreement the suit property belonged to Arjun Das. However, the trial Court refused to allow decree in favour of the plaintiff for the reason that Arjun Das being patient of plaintiff Dr. B.P. Baghel, the agreements were not lawful inasmuch as the appellant was in a position to dominate over his patient, therefore, the agreement was not executed by Arjun Das out of his free will.
6. We have heard learned counsel for the parties at length and perused the record.
7. It is the assertion of the appellant that there being no pleading in any of

the written statements that the appellant had got executed the agreements by coercion, fraud or undue influence, the finding recorded to that effect by the trial Court is perverse.

8. True it is that there is no such pleading in the written statements filed by any of the defendants. However, there is clear admission by the appellant in his deposition and in the deposition of his witness (PW-3) Jeevan Lal Khunte, who works as compounder in the plaintiff's clinic that Arjun Das, aged about 77 years at the time of execution of agreements, was not keeping good health and was frequently visiting the appellant's clinic for his treatment. Thus, even if there is no pleading in the written statement, it is admitted position that the appellant being physician of Arjun Das was in such capacity who could have prevailed over his patient for execution of the agreement. Ordinarily, relations between the professional and his client, be it relation between the doctor and patient, lawyer and his client, chartered accountant and his client or any other professional is that of trust and confidence. The business transaction with the client or patient is ordinarily looked at suspicion in a suit of this nature. Had it been a case where Arjun Das had executed the sale deed before his death, things would have been different. But once it is established that Arjun Das was not keeping good health and had agreed to sell the land, as he was in need of money for his own treatment, which is categorically mentioned in the agreement (Ex.-P/2), the appellant was morally bound

not to enter into such transaction with his patient, who was in need of money for his own treatment at the hands of the appellant. The legal niceties apart, in a suit for specific performance which by itself is an equitable relief, mere readiness and willingness would not be sole determining factor to issue a decree. In such matters Court's judicial conscience should at once reach to a conclusion as to whether it is a fit case for grant of specific performance. Once the trial Court which has the benefit of seeing the witnesses and their demeanour including the ignorance, illiteracy or innocence of the parties, reaches to the conclusion that it is not a fit case for grant of decree of specific performance, the appellate Court should not interfere with the exercise of judicial discretion which is based on facts available on record. The appeal against exercise of judicial discretion is an appeal on principle, therefore, it should not be interfered ordinarily, as has been observed by the Supreme Court in the matter of **Wander Ltd. And Another Vs. Antox India P. Ltd** {1990 (Supp) SCC 727} in para-14 which reads thus:-

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one

reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph*: (SCR 721) {(1960) 3 SCR 713 : AIR 1960 SC 1156}

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseinton & Co. v. Jhanaton* {1942 AC 130} ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

The appellate judgment does not seem to defer to this principle.”

9. Even if agreements (Ex.-P/1 to Ex.-P/3) are otherwise taken to have been executed by Arjun Das, as also the fact that the appellant was ready and willing to perform his part of contract, we are not satisfied with the appellant's case that a decree for specific performance should be allowed. Moreover, advance amount of Rs.76,000/- has not been paid by way of any negotiable instrument and the same is stated to have been paid to Arjun Das in cash, in installments. Even at the time of filing the suit, the dispute about ownership of the property belonging to the joint family between Arjun Das and Taksar was pending. It is also to be seen that barely 10 days after execution of the first agreement, Tehsildar passed an order allowing mutation in the name of Taksar, real

brother of Arjun, over the suit land. Even today, this dispute is pending before the Board of Revenue. The lands at the hand of legal heirs, will be distributed as per their share in accordance with Section 8 read with Schedule I of the Hindu Succession Act. It is not a case where legal heirs have ratified the agreement entered by Arjun Das, therefore, for all these complications, the trial Court's refusal to allow the suit does not call for any interference.

10. Learned counsel for the appellant has placed reliance on judgments in the matters of **Ramakrishna Pillai & Anr. Vs. Muhammed Kunju & Ors.** {AIR 2008 SC 1601} and **Prakash Chandra Vs. Narayan** {AIR 2012 SC 2826}.

11. The first judgment is on the issue of readiness and willingness and the second judgment is for the proposition that when plea of undue pressure has not been raised in the written statement, the same should not form basis for dismissal of the suit for specific performance.

12. The law settled by the Supreme Court would apply on the facts of each case. The legal propositions are not to be applied in abstract terms ignoring the facts of the case at hand.

13. As discussed above, it is not that Arjun Das was pressurized by the appellant to execute the sale deed, but the crucial fact between the parties, as deductible from the evidence available on record, is that the appellant was treating Arjun Das and in that course, an agreement was

executed in his clinic to which his own compounder along with stamp vendor i.e. uncle are the witnesses. When these facts are read along with statement in the second agreement that Arjun Das needed the amount for his own treatment, irrespective of undue pressure or coercion, it is the equitability of the agreement and legal justification for passing decree approving the relations between the doctor and the patient, would compel this Court to agree with the trial Court's finding that it is not a case for issuance of decree for specific performance.

14. For the above stated reasons, we are not inclined to allow the Appeal, which fails and is hereby dismissed.

Sd/-
Judge

(Prashant Kumar Mishra)

Sd/-
Judge

(Vimla Singh Kapoor)

Barve