

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 725 of 2003**

1. Puranlal, S/o Sunanda Ramteke, aged about 59 years, Occupation Service.
2. Rajkumar, S/o Puranlal, aged 32 years,
3. Anil Kumar, S/o. Puranlal, aged 29 years,

All R/o. Bhilai District Durg (C.G.) Village Kodikasa, Tahsil Ambagarh Chowki, District Rajnandgaon (C.G.)

----Appellants/Plaintiffs

Versus

1. Ramji lal, S/o. Shri Narayan Khandelwal, aged about 67 years, R/o. Kodikasa, P.C. No. 109/113, Tahsil – Ambagarh Chowki, Distt. Rajnandgaon (C.G.)
2. State of Chhattisgarh, Through Collector , Rajnandgaon (C.G.)

---- Respondents/defendants.

For Appellants	: Mr. Amiyakant Tiwari, Advocate.
For Respondent No.1	: None present, though served.
For Respondent No. 2	: Shri R.K. Jaiswal, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/03/2019

(1) The substantial question of law involved, formulated and to be answered in this plaintiffs' second appeal states as under:

“Whether the lower appellate Court was not justified in refusing to pass a decree for specific performance of contract even after holding that the agreement to sale between the parties (exhibit P-1 dated 27.1.1982) was proved in accordance with law ?

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court).

2. Plaintiffs filed a suit for specific performance of contract stating *inter alia* that plaintiff No. 1 has entered into an agreement to sell in the name of plaintiffs No. 2 & 3 with defendant No. 1 for a cash consideration of Rs.2,001/-; and paid Rs.1,000/- on the date of purchase; and the remaining amount of Rs.1,000/- was also paid to defendant No. 1 on 13.02.1982 and plaintiff No.1 is always ready and willing to perform his part of contract, which defendant No.1 is avoiding leading to filing of suit for specific performance of contract.

3. The trial Court decreed the suit in favour of the plaintiffs. Defendant No.1 preferred first appeal thereagainst. The first appellate Court has allowed the appeal filed by defendant No.1 on the ground that particulars as envisaged in the State amendment in Order 6 Rule 4-A of the CPC were not furnished in the plaint and dismissed the suit, against which instant second appeal has been preferred by the plaintiffs in which substantial question of law has been formulated, which has been set out in the opening paragraph of the judgment.

4. Mr. Tiwari, learned counsel appearing for the appellants/plaintiffs would submit that provisions of Order 6 Rule 4-A of the CPC are directory in nature and, as such, non-compliance of the provisions of Order 6, Rule 4-A of the CPC does not create jurisdictional incompetence to the Court hearing the appeal and, therefore, the first appellate Court has committed error in reversing the well merited judgment & decree of the trial Court decreeing the suit of the plaintiffs after having held that agreement to sell was executed by defendant No. 1 in favour of the plaintiffs and the plaintiffs

are ready and willing to perform their part of contract, as such, impugned judgment & decree deserve to be set aside.

5. I have heard learned counsel appearing for the appellants/plaintiffs and considered the submissions made hereinabove and also went through the record with utmost circumspection.

6. Order 1, Rule 3-B and Order 6, Rule 4-A, Civil Procedure Code brought on the statute book by M.P. Act No. 29 of 1984 with effect from 14-8-1984 read as under:-

“3-B. Condition for entertainment of suits.- (1) No suit or proceeding for-

- (a) Declaration of title or any right over any agricultural land, with or without any other relief; or
- (b) Specific performance of any contract for transfer of any agricultural land with or without any other relief,

shall be entertained by any Court, unless the plaintiff or applicant, as the case may be, knowing or having reason to believe that a return under Section 9 of the Madhya Pradesh Ceiling or Agricultural Holdings Act, 1960 (No. 20 of 1960) in relation to land aforesaid has been or is required to be filed by him or by any other person before competent authority appointed under that Act, has impleaded the State of Madhya Pradesh as one of the defendants or non-applicants, as the case may be, to such suit or proceedings.

(2) No Court shall proceed with pending suit or proceed referred to in sub-rule (1) unless, as soon as may be, the State Government is so impleaded as a defendant or non-applicant.

Explanation.- The expression “suit or proceeding” used in this sub-rule shall include appeal, reference or revision, but shall not include any proceeding for or connected with execution of any decree or final order passed in such suit or proceed.”

ORDER 6:-

“4-A. Particulars of pleadings for agricultural land.- In any suit or proceedings contemplated under Rule 3-B of Order 1 and parties, other than the State Government shall plead the particulars of total agricultural land which is owned, claimed or held by them in any right and shall further declare whether the subject matter of suit or proceedings is or is not covered by Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No.20 of 1960) and whether any proceedings in relation to such subject matter are to the knowledge of the party pending before the competent authority.”

7. The question whether judgment and decree of the courts below is vitiated for non-compliance of provisions contained in Order 1, Rule 3-B and Order 6, Rule 4-A of the CPC was referred to the Division Bench of the Madhya Pradesh High Court in the matter of **Brijraj Singh and others Vs. Bitto Devi (Smt.) and another**¹ and the Division Bench after consideration answered the issue as under:-

23. (1) the non-compliance with the provisions containing in Order 1 Rule 3-B, Civil Procedure Code does not create jurisdictional incompetence in the Court hearing the suit or appeal solely on account of non-compliance therewith;

(2) the defect as to non-compliance with the provisions contained in Order 1, Rule 3-B, Civil Procedure Code can be rectified by joining the State as party to the proceedings and noticing it at that very stage at which the defect is detected or pointed out to the Court;

(3) the party on whom lay the primary duty of impleading the State as party to the case having defaulted in doing so, cannot plead the defect at subsequent stage of the proceedings to its own advantage so as to get rid of a decree against it, otherwise well merited. No such decree shall be set aside unless the State be in a position to point out that merits of the case or jurisdiction of the Court have been affected on account of non-compliance with the provisions contained in Order 1, Rule 3-B, and Order 6, Rule 4-A,

1 1994 M.P.L.J. 192

Civil Procedure Code.”

8. Reverting to the facts of the case in light of legal position enunciated by the Division Bench of the Madhya Pradesh High Court in **Brijraj Singh** (supra) *qua* non-compliance of Order 6, Rule 4-A of the CPC, it is quite vivid that the State Government was impleaded as party defendant No. 2 in the suit since the date of institution of the suit and the State Government, after due service of summon, proceeded ex parte on 12.07.1993 and, therefore, it is not the case where the State Government was not impleaded as party defendant in the suit. It appears from the record that even after appearance of defendant No. 2/ State, it did not raise any plea, and in that case, the principle of law laid down by the Division Bench of Madhya Pradesh High Court in **Brijraj Singh** (supra), paragraph 23 would squarely apply, in which it has been stated that no such decree shall be set aside unless the State be in a position to point out that merits of the case or jurisdiction of the Court have been affected on account of non-compliance with the provisions contained in Order 1, Rule 3-B, and Order 6, Rule 4-A of Civil Procedure Code. In the instant case, though the State was party in suit and appeal, but nothing has been shown by the State in this regard and merely because the particulars envisaged in Order 6 Rule 4-A CPC have not been complied with, jurisdiction of the Court cannot be said to have affected, the First Appellate Court though noticing the State of Chhattisgarh as party defendant in the suit and appeal, yet proceeded to dismiss the suit holding the provisions mandatory, though non-compliance of the provisions of Order 6 Rule 4-A (State Amendment) is curable defect and it does not create jurisdictional incompetence as held by the Madhya Pradesh High Court in the matter of **Brijraj**

Singh (supra).

9. In view of the aforesaid discussion, it is apparent that since the first appellate Court has also considered the appeal on merits and clearly held that agreement to sell was executed between plaintiff No. 1 in the name of plaintiffs No. 2 & 3 with defendant No. 1 on 27.1.1982 and obtained Rs. 2,000/- but failed to perform his part of contract though plaintiff is ready and willing to perform his part of contract but only dismissed the suit on the ground of non-compliance of provisions contained in Order 6 Rule 4-A of the CPC, which is perverse finding in view of the above-stated legal analysis, therefore, impugned judgment & decree is liable to be set aside.

10. In view of the aforesaid discussion, the judgment and decree passed by the first appellate Court is liable to be and is hereby set aside and the judgment and decree passed by the trial Court is restored. The second appeal is consequently, allowed and the plaintiff's suit stands decreed. No cost(s).

11. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

