

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 3-07-2019

Judgment delivered on 2-8-2019

FA No. 47 of 2007

- Smt Chandrika Bai Sahu W/o Late Bhookhan Lal Sahu Aged About 48 Years R/o Village Khamhariya, Tahsil And District-Durg, Chhattisgarh.

---- Appellant/plaintiff.

Versus

1. Smt Kachari Bai Dead Through LRs Bilaspur
1(a) Umrao Puri Goswani S/o Jangipuri Aged About 65 Years
R/o Kanakot, Post Kanakot, Tahsil Patan, District-Durg,
Chhattisgarh (deleted)
1 (b) Deopuri Goswani S/o Umrao Puri Goswami Aged About
45 Years R/o Kanakot, Post Kanakot, Tahsil Patan,
District-Durg, Chhattisgarh
1.(c) - Annpurna Puri W/o Kriparam Gadariya Aged About 40
Years R/o Kanakot, Post Kanakot, Tahsil Patan, District-
Durg, Chhattisgarh
2. The State Of Chhattisgarh Through- The District Collector,
Durg, Chhattisgarh.

---- Respondents/defendants

For appellant : Mr. Pramod Ramteke, Advocate.

For respondents : Smt. Savita Tiwari, Advocate.
No. 1(a) to 1 (c)

For respondent No.2/ : Smt. Subha Shrivastava, P.L.
State

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 19.01.2007

passed by 10th Additional District Judge (FTC), Durg (CG) in Civil Suit No. 10-A/2005 wherein the said court dismissed the suit filed by the appellant/plaintiff for specific performance of contract for land bearing Khasra No. 1236, area 0.67 hectare, survey No. 1254, area 0.192 hectare, survey No. 1278/2, area 0.20 hectare total area 1.06 hectare situated at Village- Kanakot, Tahsil- Paatan, District- Durg (C.G.).

2) As per appellant/plaintiff he entered into an agreement with original respondent No. 1 namely Smt. Kachari Bai for purchase of the above mentioned land at the rate of Rs. 40,000/- per acre, totalling to Rs. 1,10,000/-. Appellant paid earnest money of Rs. 30,000/- to original respondent No.1/defendant namely Smt. Kachari Bai and remaining was to be paid at the time of execution of sale-deed. The sale-deed was not executed that is why suit was filed but the trial Court dismissed the suit contrary to facts and legal aspect of the matter.

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

- i) The trial Court ought to held that written agreement was executed between the parties on 6-11-2000 and earnest money was paid to original respondent No. 1.
- ii) The finding of the trial court is hyper technical contrary to evidence.

lii) The trial Court has not evaluated the evidence in its true perspective, therefore, same is liable to be set aside.

4) On the other hand, learned counsel for respondent No. 1/legal representatives submits as under:-

i) The date of agreement is 6 November, 2000 and as per agreement the time of execution of sale-deed was fixed as 6 months from the date of agreement but the appellant did not issue any notice to original respondent No. 1 within 6 months and notice was issued after 3 years as per Ex-P/4 dated 24th November, 2003 which shows that appellant was not ready and willing to perform his part of contract.

ii) In absence of readiness and willingness appellant is not entitled for specific performance as per Section 16 of Specific Relief Act, 1963.

iii) The trial Court has elaborately discussed

the entire evidence and recorded finding that the appellant is not entitled for relief of specific performance of contract which is not liable to be interfered while invoking jurisdiction of the appeal.

5) I have heard learned counsel for the parties and perused the record in which judgment/decreed has been passed.

6) The point for consideration of this Court is whether the appellant is entitled to decree for specific performance of contract. The relief sought is discretionary in nature, therefore, the present claimant should show firmness on his/her part. In the present case, the date of contract is 6th November, 2000 and in the said contract the period of sale-deed was 6 months. The appellant did not show willingness or readiness on her part for execution of sale-deed by issuing notice within 6 months or just after 6 months to original respondent No. 1 for execution of sale-deed.

7) Admittedly, notice was sent to respondent No. 1 on 24th November, 2003 i.e. after more than 3 years of the contract which shows that appellant was not ready and willing to perform her part of contract. The trial Court has elaborately discussed the entire evidence and recorded finding the appellant herself is at fault,

therefore, she cannot be benefited of her own fault. In view of this court decree of specific relief was rightly refused.

8) The second question of this Court is whether the appellant is entitled for refund of earnest money of Rs. 30,000/- which was paid on the date of contract to original respondent No. 1 Smt. Kachari Bai.

9) From the evidence of Smt. Kachari Bai (PW-1), Toran Lal (PW-2), Gopal Ram Banjare (PW-3), it is established that Rs. 30,000/- was paid to Smt. Kachari Bai which is not rebutted and, therefore, it is established from the record of the trial Court that Rs. 30,000/- was paid to Smt. Kacharai Bai as earnest money. When contract is not executed in favour of the appellant she is entitled for refund of earnest money. Admittedly, son of Smt. Kachari Bai namely Deo Puri Goswami and her daughter namely Annapurna Puri are arrayed as respondents No. 1-b and 1-c and both are successors of Smt. Kacahri Bai and they are under obligation to repay the amount to appellant subject to their inheriting property of Smt. Kachari Bai worth Rs. 30,000/- and more. It is for the executing Court to decide whether Deo Puri Goswami and Annapuri Puri inherited property by Smt. Kachari Bai and whether after inheriting property they can satisfy the claim of the appellant for principal amount and interest thereon.

10) Accordingly, the appeal is partly allowed and decree was passed in favour of appellant and against respondents No. 1(b) and 1 (c) as under.

- (i) Respondents No. 1(b) and 1(c) shall pay Rs.30,000/- to appellant up to 30th September, 2019 filling which 9% interest shall be charged on that amount. The execution of decree shall be subject to inheritance of property by resplendent No. 1 (b) and 1 (c) from Smt. Kachari Bai and only that property shall be liable for recovery.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (v) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju