

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 150 of 2001****Reserved on : 09.05.2019****Delivered on : 21.06.2019**

1. Mehatarin Bai, W/o Rajau Ram Nishad, aged about 55 years (Deleted).
2. Rajau Ram, S/o Manglu Nishad, aged about 65 years (Deleted),
Both R/o Brahamadaipara, Khamtarai, Tahsil & District- Raipur (C.G.)
 - 2(A) Gajanand, S/o Rajau, aged about 50 years.
 - 2(B) Balaram, S/o Rajau, aged about 29 years (Deleted).
 - 2(B-1) Kumari Bai, W/o Balaram (Deceased), aged about 34 years.
 - 2(B-2) Radha Bai, W/o Ravi, aged about 26 years, Sanjay Nagar, Tikrapara, Raipur (C.G.).
 - 2(B-3) Ku. Chandrika, D/o Balaram (Deceased), aged about 16 years.
 - 2(B-4) Pappu, S/o Balaram (Deceased), aged about 13 years.
 - 2(B-5) Bhusan, S/o Balaram (Deceased), aged about 11 years.
 - 2(B-1), 2(B-3) to 2(B-5) All are resident of Baramdeopara, Khamtarai, Tahsil & District- Raipur (C.G.)
 - 2(C) Lalaram, S/o Rajau, aged about 28 years.
 - 2(D) Ganesh, S/o Rajau, aged about 25 years.
 - 2(E) Mahesh, S/o Rajau, aged about 22 years.
 - 2(F) Reshma Bai, D/o Rajau, aged about 28 years.
 - 2(G) Ram Bai, D/o Rajau, aged about 20 years.

---- Appellants**Versus**

1. Krishna Kumar Sharma, S/o Late Chandrika Prasad Sharma, aged about 35 years.
2. Nand Kumar Sharma, S/o Late Chandrika Prasad Sharma, aged about 30 years.
Both R/o Near Shiv Mandir, Khamtarai, Tahsil & District- Raipur (C.G.)
3. Smt. Sumitra Sahu, W/o Bhagwat Prasad Sahu, aged about 41 years, R/o Brahamadaipara, Khamtarai, Tahsil & District- Raipur (C.G.)

---- Respondents

For Appellants	:	Mr. Sharad Mishra & Mr. Sangeet Kumar Kushwaha, Advocates.
For respondents	:	Mr. B.P. Sharma & Mr. M.L. Sakat, Advocates.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 23.08.2001 passed by Fourth Additional District Judge, Raipur (C.G.) in Civil Suit No. 33A/2001, wherein the said court dismissed the suit filed by the appellants/ plaintiffs for specific performance of contract regarding house No. 5/149 situated at Village- Khamtarai, Ward No. 10, bearing Survey No. 333/20, Patwari Halka No. 11/10, Tahsil & District- Raipur (C.G.).
2. As per the appellants, they entered into an agreement for purchase of immovable property as mentioned above on 28.12.1996 with respondents No. 1 & 2 for a cash consideration of Rs. 1,00,000/-. At the time of execution of said agreement, an amount of Rs. 35,000/- was paid by way of earnest money. The agreement was marked as Ex. P/6. It was further agreed that out of remaining consideration, Rs. 20,000/- was to be paid by 30.01.1997, while the rest of the amount was to be paid at the time of registration of sale-deed. As per the agreement, the execution of registered sale-deed was to be completed by three months. An amount of Rs. 6,000/- was received by respondent No. 1 and Rs. 9,000/- was received by respondent No. 2

on 12.03.1997, so on admitted facts it was apparent that the time was not the essence of the contract. The respondents sold the property in question by registered sale-deed dated 17.06.1997 (Ex.P/4) to respondent No. 3 for a valuable consideration of Rs. 1,12,000/-.

3. Learned counsel for the appellants submits as under:-

(i) The trial court failed to appreciate that time cannot be the essence of the contract in respect of property in question and in view of payment subsequently made from time to time.

(ii) The trial court ought to have considered that the appellants were willing to perform their part of contract, but the trial court failed to appreciate oral and documentary evidence in its true perspective, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondents submits as under:-

(i) The date of agreement is 28.12.1996 and sale-deed was to be executed as per agreement up to 27.03.1996, but the appellants failed to execute their part of contract and as per version of their witness Balaram (PW-2), the balance amount was not paid because one tenant was residing in the house in question and he was not vacating, therefore, the appellants were not willing to purchase the property and sale-deed was executed much later in favour of respondent No. 3 on 17.06.1997.

(ii) The property was not transferred and specific performance of

contract is not permissible under the law.

(iii) Finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court while invoking jurisdiction of appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
6. The case of the appellants is based on agreement Ex. P/6. As per this document which is written on 28.12.1996, Rs. 35,000/- was paid as advance sum and rest of the amount was to be paid within three months. Balaram (PW-3) admitted (Para 15) that the balance amount is not paid because one tenant was residing in the house in question and he was not vacating the same. Condition that the sale-deed shall be executed after vacation the house, was not admitted in Ex.P/6 which is agreement between both side, therefore, it is established from the evidence of appellants side that they were willing to execute sale-deed only after vacation of house by the tenant. In absence of said term in the agreement, the respondents were not under obligation to wait for a long for vacation of house. The term of contract was ended on 28.03.1997, therefore, sale-deed executed by the respondents on 17.06.1997 cannot be questioned by them. Again, it is mentioned in the agreement (Ex. P/6) that if remaining amount is not paid up to 27.03.1997, the earnest money is not recoverable.
7. The trial court discussed the entire evidence elaborately and recorded finding that the specific performance of contract is not possible in the present case because property is already alienated in favour of respondent No. 3. Again, earnest money cannot be returned as per

the agreement because the appellants were not willing to execute the sale-deed up to 27.03.1997.

8. Finding of the trial court is based on proper marshaling of evidence and after reassessing the same, this Court has no reason to record contrary finding. Accordingly, the appeal is liable to be dismissed.
9. The decree is passed against the appellants and in favour of the respondents on the following terms and conditions:-
 - (i) The appeal is dismissed with cost.
 - (ii) Parties to bear their own costs.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge