

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 20-09-2018****Judgment delivered on 11-01-2019****FA No. 19 of 2014**

1. Sushil Kumar Goyal S/o Prabhu Dayal Goyal Aged About 34 Years Occupation Businessman
2. Smt. Ranjna Goyal W/o Sushil Kumar Goyal
3. Saket Goyal S/o Sushil Kumar Goyal (Minor)

All are R/o Gorella, Tah. Pendra Road, Distt. Bilaspur C.G.

---- Appellants**Versus**

1. Anup Kumar Sultaniya S/o Late Kailash Prasad Sultaniya Aged About 34 Years R/o Gorella, Tah. Pendra Road, Distt. Bilaspur C.G.

---- Respondent

For Appellants
For Respondent

Shri Arvind Shrivastava, Advocate
Shri Sumesh Bajaj, Advocate

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

The following judgment of the Court was delivered by
Prashant Kumar Mishra, J.

1. This is defendants's first appeal challenging the judgment and decree passed by the trial Court allowing the plaintiff's suit for

specific performance of agreement to sell the land bearing khasra No.730 (part) area 0.07 acre and khasra No.780/1 Ga area 0.27 acre total area 0.34 acre at the rate of Rs.71/- per sq.ft.

2. Plaintiff's suit was based on the pleading that on 31-3-2007 the subject agreement (Ex.P/1) was executed and the defendant accepted Rs.5,000/- in addition to Rs.15,000/- received earlier totaling Rs.20,000/- as advance and agreed to sell the property by receiving the balance sale consideration at the time of registration of sale deed, which was to be executed within two months, however, despite repeated assurance the defendant did not execute the sale deed. On 31-3-2010 (Ex.P/3) defendant No.1 executed another agreement ratifying the previous agreement and receiving further advance of Rs.5,000/- by a cheque. According to the plaintiff, defendants father filed a suit against the defendant No.1 and the plaintiff for declaration of title and permanent injunction, which was subsequently dismissed for want of prosecution, but even after that the defendants did not executed the sale deed.
3. In their written statement the defendants denied to have executed the agreement and prayed for dismissal of the suit on the ground of limitation. It was also pleaded that the plaintiff

and the defendants have business relations. The suit land was recorded in the name of Ranjana Goyal and Saket Goyal from 2006 and the price of the suit land at the time of agreement was Rs.50.00 lacs, therefore, there was no question of agreement for a sum of Rs.10.00 lacs. In respect of amount received by cheque the defendants averred that one Suresh Sahu, friend of the defendant No.1 was in need of money, therefore, the defendant No.1 has borrowed Rs.5,000/- from the plaintiff to satisfy the need of his friend Suresh Sahu.

4. The plaintiff examined himself as PW-1 and his witnesses Ashish Agrawal (PW-2), J.N. Singh (PW-3), Dilip Kumar Sultaniya (PW-4), Shyam Uttam Sharma (PW-5) and Anupam Gupta (PW-6) whereas the defendant No.1 examined himself as DW-1 and his witness Suresh Kumar Sahu as DW-2. On appreciation of the evidence, the trial Court has decreed the suit.
5. Shri Arvind Shrivastava, learned counsel appearing for the appellants, would argue that the finding recorded by the trial Court is perverse. Learned counsel would further argue that the value of the land was Rs.50.00 lacs on the date of execution of the agreement, therefore, the agreement itself is doubtful.

6. Shri Sumesh Bajaj, learned counsel appearing for the respondent, *per contra*, would argue that the respondent/plaintiff has proved his case by examining the attesting witnesses and proving the agreements. Learned counsel would place reliance upon the decisions of the Supreme Court rendered in **Roop Kumar v Mohan Thedani¹**, **Sukhbir Singh and Others v Brij Pal Singh and Others²** and **Pancharan Dhara & Ors. v Monmatha Nath Maity (D) by L.Rs. & Anr.³**
7. Ashish Agrawal (PW-2) and Shyam Uttam Sharma (PW-5) are the attesting witnesses to the sale agreement. Both of them have supported the plaintiff by stating that they were present at the time of execution of agreement and receipt of Rs.5,000/- on the said date. J.N. Singh (PW-3) is the Stamp Vendor from whome the stamp for execution of agreement was purchased by the defendant No.1 and has signed over the reverse side of the stamp.
8. Dilip Kumar Sultaniya (PW-4) is the brother of the plaintiff. According to him, the agreement was executed in the house of Notary. The said Notary having already died his son Anupam Gupta has been examined as PW-6. He has proved the

1 AIR 2003 SC 2418

2 AIR 1996 SC 2510

3 AIR 2006 SC 2281

register (Ex.P/8) maintained by his father carrying the entry about execution of agreement dated 31-3-2007.

9. In his statement the plaintiff has clearly stated that he had served the legal notice on the defendants vide Ex.P/7 and has got published a public notice vide Ex.P/4.
10. It is worth notice that soon after the agreement dated 31-3-2007 the defendant No.1 Sushil Kumar Goyal and his wife Smt. Ranjana Goyal (defendant No.2) moved an application before the Tahsildar on 7-4-2007 for recording the name of Smt. Ranjana Goyal in the revenue record pertaining to the suit property as joint owner. Thus, having executed the sale agreement, the defendant No.1 started creating complication to avoid execution of the sale deed. The Tahsildar rejected the prayer vide order dated 6-6-2007, which is part of Ex.P/9 that there is no provision for entering the name of joint owner over the land, which was purchased by only one person through the registered sale deed. When this attempt of the defendant No.1 failed his father filed a suit against the present plaintiff and the defendant No.1 for declaring his title, but the said suit was dismissed for want of prosecution. The cheque through which an amount of Rs.5,000/- was paid on 31-3-2010 has been proved as Ex.P/13. In his statement the plaintiff has further stated that

he is possessed of FDR to the tune of Rs.10.0 lacs for purchase of the property. In any case, the defendants have not come forward with a case that the plaintiff has no means to pay the sale consideration.

11. In **Sukhbir Singh** (supra) the Supreme Court has held that for proving readiness and willingness the plaintiff need not to move 24 x 7 with funds in his pocket.
12. The plea raised by the defendant that an amount of Rs.5,000/- was obtained by him on 31-3-2010 for satisfying the need of his friend Suresh Sahu appears to be a fanciful explanation because no person would obtain loan by way of cheque, which is really intended to be handed over to some other person.
13. In the considered opinion of this Court the trial Court has appreciated and marshalled the evidence purforth by the parties in its true perspective and the finding about execution of agreement and readiness and willingness of the plaintiff to perform his part of contract does not appear to be perverse in any manner. This is a case where only one view was possible on the basis of evidence on record and the trial Court has not committed any error in taking the view in favour of the plaintiff.

14. In the result, the instant first appeal deserves to be and is hereby dismissed, leaving the parties to bear their own costs.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor

Gowri