

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 1-5-2019

Judgment delivered on 16-05-2019

FA No. 20 of 2007

1. Manoj Kumar aged 36 years S/o Pratap Rai Pinjani, r/o. Bansal Hardware Sanitary & Paints, Lakhenagar, District-Raipur.
2. Murlidhar aged about 48 years s/o. Shri Prahlad Rai Pinjani, r/o. Bansal Hardware Sanitary in front of Paints, Lakhenagar, Raipur city, District-Raipur.
3. Kheeyal Das @ Shiyal Das age 57 years s/o. Shri Prahlad Rai Pinjani, Ashwani Nagar, H. No. 1595, Opposite Anurag Computer, Hanuman Gali, Raipur.

---- Appellants/Defendants

Versus

1. Ranjita Chaudhari aged 51 years, w/o. Gagankanti Choudhari r/o. Qtr No.B-86, Ramkrishna Paramhans Nagar, Kota Colony, Raipur.

-Respondent/Plaintiff

2. State of Chhattisgarh through Collector, Raipur

---- Respondent/defendant No.4

For appellants	:	Mr. Raja Sharma, Advocate
For State	:	Mr. Afroj Khan, Panel Lawyer.
For respondent No.	:	None

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 23-8-2006

passed by XIII Additional District Judge (FTC), Raipur (CG) in Civil Suit No.24-A/2004 wherein the said court decreed the suit for specific performance of contract in favour of respondent No.1/plaintiff for land bearing Survey No. 556/1 area 0.081 hectares and survey N. 557/1 area 0.081 hectares total area 0.162 hectares situated at village Raipura.

2) Respondent No.1 /plaintiff instituted a civil suit against the appellants/defendants for specific performance of agreement of the land as mentioned above and one agreement was executed on 24-11-1999 as per Ex.P/4. As per appellants, agreement was not signed on behalf of respondent No.1 but the suit was decreed.

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

- i) PW/1 Gagankanti Choudhari deposed in his statement (para 10) that Ranjita Choudhari did not execute Power of Attorney in his favour on 24-11-1999, therefore, Gagankanti Choudhari was not authorised to enter into agreement on behalf of Ranjita Choudhari.
- ii) Document Ex.P/5 is signed by Khiyal Das and Gagankanti Choudhari, but there is no reference of Ranjita Choudhari in the said document, therefore, they were not acting on behalf of Ranjita Choudhari.
- iii) Manoj Kumar (DW/2) who is proposed seller deposed before the trial Court that he had

cancelled the Power of Attorney granted in favour of Kheeyal Das on 1-2-2000 which was effected from the said date, therefore, Kheeyal Das was not authorised to enter into agreement as per Ex.P/5.

- v) Urban Land (Ceiling and Regulating) Act, 1976 was not enforced on the date of agreement i.e., 24-11-1999 and permission from the competent authority under the said Act was not required for execution of sale deed.
- v) Ranjita Choudhari did not sign into the agreement and no one was legally acting on behalf of Ranjita Choudhari, therefore, there was no contract between Ranjita Choudhari and appellants No. 1 and 2.

4) The ground taken by the respondent No.1 is that the finding of the trial court is based on proper marshalling of the evidence 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 and decree has been passed.

6) The first question for consideration of this court is whether Ranjita Choudhari appellants Manoj Kumar and Murlidhar entered into agreement for sale of land in question.

7) As per version of Gagankanti Choudhari (PW/1), Ranjita Choudhari is his wife and she gave Power of Attorney to him as per Ex.P/1. As per version of this witness he entered into agreement with appellants No. 1 and 2 on the basis of Power of Attorney as per document Ex.P/4. Version of this witness is supported by version of Mohanlal (PW/2) who is witness to the agreement (Ex.P/4). Again, Kheeyal Das admitted execution of agreement Ex.:P/4 which is supported by Manoj Kumar who is proposed seller (DW/2).

8. From the entire evidence, it is clear that respondent No.1 and appellants entered into agreement to sell the land in question. Though Manoj Kumar (DW/2) deposed that he cancelled the Power of Attorney given to Kheeyal Das but no document was produced regarding cancellation of Power of Attorney. In absence-of any document it is not proved that Manoj Kumar cancelled the Power of Attorney given to Kheeyal Das. Looking to the entire evidence, the trial Court recorded a finding that there was an agreement between the parties for sale of land in question. A notice was given to the appellants as per Ex.P/6 by respondent No.1 for execution of sale deed which shows that respondent No.1 was willing to perform her part of contract, but even after notice sale deed was not executed which shows that the appellants have not perform their part of contract, therefore, the trial Court is right in holding that respondent

No.1 was willing to perform her part of contract and she is entitled for decree of specific performance of contract. As Urban Land (Ceiling and Regulating)Act, 1976 was repealed on 22-3-1999 before entering into agreement by the parties, there is no legal impediment for execution of sale deed.

9) The trial Court has elaborately discussed the entire evidence and recorded the finding in favour of the respondent. Finding of the trial court is based on proper marshalling of the evidence and after re-assessing the evidence, this court has no reason to substitute contrary finding. The appeal is liable to be dismissed as argument advanced on behalf of the appellants is not sustainable.

10) Accordingly, decree is passed in favour of respondent No.1 and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellants to bear the cost of the respondent No.1 through out..
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE