

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 8-07-2019

Judgment delivered on 2-8-2019

FA No. 64 of 2006

1. Kirtan Lal s/o. Shri Banihar Das Kaushal, aged about 45 years.
2. Smt. Radha w/o. Shri Bogat Singh Dhruv, aged about 42 years.
3. Smt. Chandrika w/o. Shri Chamman, aged about 37 years.
4. Appellants 1 to 3 are r/o. Village and post Antagarh, Tehsil Antagarh, Dist. Kanker (CG).
5. Smt. Surekha, w/o. Rajendra Mahar, 24 years, r/o. Village Dogri, Tehsil Antagarh, Dist. Kanker (CG).

---- Appellants/defendants 2, 3, 5, 6 & 7.

Versus

1. Dayalu Ram Uikey s/o. Shri Bhabiram Uikey, 68 years, r/village Himoda, Tehsil Antagarh, Dist. Kanker (CG) (died) and deleted through LR's.
 - 1 (a) Dev Kunwar w/o. Late Dayaluram Uikey 70 years.
 - 1 (b) Bais Narayan s/o. Late Dayaluram Uikey 50 years.
 - 1(c) Bhuvnmeshwar s/o. Late Dayaluram Uikey 48 years.
 - 1(d) Pineshwar s/o. Late Dayaluram Uikey 42 years.

Respondent/plaintiff

2. Madhu Kiran w/o. Late Shri Pran Singh Soni, aged about 50 years.
3. Birendra Kumar, s/o. Late Shri Pran Singh Soni, aged about 30 years.
4. Narendra Kumar s/o. Late Shri Pran Singh Soni, aged about 28 years.
5. Ku. Aruna, d/o. Late Shri Pran Singh Soni, aged about 25 years.

Respondents 2 to 5 are r/o. Adkachepra, Tehsil Kondagaon,
Dist. Bastar (CG). **Defendants/1A,b,C & D**

6. Smt. Surekha w/o. Rajendra Mahar, 24 years, r/o. Village Dogri, tehsil Antagarh, Dist. Kanker (CG) – deleted.
7. Jai Kumar, s/o. Shri J.R. Dewangan, 27 years, caste Kosta, r/o.village and post Antagarh, tehsil Antagarh,dist. Kanker (CG).

---- Respondent

For appellants : Mr. Prafull N. Bharat, Advocate.

For respondents : 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 31-1-2006 passed by the First Additional District Judge, Kanker (CG) in Civil Suit No. 5-A/2003 wherein the said court decreed the suit filed by the original respondent No.1 namely Dayaluram Uikey for specific performance of contract regarding land bearing survey No. 287/2 and Survey No. 698/2 area 0.44 hectares situated at village Antagarh, Tehsil and District Kanker.

2) Original respondent No.1 as mentioned above filed a suit for specific performance of contract regarding land as mentioned above on pleading that Pran Singh is owner of the land in question and he entered into contract with respondent No.1 to sell the aforesaid land for cash consideration of Rs.1,10,000/-. The sale consideration was received on various dates and last sale

consideration was paid on 1-4-2002. When sale deed was not executed, notice was sent to Pran Singh but same was not replied and he sold the land to other respondents that is why suit was filed. Pran Singh denied all the contentions and after recording evidence and hearing the parties, the trial Court decreed the suit in favour of original respondent No.1 Dayaluram Uikey.

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

- i) Respondent No.1/plaintiff has not pleaded that he is ready and willing to perform his part of contract, therefore, he is not entitled to decree of specific performance of contract as per Section 16 (1)(c) of the Specific Relief Act, 1963.
- ii) Witnesses of Dayaluram Uikey were not certain about description of the land for which Pran Singh entered into agreement.
- iii) Dayaluram Uikey admitted that the property in question is joint family property, therefore, Pran Singh had no right to alienate the property without consent of other co-sharers.
- iv) Though the documents Ex.P/2 to Ex.P/17 have been filed before the trial Court which

are alleged to be receipts of payment of consideration amount, but the witnesses have not confirmed regarding payment made as per receipts.

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

5) The first question for consideration of this court is whether property in question was joint family property. The documents Ex.P/2 to Ex.P/17 were produced before the trial Court and it is deposed by witnesses that these are the documents regarding payment of consideration amount. In Ex.P/17 which is written on 3-3-2000 it is mentioned that Pran Singh has four brothers and 7 dismil of land is in the share of Pran Singh but from the document, specific survey number is not mentioned in the said paper. It is mentioned that Rs.1200/- was paid towards consideration amount to Pran Singh. Again in the document Ex.P/16, it is mentioned that it is a document regarding sale of 0.07 dismil of land and consideration amount was shown as Rs.14,000/-. It is mentioned that Rs.6,400/- was paid. In Ex.P/15, P/14, P/13, P/12, P/11, P/10 no specific land was mentioned which is agreed to be sold though payment of amount to the tune of Rs.3600/-, Rs.2000/-, Rs.2000/-, Rs. 2000/- Rs.500/- is mentioned in those papers. In Ex.P/9 it is

mentioned that it is an agreement for sale of 0.50 decimal of land but description of land and survey number is not clear. Ex.P/8 it is mentioned that it is an agreement for sale of 50 dismil of land. In Ex.P/6 it is mentioned that it is an agreement for sale of 75 dismil of land. In documents (Ex.P/6, P/5 and P/4) the amount which is paid is mentioned. In Ex.P/3 it is mentioned that it is a document regarding sale of 80 dismil of land. In Ex.P/2 it is mentioned that it is an agreement for sale of 1.10 dismil of land for consideration of Rs.1,10,000/- but no amount was paid on that day.

6) Looking to the entire documents (Ex.P/2 to P/17) description of land is not clear, but amount was paid, therefore, the amount which is paid is not for sale of land which is described in the plaint. In these documents it is mentioned that property is not solely owned by Pran Singh. When property is owned by other co-sharers, consent of other co-sharers is required for alienating the property. When others are shareholders, specific portion of land cannot be sold and therefore, looking to the entire evidence, Pran Singh was not entitled to alienate the property, but the trial Court passed the decree of specific performance of contract on the basis of document (Ex.P/1), but consideration amount was not paid on the date of disagreement on 28-2-2002. It is mentioned in the document that the amount was received earlier since 3-3-2000 but in earlier document there is no description of land, therefore,

consideration which was paid was not for the land which is mentioned in Ex.P/1. The trial court has not evaluated the documents (Ex.P/2 to P/17), therefore, finding of the trial Court is not sustainable on this count. Agreement Ex.P/2 to P/17 is not specific, therefore, decree of specific performance could not have been passed but same is passed by the trial Court which is not sustainable.

7) As per evidence, it is established that original respondent No.1 Dayaluram paid Rs.1,00,000/- to Pran Singh on various dates. Both Dayaluram and Pran Singh died and there is no evidence that the successors of Pran Singh inherited any property from Pran Singh, therefore, in absence of evidence liability of payment of earnest amount which was received by Pran Singh cannot be fastened on his successors.

8) On overall consideration of evidence, decree passed by the trial Court is not sustainable and same is hereby set aside. Accordingly the appeal is allowed. Decree is passed against respondents No. 1 (a) to 1 (d) and in favour of appellants as under.

- (i) The suit filed by the original respondent No.1 Dayaluram Uimkey is dismissed with cost.
- (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.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju