

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 26-4-2019Judgment delivered on 30-8-2019FA No. 287 of 2016

1. Sheikh Ayyub S/o Sheikh Mannu Musalman, Aged About 41 Years R/o Jarhabhata, Bilaspur, Police Station Civil Lines, Main Post Office, Bilaspur, Civil And Revenue District Bilaspur, Chhattisgarh
2. Shiv Kumar Sharaf S/o Motilal Sharaf, Aged About 47 Years R/o Link Road, Police Station Tarbahar, Post Tarbahar, Civil And Revenue District Bilaspur, Chhattisgarh

---- Appellants

Versus

1. Chhaya Bai D/o Damodar Rao, Aged About 46 Years W/o Premlal Soni
2. Rekha Khande D/o Damodar Rao, Aged About 47 Years W/o K.D.Khande

Both R/o House No. A-4, Rukhmani Vihar, Magarpara, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh

3. State Of Chhattisgarh, Through Collector, Bilaspur, District Bilaspur, Chhattisgarh

* Nandani, Wd/o Damodar Rao (since Died)

Her name has already been deleted according to the cause title of judgment and decree.

---- Respondents

For Appellant

For Respondent No.1

For Respondent/State

Shri Manoj Paranjape, Advocate

Dr. N.K. Shukla, Sr. Advocate with

Shri Vikram Sharma, Advocate

Shri Gagan Tiwari, Dy. Govt. Adv.

Hon'ble Shri Prashant Kumar Mishra, J

Hon'ble Shri Parth Prateem Sahu, J

C A V Judgment

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

1. Trial Court has dismissed the appellants/plaintiffs' suit for specific performance of agreement and delivery of possession. A sale agreement was executed by the defendants in favour of the plaintiffs on 28-8-2000 for sale of following lands situated at Bhojpuri, PH No.6 R.I. Circle Belha, Tahsil & Dist. Bilaspur at the rates mentioned opposite to khasra numbers and received the advance amount of Rs.50,000/- :

Name of owner	Khasra No.	Area	Rate
Chhaya Bai (Def.No.1)	76/1 76/3 76/6	60 decimal 9.75 acres 1.50 acres (in total 11.85 acres)	Rs.51,000/- per acre
Nandani (Def.No.2) (Dead)	76/2	50 decimal	Rs.51,000/- per acre
Rekha Khande (Def.No.3)	76/7 82/1 82/2	Decimal 1.00 acre 05 decimal	Rs.51,000/- per acre Rs.1,60,000/- per acre Rs.1,60,000/- Per acre

2. According to the plaintiffs, under the terms of agreement, demarcation of the land was to be carried before execution of the sale deed, but despite repeated requests the defendants did

not proceed for demarcation even though plaintiffs were having sufficient funds and were ready and willing to perform their part of contract for getting the sale deed registered. On 25-9-2000 the defendants served a legal notice on the plaintiffs alleging that demarcation was to be carried by the plaintiffs. Thereafter, the plaintiffs served legal notice dated 10-10-2000 but the defendants requested for demarcation and execution of sale deed, however, again, the defendants did not take interest and started negotiating with Ramadevi, W/o Narayan Singh for alienation of the suit land as they became greedy to receive enhanced consideration. The plaintiffs again served legal notice dated 1-7-2003, but once again the defendants did not oblige the plaintiffs, therefore, the suit is filed for specific performance and delivery of possession. The plaintiffs also pleaded, in the alternative, that the advance amount of Rs.50,000/- be refunded along with interest at the rate of 24% per annum.

3. In their common written statement the defendants No.1 to 3 denied the plaint averments. They specifically pleaded that at the time of execution of agreement itself the land was measured and the plaintiffs have verified the revenue papers, therefore, it is not mentioned in the agreement that demarcation shall be carried at the behest of the defendants.

It is also pleaded that the sale deed was to be executed within 15 days upon payment of balance sale consideration, but the plaintiffs unwarrantedly raised a dispute of demarcation.

4. The defendants specifically pleaded that the plaintiffs are known builders of the town and they are engaged in sale and purchase of property and in the process they obtained sale agreement and thereafter, started searching for prospective buyers for registration directly in the name of subsequent buyers. The land being on the Bilaspur-Raipur Main Road, at the time of formation of State of Chhattisgarh big builders were purchasing lands for obtaining whopping profits later on. The plaintiffs have also trapped the defendants in their property dealing business and created complications so that the defendants do not find genuine buyers.
5. It was also pleaded by the defendants that they were in need of funds, therefore, they had entered into agreement by agreeing to execute the sale deed within fortnight, but on failure of the plaintiffs they started searching for genuine buyers, but the plaintiffs got published a declaration in the newspaper about the agreement, therefore, the defendants were compelled to file civil suit for declaring the agreement as void, but during pendency of said civil suit No.117-A/2002, the present suit was filed, therefore, the

earlier suit became meaningless and was withdrawn. The defendants, thus, pleaded that the plaintiffs were never interested to perform their part of contract and have violated the terms of the contract, therefore, they are not entitled to specific performance or delivery of possession.

6. The trial Court has found that the agreement was executed by the defendants, but the plaintiffs have violated the terms thereof, therefore, they are not entitled to a decree for specific performance.
7. At the first instance the suit for specific performance was dismissed, but the prayer for refund was allowed by judgment and decree dated 10-7-2006 whereagainst an appeal was preferred by the plaintiffs before the High Court bearing FA No.185 of 2006. The said appeal was allowed on 29-1-2015 and the suit was remanded back to the trial Court for framing specific issue regarding specific performance and decide it afresh.
8. The trial Court thereafter framed issues on 3-2-2016 including issue No.3 as to whether plaintiffs were ready and willing to perform their part of contract. The remaining issues are more or less in the same terms as was framed earlier in the pre remand trial.

9. Under the impugned judgment and decree the trial Court has found that the plaintiffs were not ready and willing to perform their part of contract and have violated the terms of agreement dated 28-8-2000, therefore, they are not entitled for decree for specific performance, but they are entitled for refund.
10. Challenging the impugned judgment and decree, Shri Manoj Paranjape, learned counsel appearing for the plaintiffs, would submit that the trial Court has not properly appreciated the evidence available on record and has recorded illegal and perverse finding in respect of violation of terms of contract and plaintiffs readiness and willingness. Shri Paranjape would further submit that on correct appreciation it would be clear that the plaintiffs are entitled for decree for specific performance.
11. Dr. N.K. Shukla, learned senior appearing for the defendant No.1, *per contra*, would support the impugned judgment and decree. It is argued by Dr. Shukla that the plaintiffs being property dealer and builder they are not genuine purchasers, but had entered into an agreement for obtaining whopping profits by selling the property in favour of some other person, therefore, the suit has rightly been dismissed by the trial Court.

12. We have heard learned counsel appearing for the parties at length and perused the pleadings and evidence, both oral and documentary.
13. The agreement dated 28-8-2000 (Ex.P/1) records that the defendants have agreed to sale the suit land to the plaintiffs as they are in need of funds for construction of their house and other domestic requirements. It is also recites that the sale deed shall be executed within fortnight in favour of purchasers/plaintiffs or in favour of any other person in one go or in pieces/parcels upon direction of the plaintiffs. It further mentions that the demarcation shall be carried before registration, however, this particular aspect of the agreement is silent as to who shall carry out the demarcation. Ex.P/2 is the first legal notice dated 25-9-2000 served by the defendants on the plaintiffs.
14. In this notice the defendants have alleged that at the time of agreement the plaintiffs had stated that they are satisfied with the area of land available on the spot and the papers have been verified from the Patwari. The notice provides details of the effort made by the defendants to contact the plaintiffs for registration of sale deed before 11-9-2000 and eventually it was mentioned that despite the plaintiffs having violated the terms one last opportunity is provided for execution of sale

deed by 3-10-2000 failing which the agreement shall be treated to be cancelled/annulled.

15. After receipt of this notice, instead of execution of sale deed by 3-10-2000 the plaintiffs served a notice on defendants on 10-10-2000 vide Ex.P/3 alleging that the defendants have failed to carry out demarcation, however, the contents of defendants notice dated 25-9-2000 (Ex.P/2) was not denied specifically. In respect of Ex.P/2 plaintiffs only stated that the contents of the notice being misleading, incomplete and lacking required details.
16. The fact of defendants filing a previous suit bearing civil suit No.117-A/2002 (Old No.295-A/2001) is not in dispute. In this previous suit filed by the defendants they had prayed for a declaration that the agreement dated 28-8-2000 is null and void having already been cancelled for the plaintiffs violation of terms of agreement.
17. Thus, from the very beginning the defendants have been alleging that the agreement has already been cancelled and yet the present suit has been filed without making a prayer that the defendants' action of cancellation of agreement be declared illegal and void. Such relief is necessary in the facts and circumstances of the case without which the suit is not maintainable, as has been held by the Supreme Court

in *I.S. Sikandar (Dead) by LRs Vs. K. Subramani and Others*¹, wherein the following has been held in paras 37 & 38 :

“37. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non-existing agreement of sale is wholly unsustainable in law. Accordingly, Point (i) (see para 32.1) is answered in favour of Defendant 5.”

18. It is also to be seen that in his deposition plaintiff Sheikh Ayyub examined as PW-1. He would admit in cross-examination that he is involved in sale and purchase of land and is also a builder. He also admits that the agreement was executed between the parties after he had verified all the revenue papers. According to this witness, he had also visited the spot to verify the measurement/location and further that there is no mention in the agreement that if land available on the spot is found less or more the agreement shall be cancelled. He further admits that it is not mentioned in the

¹ (2013) 15 SCC 27

agreement as to who shall carry out demarcation and further that he himself wanted to get the land demarcated by the Tahsildar.

19. PW-1 also admits that defendant No.3 Rekha and her husband had met him on 8-9-2000 requesting execution of sale deed. He also admits that defendants had sent a telegram for execution of the sale deed by 3-10-2000. He further admits that he has not filed any details or availability of funds or copies of bank account to prove that as on the relevant date he was possessed of funds. What he has filed before the trial Court as Ex.P/6 & Ex.P/7C are the copies of bank statements of the year 2015-16 when his statement was recorded before the trial Court. Thus, there is no proof of availability of funds on the relevant date in August, September & October, 2000. It is the trite law that the Supreme Court has held that it is necessary for the plaintiffs to produce and prove availability of funds to demonstrate his readiness and willingness for performance of his part of contract.
20. The Supreme Court in *N.P. Thirugnanam (Dead) by LRs. v Dr. R. Jagan Mohan Rao and others*² has held that a person who dabbles in real estate business is not entitled for a decree for specific performance. The Supreme Court further held

² (1995) 5 SCC 115

that when the very contract is speculative in nature, the plaintiff, who has entered into the contract and has been dabbling in real estate transactions without the means to purchase a substantial immovable property like the suit property, is not entitled for decree of specific performance.

21. For the aforesaid reasons, we are satisfied that by not proceeding to get execute the sale deed upon payment of balance sale consideration within time mentioned in the agreement the plaintiffs have violated the terms of the agreement and have otherwise not proved their readiness and willingness to perform their part of contract. The plaintiffs being the builder and property dealer, the trial Court has rightly refused to grant the discretionary relief of specific performance of agreement, therefore, dismissal of the suit for specific performance and grant of decree only to the extent of refund of advance amount does not call for any interference.
22. As a sequel, the instant first appeal, *sans substratum*, deserves to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Parth Prateem Sahu)
Judge

Gowri