

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 30-09-2019

Judgment delivered on 24-10-2019

FA No. 97 of 2015

- Vinod Kumar Dewangan S/o Late Shri Askaran Dewangan Aged About 41 Years R/o Qr. No. 4-S, Street Railway Avenue, Sector-6, Bhilai, Tahsil, Civil And Rev. District Durg Chhattisgarh.

---- Appellant/plaintiff

Versus

- Samarulal Gaikwad S/o Shri Sunderlal Gaikwad, Aged About 53 Years employed in Bhilai Steel Plant, R/o Near Santoshimata Mandir, Satnami Para, Risali, Tah., Civil And Rev. District Durg Chhattisgarh.

---- Respondent/defendant

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

For respondent : Mr. N.S. Dhurandhar, Advocate.

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 13-1-2015 passed by VIth Additional District Judge, Durg, District Durg (CG) in Civil Suit No. 61-A/2013 wherein the said court dismissed the suit filed by the appellant for specific performance of contract regarding land bearing Survey No.283/1 area 0.022

hectares (40 x 60 = 2400 sq.ft), situated at village Risali, Patwari Halka No.22, Tahsil and District Durg, CG.

2. In the present case, both parties entered into an agreement on 8-3-2007 to dispose of the property as mentioned above for cash consideration of Rs.3,45,000/- out of which a sum of Rs.1,50,000/- was paid. According to contract, sale deed was to be executed after demarcation proceeding. As per the appellant, he filed suit before the trial court for specific performance of contract which was dismissed by the trial court contrary to factual matrix and legal aspect of the matter.

3. Learned counsel for the appellant would submit as under:

- i) In the agreement dated 8-3-2007 no time was fixed for performance of contract. The performance is refused vide notice Ex.P/12 dated 15-5-2013 and after refusal of performance of contract, suit was filed within a month which is within limitation as per Article 54 of the Limitation Act, 1963.
- ii) Execution of sale deed was delayed because of demarcation of the land was not done by the respondent.

- iii) The appellant was ready and willing to perform his part of contract, therefore, decree ought to have been passed by the trial court.

4. On the other hand, learned counsel for the respondent would submit that the finding arrived at by the trial court is based on proper marshaling of the evidence and same is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the court below including the judgment and decree.

6. The first question for consideration of this court is whether the appellant was ready and willing to perform his part of contract. Document Ex.P/1 is the agreement on the basis of which suit is filed. In column 5 of the said agreement it is mentioned that rest of the amount will be received within month but before writing month, space is kept blank. The appellant side is depending on this document and same is binding on him. In this document it is clear that some months' time was provided for execution of sale deed on 8-3-2007, it means maximum 12 months was provided for execution of contract as per part 5 of the agreement. Sale deed was to be executed upto 8-3-2008 but no notice was served

to respondent by the appellant side in the year 2008 and thereafter upto year 2013.

7. Looking to the entire evidence, it is clear that the appellant was sitting idle for the last five years and did not serve any notice to respondent for execution of sale deed which shows that appellant was not ready and willing to perform his part of contract and he was not ready to perform his part of contract, therefore, argument advanced on behalf of the appellant that he is ready and willing to perform his part of contract, is without substance. As per Sec16(c) of the Specific Relief Act, 1963, the party must be ready and willing to perform his part of contract otherwise, decree of specific performance may not be granted. Looking to the above fact and legal aspect, it is clear that the appellant was not ready and willing to perform his part of contract, therefore, decree of specific performance of contract cannot be granted in his favour.

8. As per clause 5 of the contract, sale deed was to be executed within 12 months but it is not executed upto 8-3-2008 and limitation starts from 8-3-2008 and it ends within three years i.e., on 8-3-2011 as per Section 54 of the Limitation Act, 1963. In the present case, first part of Section 54 of the Limitation Act, 1963 will apply, therefore, suit filed on 27-6-2013 is time barred.

9. The trial court has elaborately discussed the entire evidence and recorded finding that decree of specific performance cannot be granted. Again, the suit is time barred for recovery of earnest money also, therefore, return of earnest money cannot be ordered. After re-assessing the entire evidence, it is not a case where interference of this court is required with the finding of the trial court. In view of the above, argument advanced on behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

10. Accordingly, decree is passed in favour of respondent and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of respondent 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

Raju