

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.515 of 2005

Laxman Prasad, S/o Firtu, aged about 49 years, R/o Sanjay Nagar,  
Champa, Tahsil Champa, Distt. Janjgir-Champa (C.G.)

(Plaintiff)  
---- Appellant

Versus

1. Dharamlal, aged about 50 years, S/o Buddhu, R/o Village Birgahani,  
Tahsil Janjgir, Distt. Janjgir-Champa (C.G.)
2. State of Chhattisgarh, through the Collector, Janjgir-Champa, Distt.  
Janjgir-Champa (C.G.)

(Defendants)  
---- Respondents

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| For Appellant:                 | Mr. Shobhit Koshta, Advocate.    |
| For Respondent No.1:           | None present, though served.     |
| For Respondent No.2 / State: - | Mr. Aakash Pandey, Panel Lawyer. |

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Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

08/08/2019

1. This plaintiff's second appeal under Section 100 of the CPC was admitted for hearing by formulating the following substantial question of law: -

“Whether the first appellate Court was justified in holding that Ex.P-1 is not a real agreement to sell executed by defendant No.1 in favour of plaintiff and it is a forged document?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. Laxman Prasad – plaintiff / appellant herein, filed a suit for specific performance of contract stating inter alia that in respect of the suit lands bearing Khasra No.741/1, area 0.97 acre and Khasra No.952/1, area 0.74 acre, total area 1.71 acres, situated at Village Birgahani,

Patwari Halka No.40, Tahsil Janjgir, he entered into agreement to sale with defendant No.1 on 29-3-1990 for a cash consideration of ₹ 27,000/- and obtained ₹ 25,000/- and executed Ex.P-1 in presence of three witnesses, as defendant No.1 required money for marriage of his daughter, but thereafter, defendant No.1 did not execute the sale deed though the plaintiff is ready and willing to perform his part of contract leading to issuance of notice dated 12-7-1994 (Ex.P-2) followed by another notice dated 25-8-1994 (Ex.P-5) which was duly served, yet neither the notices were replied appropriately nor defendant No.1 performed his part of contract necessitating the institution of suit for specific performance of contract along with relief of possession and in alternative, refund of earnest money.

3. Defendant No.1 filed his written statement and in para 26, raised a specific plea that defendant No.1 was in need of money, therefore, he took ₹ 500/- as a loan from the plaintiff and signed on a blank stamp paper and handed-over to the plaintiff and on 16-7-1994, he returned money of ₹ 7,150/- to the plaintiff and the plaintiff also returned his *rin pustika*, but retained the blank stamp paper on the pretext that it was lost, as such, it was a loan transaction and it is not an agreement to sale which can be specifically enforced under Section 20 (unamended) of the Specific Relief Act, 1963.
4. The trial Court after appreciating oral and documentary evidence on record granted decree in favour of the plaintiff holding that the plaintiff has entered into agreement to sale with defendant No.1 on 29-3-1990 and obtained ₹ 25,000/- and promised to pay the balance amount of ₹ 2,000/-, but he did not pay the said amount despite the two notices Exs.P-2 and P-5. The plaintiff is ready and willing to perform his part of contract and it is not a loan transaction, it is an outright agreement

to sale and granted decree in favour of the plaintiff for specific performance of contract and in alternative, to refund the earnest money of ₹ 25,000/-.

5. On appeal being preferred by defendant No.1, the first appellate Court interfered with the judgment & decree of the trial Court and dismissed the suit by granting the appeal against which this second appeal has been preferred by the plaintiff in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
6. Mr. Shobhit Koshta, learned counsel appearing for the plaintiff / appellant herein, would submit that the first appellate Court is absolutely unjustified in holding that the agreement to sale (Ex.P-1) is a forged and suspicious document.
7. None present for respondent No.1 herein / defendant No.1, though served.
8. I have heard learned counsel for the appellant herein / plaintiff and considered his submissions and went through the record with utmost circumspection.
9. It is the case of the plaintiff that on 29-3-1990, he entered into an agreement with defendant No.1 to purchase the suit land and paid ₹ 25,000/- in presence of three witnesses namely Manglu (PW-1), Khamhan (PW-2) & Triloki Prasad (PW-3) for a consideration of ₹ 27,000/- out of which earnest money of ₹ 25,000/- was paid on the date of agreement to sale. The case of defendant No.1 is that it was a loan transaction, as only ₹ 5,000/- was taken from the plaintiff which he had already returned on 16-7-1994 in presence of Mahavir (DW-2) & Guharam. The plaintiff apart from examining himself has also

examined all the three witnesses to Ex.P-1 – agreement to sale. They have categorically stated that the plaintiff and defendant No.1 entered into agreement to sale and the plaintiff paid ₹ 25,000/- as earnest money and promised to pay ₹ 2,000/-. On behalf of defendant No.1, they were cross-examined to elicit that the blank stamp paper was signed by him and it was handed-over to the plaintiff which he returned the agreement subsequently and got the sign of three witnesses Manglu (PW-1), Khamhan (PW-2) & Triloki Prasad (PW-3) on the same subsequently. But, all these three witnesses have categorically denied the fact that it was signed on blank paper and it was given to the plaintiff, rather they have clearly stated that the agreement was entered into between the parties and the plaintiff paid ₹ 25,000/- to defendant No.1 and in acceptance of the same, defendant No.1 signed the agreement to sale Ex.P-1 which the trial Court has also accepted and granted decree finding readiness and willingness on the part of the plaintiff to pay the remaining part of consideration and get the sale deed executed as provided under Section 16(c) of the Specific Relief Act, 1963. Defendant No.1 has taken the plea that it was a blank paper and he has signed on the blank stamp paper and handed-over to the plaintiff to be returned after refund of loan amount to him which he has already returned and therefore, no decree for specific performance or decree for earnest money can be granted in favour of the plaintiff.

10. Once defendant No.1 admits that the said document Ex.P-1 is signed by him, it is for him to prove that it was not the agreement to sale and he has not received any consideration amount and the nature of transaction is a loan transaction, as he has denied the receipt of consideration amount. Therefore, it was for defendant No.1 to prove

that it was a loan transaction. He was bound to prove the existence of the fact that he has signed on the blank paper and subsequently, it was returned to the plaintiff and thereafter, witnesses – Manglu (PW-1), Khamhan (PW-2) & Triloki Prasad (PW-3) had signed on Ex.P-1. Defendant No.1 has failed to discharge the burden to prove the fact that he had signed on the blank stamp paper and the agreement to sale was written subsequently by the plaintiff.

11. The trial Court has correctly appreciated the fact by holding that defendant No.1 took the plea that it was only a blank paper in which he signed and subsequently it was returned and signed by the witnesses. Defendant No.1 ought to have adduced evidence to prove the said fact. Three witnesses of the plaintiff – Manglu (PW-1), Khamhan (PW-2) & Triloki Prasad (PW-3) have categorically denied the suggestion given on behalf of defendant No.1 that it was a blank stamp paper and it was returned subsequently and they have signed thereafter. The first appellate Court has wrongly placed burden upon the plaintiff that he has not proved that Ex.P-1 is a forged and suspicious document. Since the plaintiff has proved due execution of Ex.P-1 by adducing evidence of three witnesses of Ex.P-1 – agreement to sale, namely, Manglu (PW-1), Khamhan (PW-2) & Triloki Prasad (PW-3) which remains un-controverted and un-rebutted, the first appellate Court should not have by placing further burden on the plaintiff by noting minor contradictions on the amount of sale consideration interfered with the well-merited and well-reasoned finding of the trial Court. As such, the first appellate Court is absolutely unjustified in setting aside the judgment & decree of the trial Court.

12. Accordingly, the judgment & decree of the first appellate Court is set

aside and that of the trial Court is restored to the following effect: -

1. The suit is decreed in favour of the plaintiff and against defendant No.1 directing that defendant No.1 shall execute sale deed of the suit land bearing Khasra No.741/1, area 0.97 acre and Khasra No.952/1, area 0.74 acre, total area 1.71 acres, situated at Village Birgahani, Patwari Halka No.40, Tahsil Janjgir, in favour of the plaintiff on payment of remaining amount of consideration of ₹ 2,000/- within 30 days from today and in failure to do so, the trial Court will execute sale deed in favour of the plaintiff. The plaintiff shall bear the cost of registration of sale deed.
2. Defendant No.1 is further directed to deliver peaceful possession of the aforesaid land to the plaintiff.
13. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).
14. A decree be drawn-up accordingly.

Sd/-  
(Sanjay K. Agrawal)  
Judge