

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 29-1-2019

Judgment delivered on 20-02-2019

FA No. 65 of 2006

Hardayal Singh s/o. Late Dhyan Singh, aged about 73
(died/deleted).

1. Sardar Harvinder Singh, aged about 45 years, s/o. Shri Hardayal Singh.
2. Sardar Satpal Singh, aged about 43 years s/o. Shri Hardayal Singh.

Both residents of Mahaveer Nagar, Puraina, Tahsil & District Raipur (CG).

---Appellants/Defendants

Versus

1. Sardar Balbir Singh Chadda s/o. Shri Santosh Chadda s/o. Shri Santosh Singh Chadda, aged about 42 years, resident of Shyam Nagar, Raipur.
2. Smt. Inder Beer Kaur, w/o. Shri Harmanjeet Singh, r/o. Near Preet Flour Mill, Shyam Nagar, Raipur.
3. Smt. Amrit Beer Kaur, wife of Shri Gurucharan Siongh, r/o. 57/B, Nagar, Jail road, New Delhi 18.
4. Simran Beer Singh, daughter of Shri Balbeer Singh Chadda, r/o. Shyam Nagar, Raipur.

----Respondents/Plaintiffs

5. State of Chhattisgarh through the Collector, Raipur (CG).

--Defendant No.4

For appellants : Mr. B.P. Sharma, Advocate.

For respondents : Mr. Kishore Bhaduri, Advocate.
No. 1 to 4.

For respondent : Mr. V.B. Singh, Panel Lawyer.
No.5/State.

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 27-2-2006 passed by the 10th Additional District Judge, (FTC), Raipur, CG in Civil Suit No. 81-A/2004 wherein the said court decreed the suit filed by the respondents No.1 to 4/plaintiffs against the appellants for specific performance of contract regarding land bearing survey No. 87/2, area 10020 sq.ft., situated at village Puraina, Patwari Halka No. 113, Tahsil and Dist. Raipur, CG and after execution of sale deed delivery of possession thereon.

2. As per version of respondents/plaintiffs Smt. Jasbir Kaur who is wife of respondent No.1 entered into an agreement on 31-3-1994 with the original appellant Hardayal Singh for land in question for cash consideration of Rs.1,00,000/-. The whole amount of consideration was paid to the original appellant No.1 by Jasbit Kaur on 31-3-1994. Original appellant Hardayal executed Power of Attorney in favour of husband of Jasbir Kaur to perform on behalf of the said appellant of the part of contractual obligations under the agreement dated 31-3-1994. The said Hardayal did not take any action for obtaining permission from the Urban Ceiling Authority and not executed sale deed and at the

same time carried out construction work over the said piece of land, therefore, respondents have made protest and it is agreed that for construction raised over the said piece of land Smt Jasbir Kaur will pay additional amount of Rs.50,000/-. Rs.50,000/- was paid and document is also executed for the said purpose. Smt. Jasbir Kaur died on 21-11-1995 and respondents being legal representatives are entitled to get the sale deed executed from appellants/legal representatives of late Hardayal. As it is pleaded on behalf of the appellants that document produced before the trial Court by the respondents is written statement against loan amount borrowed by them from Smt. Jasbir Kaur and same is not agreement to sell of the property in question. They further pleaded that the land in question is partitioned between two sons of late Hardayal Singh i.e., appellants No. 1 and 2 namely Harvinder Singh and Satpal Singh by registered sale deed and they are in possession of their respective piece of land and constructed a house thereon. They further pleaded that property in question was purchased by Hardayal Singh on 30-3-1994, there is no need of entering into another agreement after a day. i.e., 31-3-1994. After hearing the parties, the trial Court opined that both parties have entered into agreement to sell the property in question and document produced before the trial Court regarding agreement to sell is not a document written for security

of loan. As the respondents have completed their part of contract, the appellants have to perform their part of contract and that is why decree was passed against appellants.

3. It is contended on behalf of the appellants that the original appellant/defendant Hardayal Singh executed Power of Attorney in favour of respondent Balbir Singh, therefore, sale deed cannot be executed because such transfers are made to avoid payment of stamp duty and registration charges and to avoid payment of capital gain on transfer to invest unaccounted money, therefore, sale deed cannot be executed in the present case as per law laid down in the matter of **Suraj Lamp and Industries Private Limited vs. State of Haryana and another, reported in (2012) 1 SCC 656.**

4. In the present case, the trial Court has not ordered any sale to be executed by Power of Attorney holder. It is a decree against representatives of late Hardayal Singh appellants No. 1 and 2 and in favour of respondents/plaintiffs. No one is executing the same on the basis of any Power of Attorney, but being party of the agreement to sale/legal representatives of the party to agreement, therefore, argument advanced on behalf of the appellants is not sustainable.

5. Learned counsel for the appellant further submits that document Ex.P/1 which is alleged to be agreement of sale is a

deed of conveyance because possession is delivered to the respondents, therefore, its registration is required.

6. For deciding the issue the point for consideration is whether possession is delivered to the respondents after execution of agreement to sale. From the evidence of Balbir Singh (PW/1) (para 4) it is clear that the appellants started construction on the land in question and they continued the work. The original appellant Hardayal Singh (DW/1) also deposed that he is in possession of the land in question, therefore, from the evidence of both sides, it is clear that possession was not delivered to any of the respondents after agreement. Therefore, document Ex.P/1 is plainly agreement to sale and same is executory contract. As no right of the appellants is limited or extinguished by this document, the same is not required registration as per Section 17(i)(b) of the Indian Registration Act, 1908. Argument on this count is also not sustainable.

7. Learned counsel for the appellants would further submit that as per Section 20(2)(a) of the Specific Relief Act, 1963, relief of specific performance of contract is discretionary in nature and from the evidence it is clear that the appellants have constructed the house in the land in question, therefore, hardship will cause to them if specific performance of the contract is ordered.

8. In view of this court, argument is not sustainable. The appellants were aware of the fact that property in question is under agreement to sale, therefore, they should not have proceeded to construct on the said land. They proceeded to construct the house on the said land at their own risk and no other is responsible for their act. If they are responsible for their act, they cannot be benefited of their own wrong. From the evidence adduced by the respondent,s it is clear that consideration of Rs.1,00,000/- for the said land is paid on the date of agreement and again further sum of Rs.50,000/- was paid for construction and the total amount is mentioned in Ex.P/3 which goes to show how that Rs.50,000/- is paid for construction on the said land before August 1995. It reveals from the document Ex.P/4 which is a document of purchase of the said land by the original appellant Hardayal Singh that he purchased the property for cash consideration of Rs.60,150/- and contracted to sell the same for Rs.1,00,000/- which is higher than the amount which he paid for the land in question. The document produced as Ex.D/1 by the appellants' side is a document of some other land dated 5-3-1995 which has no relevancy in deciding the issue between the parties, therefore, the trial Court is right in holding that the said document is irrelevant for deciding the issue between the parties.

9. From the evidence of the respondents, it is clearly established that entire consideration amount is paid by them and they were willing to perform their part of contract and have shown their readiness for execution of sale deed. It is for the appellants to execute the sale deed after formalities but they did not accelerate the matter and did not execute the sale deed in favour of the respondents that is why cause of action arose. The trial Court has elaborately discussed the evidence adduced by both sides and recorded a finding that the amount paid to appellant side was not loan and amount was never repaid by them, but same was consideration for sale and no hardship will cause to the appellants in executing the sale deed in favour of the respondents. The finding of the trial Court is based on proper marshalling of factual matrix and legal aspect of the matter and this court has no reason to substitute the contrary finding and the appeal is liable to be dismissed.

9. Accordingly, judgment and decree is passed against the appellants and in favour of the respondents as under:

- i) The appeal is dismissed with cost.
- ii) Appellants/legal representatives shall bear the cost of the respondents through out.
- iii) Pleaders' 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