

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 13-09-2019

Delivered on 04-10-2019

FA No. 192 of 2013

- Jhurru S/o Jhaduram Aged About 65 Years R/o Mohanbhanta, Post- Barari, Tah. Takhatpur, Distt. Bilaspur Chhattisgarh

---- Appellant/defendant

Versus

- Chedilal S/o Ramlal R/o Mohanbhanta, Post- Barari, Tah. Takhatpur, Distt. Bilaspur Chhattisgarh

---- Respondent/plaintiff

For appellant : Mr. Rajendra Tripathi, Advocate.

For respondent : Mr. A.N. Bhakta, 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 20-9-2013 passed by 4th Additional Judge, to the Court of First Additional District Judge, Bilaspur (CG) in Civil Suit No. 50-A/2013 wherein the said court decreed the suit filed by the respondent/plaintiff for specific performance of contract regarding land bearing survey Nos. 242, 251, 254 area 0.52, 0.34 and 0.66 acres, total area 1.52 acres

situated at village Mohanbhata, Patwari Halka No. 12, Revenue Circle Takhatpur, District Bilaspur, CG.

2. Respondent/plaintiff preferred a civil suit for specific performance of contract that both parties entered into agreement for sale of the land as mentioned above @ Rs.2,50,000/- per acre. Agreement was executed on 28-2-2011 and Rs.1,00,000/- was given as earnest money to the appellant. It is pleaded that when respondent asked the appellant for execution of sale deed in the month of May, 2011, he sought time for preparation of revenue record but he did not comply with the agreement and demanded much more money, thereafter a notice was served to appellant on 1-9-2011, even then sale deed was not executed that is why suit was filed. As per the appellant he agreed to sell only two pieces of land @ Rs.4,00,000/- per acre and only advance a sum of Rs.20,000/- which was received by him, even then the trial court decreed the suit in favour of respondent.

3. Learned counsel for the appellant submits as under.

- i) The trial court failed to appreciate that agreement itself was a forged and concocted document and the same has been prepared due to illiteracy of the appellant.
- ii) Patwari went to the spot and measured

two pieces of land bearing survey No.0.34 acres and 0.27 acres which was recorded in the name of the appellant, therefore, finding of the trial court that the entire land of the agreement is owned by the appellant is not correct.

- l ii) The trial court has not evaluated the entire evidence in its true perspective, therefore, finding of the trial court is liable to be reversed.

4. On the other hand, learned counsel appearing for the respondent would submit that the finding of the trial court is based on proper marshalling 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 court below including the judgment and decree.

6. The first question for consideration of this court is whether the land mentioned in the agreement total area 1.52 acres is owned by the appellant.

7. Respondent/plaintiff examined himself as PW/1, Ghorelal (PW/2), Smt. Girija Jaiswal (PW/3) and Jagat Ram (PW/4) while appellant/defendant himself as DW/1, Chhedilal Yadav (DW/2) and Munna Yadav (DW/3). Respondent/plaintiff side produced

documents Ex.P/1 to P/8 while other side has not produced any document. From the document (Ex.P/1) it is clear that the appellant is owner of the property in question which is supported by the witnesses of the respondent/plaintiff side. Though it is deposed by the appellant (DW/1) that rate of land was fixed @ Rs.4,00,000/- per acre in presence of Sahasram and Tirathram but Tirathram was not examined before the trial court and affidavit of Sahasram was adduced before the trial court but he has not been cross examined, therefore, version of the appellant is not supported by any witness regarding rate of land per acre. From the evidence of respondent/plaintiff side it is established that appellant entered into contract for sale of land measuring 1.52 acres as mentioned above @ Rs.2,50,000/- per acre and total value of the questioned land is Rs.3,80,000/- and Rs.1,00,000/- was paid as advance which is not rebutted by the evidence of appellant side.

8. The trial court has elaborately discussed the entire evidence and recorded finding that agreement was entered into between the parties as mentioned above for sale of land measuring 1.52 acres for which Rs.1,00,000/- was paid and Rs.2,80,000/- remained to be paid at the time of execution of sale deed. Finding of the trial court is based on oral and documentary evidence adduced by both sides and after reassessing the evidence this court has no reason to record a contrary view. From the evidence, it is clear that notice

was served to appellant for execution of land but he did not respond to the notice that is why suit was filed. From the pleading and evidence it is proved that respondent was ready and willing to perform his part of contract that is why he served notice to appellant. The trial court recorded finding in favour of respondent and this court on this count has no reason to take a contrary view. Though it is pleaded by the appellant that rate of land was fixed @ Rs.4,00,000/- per acre but that was not substantiated by evidence, therefore, the trial Court is right in holding that rate as mentioned above by the appellant is not settled between the parties. When the appellant is owner of the property in question for which he entered into contract for sale, he is under obligation to execute the sale deed in favour of respondent after getting the balance amount. In view of the above, finding arrived at by the trial court is not liable to be interfered with. Argument advanced on behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

9. Accordingly, while dismissing the appeal decree is passed in favour of respondent and against appellant as under:

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