

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****FA No. 162 of 2014**

- Mirja Jamaluddin Beg, S/o Abdul Jabbar Beg, Aged About 47 Years, R/o Behind Railway Colony, Ward No. 15, Sakti, Tahsil Sakti, District (Civil & Revenue) Janjgir-Champa (CG)

---- Appellant**Versus**

1. (a) Swatantrata @ Seema Yadav, Wd/o Late Mohan Lal, Aged About 50 years
1. (b) Bhaskar Yadav S/o Late Mohan Lal Aged About 30 Years
1. (c) Sunita Yadav D/o Late Mohan Lal Aged About 28 Years
1. (d) Sarita Yadav D/o Late Mohan Lal Aged About 25 Years

No.1A to 1D are R/o Chandela Colony, M.I.G. B-41, Bilaspur, Tahsil and District Bilaspur C.G., District: Bilaspur, Chhattisgarh

2. Tihliram Yadav S/o Tijau Ram Aged About 64 Years R/o Ward No. Idgahpara, Sakti, Tahsil Sakti, District (Civil & Revenue) Janjgir-Champa (CG)
3. Lakshya Kunwar Wd/o Beniram Aged About 50 Years
4. Ishwar Yadav S/o Beniram Aged About 30 Years

No.3 & 4 are residents of Near Railway Station, Sakti, Tahsil Sakti, District (Civil & Revenue) Janjgir-Champa (CG)

5. State Of Chhattisgarh S/o Through- Collector, District (Civil & Revenue) Janjgir-Champa (CG)
6. Punam Yadav S/o Beniram R/o Sonthi, Tahsil Sakti, District (Civil & Revenue) Janjgir-Champa (CG)
7. Umesh Kumar Sharma S/o Hariom Sharma Aged About 32 Years R/o Hatri Chowk, Sakti, Tahsil Sakti, District (Civil & Revenue) Janjgir-Champa (CG)

---- Respondents

For Appellant	:	Shri M.A. Latif Rehma, Advocate.
For Respondent No.1A to 1D & 7:	:	Shri Sanjay Agrawal, Advocate.
For Respondent No.5	:	Shri Rajendra Tripathi, P.L.
For Respondent No.2 to 4	:	None.

Hon'ble Shri Prashant Kumar Mishra, Ag. Chief Justice
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Prashant Kumar Mishra, Ag. CJ

15/04/2019

1. This is plaintiff's appeal challenging the judgment and decree dated 5.7.2014 passed by the trial Court dismissing his suit for specific performance of agreement dated 17.6.2010 in respect of land bearing Khasra No.63/02, area 1650 sq. ft. (22x75), out of total 0.057 hectare land, situated at Patwari Halka No.7, Near Railway Station, Sonthi, Tahsil Sakti, District Janjgir-Champa (henceforth 'the suit land') and in alternative, for refund of advance amount of Rs.1,90,000/-.
2. Original Defendant No.1- Mohan Lal Yadav executed agreement (Ex.P-1) on 17.6.2010 agreeing to sell the suit land to the plaintiff for a sum of Rs.5,00,000/-. Said Mohan Lal Yadav received advance amount of Rs.1,40,000/- on the date of agreement itself and agreed to execute sale deed within one month after receiving balance sale consideration. According to plaintiff, he paid further advance of Rs.30,000/- on 9.7.2010 and Rs.10,000/- on

29.10.2010 both through Shafique Ahmed and thereafter on 20.7.2010 he deposited Rs.10,000/- in bank account of son of defendant No.1 namely Bhaskar Yadav, maintained at SBI, Bilaspur. Thus, the plaintiff would contend that additional amount of Rs.50,000/- was paid as advance making total advance at Rs.1,90,000/-. When original defendant No.1 Mohan Lal Yadav did not execute sale deed by receiving balance sale consideration, legal notices were sent to him on 24.3.2011 & 14.10.2011, however, both these notices remained unanswered. Plaintiff filed civil suit on 15.12.2011.

3. Defendant contested the suit on submission that agreement to sell the suit land was executed because defendant was in need of money for arranging marriage of his daughter. However, the defendant stated that he received only Rs.1,40,000/- in advance and not Rs.1,90,000/- as pleaded by plaintiff. It is also stated that on plaintiff's failure to pay balance sale consideration and get executed sale deed, a part of suit land was sold to one Ishwar Yadav (defendant No.4) and remaining part to one Umesh Kumar Sharma (defendant No.7). Later on, it was found that said Umesh Kumar Sharma has purchased some other portion of same khasra number whereas a sale deed for the suit land was executed in favour of defendant No.4 - Ishwar Yadav.
4. Plaintiff examined himself as PW-1 and his witnesses namely Shafique Ahmed & Austin J Lakra, Bank Officer of SBI, Sakti, as

PW-2 & PW-3 respectively.

5. On the other side, defendant No.1 examined himself as DW-1 and his witnesses namely Virendra Singh, Bhaskar Yadav & Umesh Kumar Sharma as DW-2, DW-3 & DW-4 respectively.
6. The trial Court has found that the plaintiff paid advance amount of Rs.1,40,000/- at the time of execution of agreement, however, payment of additional advance of Rs.50,000/- on three different dates was not found to be proved. The trial Court has also found that plaintiff was not always ready and willing to perform his part of contract, therefore, he is not entitled for decree of specific performance. Prayer for refund of advance amount has been rejected on the ground of plaintiff's conduct in not paying balance sale consideration which defendant Mohanlal was requiring to arrange marriage of his daughter.
7. We have heard learned counsel for the parties and perused the record.
8. While discarding plaintiff's evidence in support of payment of additional advance of Rs.10,000/-, Rs.30,000/- & Rs.10,000/-, the trial Court has found that when plaintiff himself states to have withdrawn amount of Rs.30,000/- from the Post Office, there was no reason for him not to have visited house of defendant Mohanlal and instead using one Shafique Ahmed (PW-2) for sending said amount to defendant No.1. Similarly, deposit slip (Ex.P-3) was not

found to be working in favor of plaintiff for the reason that original of said deposit slip has not been summoned from the bank. In respect of additional sum of Rs.10,000/-, it is again found that same has also been paid by Shafique Ahmed (PW-2), whereas plaintiff could have paid it himself. The trial Court was of the opinion that name of Shafique Ahmed has been used to lend credence to the story of payment of additional advance amount through him so that by examining him, said fact can be proved.

9. Having appreciated the evidence, we are not in a position to take any different view of the matter because once defendant No.1 has accepted to have received Rs.1,40,000/- from the plaintiff at the time of execution of agreement, there was absolutely no reason why plaintiff should not have paid other amounts himself in presence of some other persons rather than using said Shafique Ahmed as conduit for payment of Rs.30,000/- & Rs.10,000/-. Similarly, there was no reason for the plaintiff to have deposited an amount of Rs.10,000/- in the bank account of Bhaskar Yadav, son of defendant No.1 Mohanlal Yadav. When said Bhaskar Yadav is not a signatory to the agreement (Ex.P-1), there was no reason why payment should have been made to him. Thus, the plaintiff has only proved payment of Rs.1,40,000/- and not remaining amount of Rs.50,000/-.
10. In respect of plaintiff's readiness and willingness, the trial Court has rightly recorded the finding that plaintiff should have paid balance

sale consideration within one month from the date of agreement, as was stipulated in agreement itself. Plaintiff having failed to pay balance amount and having filed suit belatedly after expiry of period of one month, as mentioned in the agreement, as also for the reason that plaintiff has tried to prove obtaining loan from his brother, but has not actually paid amount to defendant No.1 Mohanlal within one month, it is rightly observed that to prove obtainment of loan from his brother, the plaintiff has not examined his brother. The trial Court further considered that because of failure of plaintiff to pay balance amount, defendant No.1 Mohanlal was put in difficulty in respect of marriage of his daughter.

11. On the basis of evidence, we are also of the opinion that trial Court's finding in respect of readiness and willingness is not perverse. If the trial Court has taken a view on the issue of readiness and willingness in a suit for specific performance of contract, the same is ordinarily not to be interfered unless it suffers from grave perversity. Therefore, such being not the case here, we refuse to interfere with the said finding.
12. Now reverting to the plea of refund of advance amount. It is to be seen that in the matter of **Satish Batra v. Sudhir Rawal** reported in **(2013) 1 SCC 345** the Hon'ble Supreme Court has observed that in a suit for return of advance amount or earnest money, it is not to be adjudicated as to which party committed default in performance of contract unless the agreement contains a forfeiture clause.

Agreement in hand (Ex.P-1) does not contain a forfeiture clause although it speaks of payment of advance amount of Rs.1,40,000/-. Therefore, the reason assigned by trial Court for refusing to direct refund of advance amount on the ground that because of plaintiff's failure to perform the contract, defendant No.1 was in difficulty in relation to marriage of his daughter, is not to be gone into because the law does not permit such course for considering plea of refund of advance amount.

13. In view of foregoing, present appeal deserves to be and is hereby allowed in part. Appeal insofar as it challenges the trial Court's refusal to grant decree for specific performance is dismissed. However, the trial Court's refusal to direct refund of advance amount does not appear to be proper and therefore the same is set aside. Legal heirs of defendant No.1 Mohanlal Yadav shall refund advance amount of Rs.1,40,000/- to the plaintiff within a period of two months from today, failing which the plaintiff would be entitled to execute decree to the said extent. No order as to costs.

14. Decree be drawn-up accordingly.

Sd/-
(Prashant Kumar Mishra)
Ag. Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Roshan/-