

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**First Appeal No. 311 of 2015**

Santosh Paal, S/o. Jawahar Paal Dhankar (Gadariya), Aged about 49 years, R/o. Sahdev Nagar, Ward No. 19, Rajnandgaon (C.G.)

**----- Appellant/ Plaintiffs**

**Versus**

1. Ramnarayan Tiwari S/o Ayodhya Prasad Tiwari, Aged About 75 Years  
Occupation Agriculturist, R/o Village Koliyara, P. H. No. 1, Post  
Gidhwa, Police Station Pinkapara, Tahsil Doundilohara, District Durg  
Present District Balod Chhattisgarh, Chhattisgarh
2. State Of Chhattisgarh Through The Collector, District Durg, Present  
District Balod Chhattisgarh
3. Pushpa Bai D/o Ramnarayan Tiwari, Aged About 54 Years,
4. Smt. Kusum Bai Wd/o Gangaratan Tiwari, Aged About 45 Years,
5. Ku. Reetu D/o Gangaratan Tiwari, Aged About 26 Years,
6. Satish S/o Gangaratan Tiwari, Aged About 22 Years,
7. Ritesh S/o Gangaratan Tiwari, Aged About 20 Years,
8. Ku. Nilima D/o Gangaratan Tiwari, Aged About 18 Years,
9. Mohanlal S/o Ramnarayan Tiwari, Aged About 48 Years,

Respondent Nos. 3 to 9 are R/o. Village Koliyara, P. H. No. 1, Post Gidhwa,  
Police Station Pinkapara, Tahsil Doundilohara, District Balod  
Chhattisgarh

**-----Respondents/defendants**

With

**First Appeal No. 276 of 2015**

Ramnarayan Tiwari S/o Late Ayodhya Prasad Tiwari, Aged About 86  
Years In The Impugned Judgment Mentioned As Ayodya Prasad Tiwari  
Only In The Impugned Judgement Mentioned As 75 Years, Occupation  
Agriculturist, R/o Village Koliyara, Patwari Halka No. 1, Post Gidhwa,

P. S. Pinkapar, Tahsil Daundi Lohara, District Durg Now District Balod Chhattisgarh

-----Appellant/Defendant No.1

**Versus**

1. Santosh Pal S/o Jawahar Pal Dhankar (Gadariya) Aged About 49 Years R/o Sahdeo Nagar, Ward No. 19, Rajnandgaon Chhattisgarh.
2. Chhattisgarh State Through Collector, District Durg, Now District Balod Chhattisgarh
3. Pushpa Bai W/o Ramnarayan Tiwari, Aged About 54 Years,
4. Smt. Kusum Bai Wd/o Late Gangaratan Tiwari, Aged About 45 Years,
5. Ku. Ritu D/o Late Gangaratan Tiwari, Aged About 26 Years,
6. Satish S/o Late Gangaratan Tiwari, Aged About 22 Years,
7. Ritesh S/o Late Gangaratan Tiwari, Aged About 20 Years,
8. Ku. Neelima D/o Late Gangaratan Tiwari, Aged About 18 Years,
9. Mohan Lal S/o Ramnarayan Tiwari, Aged About 48 Years,

All R/o Village Koliyara, Patwari Halka No. 01, P. O. Gidhwa, P. S. Pinkapar, Tahsil Daundi Lohara, District Balod Chhattisgarh

-----Respondents

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For the Appellants :- Mr. R.K. Pali, Advocate.

For the Respondents :- Mr. Neeraj Pradhan, Advocate

For the Respondent/ State :- Mr. Sanjay Agrawal Govt. Advocate  
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**Hon'ble Shri Justice Manindra Mohan Shrivastava**  
**Hon'ble Smt. Justice Vimla Singh Kapoor,**

**Judgement on Board By**

**Manindra Mohan Shrivastava, J.**

**13.08.2019**

1. This common order shall govern disposal of the aforesaid two appeals, First Appeal No. 311/2015 filed by the plaintiff and First Appeal No. 276/2015 filed by the defendant Ramnarayan Tiwari.

The plaintiff suit was partly decreed in the manner that, though, the claim for specific performance was not decreed, the advance money was directed to be returned to the plaintiff. Against the decree of return of advance money of Rs. 2,21,000/-, the defendant has filed the cross appeal.

2. Santosh Paal filed a suit seeking decree of specific performance of contract, based on agreement dated 18.02.2009, Ex.P-6, on the pleadings, inter-alia, that the defendant entered into an agreement of sale of the disputed property admesasuring 13.20 acres of land for total consideration of Rs. 7,00,000/- with the plaintiff and executed an agreement Ex.P-6 on 18.02.2009. Further case of the plaintiff was that by way of advance, Rs. 2,21,000/- was also paid by the plaintiff to the defendant. According to the plaintiff, he was ready and willing to perform his part of contract by depositing balance amount of consideration within the stipulated period of six months, within which the sale deed was executed, despite repeated request, the defendant started avoiding to execute the sale deed and finally before expiry of six months, the plaintiff sent registered notice dated 25.07.2009 to the defendant stating that the plaintiff was ready and willing to perform his part of contract by paying the balance amount of consideration and the defendant should execute the sale deed. But in reply to the notice, the defendant denied such agreement and finally the plaintiff had no other option but to file suit seeking decree of specific performance of contract.

3. The defendant's stand in the written statement was that he never executed such agreement and the agreement was forged and fabricated.
4. The learned trial Court framed as many as five issues.
5. Learned trial Court framed specific issue as to whether the agreement relied upon by the plaintiff was forged document on which, signature of defendant No. 1 was fraudulently obtained. Learned trial Court also framed issue as to whether such an agreement dated 18.02.2009 was executed in which, the defendant agreed to sell 13.20 acres of land for consideration of Rs. 7,00,000/- and obtained an advance amount of Rs. 2,21,000/-. Learned trial Court also framed specific issue as to whether the plaintiff was ready and willing to perform his part of contract but the defendant avoided.
6. On first and the third issue i.e. with regard to proof of agreement and as to whether the defendant signatures were obtained by fraudulent means, the learned trial Court reached to the conclusion that the defendant plea of fraud or the documents being forged cannot be accepted in view of specific evidence led by the plaintiff himself regarding execution of agreement dated 18.02.2009, proved by one of his attesting witnesses and also the specific evidence of the handwriting expert that the signature obtaining on agreement dated 18.02.2009 is of the defendant No. 1 Ramnarayan Tiwari. However, having held so, the learned trial Court, on the issue

with regard to readiness and willingness, recorded a finding that the plaintiff was possessed of meager means and could not prove that he had sufficient fund to pay the balance amount and viewed from that point, he was not ready to perform his part of contract, resulting in dismissal of the suit.

7. Learned counsel appearing for appellant/plaintiff Santosh Paal in First appeal No. 311 of 2015, would argue that the learned trial Court having held the agreement proved, rejecting the defendant plea of his signature having been fraudulently obtained, ought to have granted equitable relief of specific performance of contract because the plaintiff had paid substantial amount Rs. 2,21,000/- which, by itself, is sufficient to draw presumption in his favour that the plaintiff had the capacity to pay the balance amount Rs. 4,79,000/- towards remaining consideration. He would further argue that the learned trial Court, completely swayed by the fact that on the date, on which, the examination of the witnesses had taken place, he had kept very small amount, has jumped to the conclusion that the plaintiff had no capacity to pay the balance amount of consideration. He has further argued that the plaintiff in his evidence has clearly stated that the plaintiff is engaged in the business of livestock and was keeping 25 goats which, by itself, proved that he had the capacity to pay the balance amount of consideration.
8. Disputing those submissions, learned counsel for the respondent would argue that the agreement itself is forged and

fabricated which has been clearly pleaded by the defendant in his pleading. He would further argue that the defendant in his evidence has clearly stated that at the time of execution of sale deeds in favour of third party namely Dilip Sharma on 31.03.2008 and 22.02.2009, the signature of the defendant may have been fraudulently obtained on certain documents for being used against him without his notice and knowledge. He would also submit that even if the findings with regard to proof of document is accepted, there is nothing in the evidence led by the plaintiff to prove that he was either possessed of the funds to pay balance amount of consideration or he was having the capacity to generate that much of fund in the event of execution of the sale deed. Therefore, in the absence of proof of readiness and willingness, the plaintiff have rightly been denied relief. In this regard, he placed reliance on the judgment in **Manjunath anandappa URF Shivappa Hanasi vs. Tammanasa and other (2003) 10 SCC 390.**

9. Pressing his appeal against the part of the decree by which learned trial Court has directed the defendant to return the balance amount of Rs. 2,21,000/- to the plaintiff which is subject matter of F.A. 276 of 2015, learned counsel for the defendant would argue that the learned trial Court having held that the plaintiff did not have sufficient fund and he was a person of meager means, ought to have disbelieved the plaintiff story of he having paid huge amount Rs. 2,21,000/- to the defendant. According to him, the plaintiff has failed to prove

receipt of any such money by the defendant by any documentary evidence of any acknowledgment of receipt.

10. We have heard learned counsel for the parties and perused the record.

11. Following point arise for determination in the aforesaid two appeals

(a) Whether the plaintiff succeeded in proving the execution of agreement dated 18.02.2009?.

(b) Whether the defendant Ramnarayan Tiwari signature was obtained by fraud and the agreement dated 18.02.2009 is forged document?

(c) Whether the findings of the learned trial Court that the plaintiff failed to prove readiness and willingness in terms of provision contained section 16(c) of the Specific Relief Act suffers from any error of law or fact.

12. As far as the first two issues are concerned, which have been decided by the learned trial Court under issue number 1 and 3, do not warrant any interference. As against the plaintiff case that he has paid Rs. 2,21,000/- and an agreement was executed on 18.02.2009, which was duly signed by the defendant, the defendant has come out with a vague plea that the document is forged. In his written statement, all that the defendant has stated at different places is that the agreement dated 18.02.2009 is forged and fabricated, that he never entered into any such agreement, he had no intention of selling his property.

However, in his affidavit under Order 18 Rule 4 CPC, the defendant statement as contained in para-6 is that in the matter of sale of a part of his land to Dilip Sharma, while getting two sale deeds dated 13.03.2008 and 22.02.2009 executed, some dispute had arisen and probably at that time, the defendant may have been misled and his signature may have been obtained or his signature may have been forged by the plaintiff. In the cross examination, he states that the agreement Ex.P/6 does not contain his signature and at the same breath he then states that while getting his signature on the stamp paper, his signature may have been obtained on the blank paper, he does not know. He then admits that to his best of knowledge, he has never signed on any blank paper or blank stamp document. He admits in para-13 of his evidence that Ashok Sharma had purchased a part of land from him, he also admits that in reply to the notice, he did not state that his signature were obtained on the stamp paper. It is not a case where the defendant has simply denied the execution of the document. The defendant, though, makes a vague pleading in the written statement that the document is forged and fabricated and he has never entered into the agreement, in his evidence, the defendant Ramnarayan Tiwari DW-1, has come out with the probability of he might have signed some documents. On this also, his evidence is not inspiring because he has made contradictory statements.

13. The plaintiff led the evidence of handwriting expert PW-3, who has deposed in his deposition before the Court regarding examination of the signature as obtaining on the disputed document agreement Ex.P-6 and the specimen signature are of the same person. In the absence of there being any doubt with regard to collection of specimen signature being that of defendant Ramnarayan Tiwari and the evidence of handwriting expert, in our opinion, the learned trial Court did not commit any illegality in holding that the agreement contains the signature of defendant Ramnarayan Tiwari. Once there is evidence which proves that the agreement did contain the signature of defendant Ramnarayan Tiwari, in the absence of specific pleading or the manner in which the fraud was practiced upon him, as required under the provisions of order 6 Rule 2 CPC, the defendant plea on this regard is liable to be rejected that any fraud was practiced on him in any manner whatsoever much less what has been stated by him in his evidence. It has also to be noticed that in the pleading, there are no specific details much less stated that the defendant signatures were obtained by any fraudulent means. Moreover, defendant's evidence that during the course of execution of two agreements, one on 31.03.2008 and other on 22.03.2009, in favour of Dilip Sharma, the defendant's signature might have been obtained fraudulently, is not at all reliable and appears to be more in the nature of a cock and bull story. In view of above, we are of the view that as far as the finding of learned trial

Court on the issue of 1 and 3 is concerned, the same does not warrant any interference and therefore, the first two points for determination are answered in that manner.

14. We find that having held that there was an agreement between the parties, the learned trial Court has dismissed the suit of the plaintiff mainly on the ground that the plaintiff failed to prove his readiness and willingness to perform his part of contract.
15. It is two well settled legal position that in order to entitle him to decree of specific performance of contract, the plaintiff is not only required to plea but also to prove that he was and continues to be ready and willing to perform his part of contract. No doubt that the plaintiff in his pleading has stated that he was ready and willing to perform his part of contract by paying the balance amount of consideration under the agreement dated 18.02.2009 and had also given a notice dated 25.07.2009 requiring the defendant to execute the sale deed by receiving balance amount of consideration, learned trial Court has recorded findings that the plaintiff is a person of meager means. If we look into the pleading of the plaintiff, we do not find that the plaintiff has disclosed how he was ready in terms of his financial capacity to pay the balance amount of consideration. According to the plaintiff, an amount of Rs. 2,21,000 was paid to the defendant as an advance amount that means the balance amount of Rs. 4,79,000/- was still required to be paid by the plaintiff. In addition, the plaintiff is also required to bear registration fee and stamp fee in the absence

of any agreement to the contrary. That means, the plaintiff was required to be possessed of sufficient fund of more than 5,00,000/- for being paid towards execution of sale deed by purchase of stamp and registration fees. The plaintiff (PW-1) however, does not appear to be a person of that much of financial capacity. In para-7 of his cross examination, he admits that he own 25 goats since his childhood, though it was never done by his father. The only assets which he disclosed was 25 goats and nothing else. He states that his family consists of wife, children were all dependent on his income and he accepts that he has only 25 goats and he does have any other business. He admits that he does not possess any document of return of Income and he is not an income tax payee and he does not even hold any bank account, even his family members do not have any bank account. Except this evidence, the plaintiff failed to lead any other evidence to prove his readiness in terms of his financial capacity to pay balance amount and bear all other expenses likely to be incurred in the matter of purchase by registered sale deed. The balance amount is not small amount but quite substantial one. The plaintiff evidence also does not prove that he had the capacity to generate funds to the tune of approximate 5 lacs in the event of execution of sale deed in his favour.

16. Learned counsel for the plaintiff has strenuously argued that once it is proved that the plaintiff had paid Rs. 2,21,000/- as an advance, his financial capacity cannot be doubted. We have

given our anxious consideration to this aspect of the matter. Even if, we accept that plaintiff had paid Rs. 2,21,000/- at the time of execution of agreement, the balance amount which is required to be paid by the plaintiff is not a small amount but almost five lacs (including all expenses of purchasing stamp papers, registration fee etc). Therefore, the plaintiff, only on the basis that he had paid Rs. 2,21,000/-, without any other evidence, cannot be said to be in a position to arrange for the balance amount so as to say that he was ready to perform his part of contract.

17. The legal requirement under Section 16(c) of the Specific Relief Act being not only to keep but to prove readiness and willingness on the evidence led by the plaintiff himself, with regard to the financial capacity, the learned trial Court does not appear to have committed illegality in recording a finding that the plaintiff failed to prove his readiness to perform his part of contract.
18. As far as challenge to the part of the decree whereby the learned trial Court had directed the defendant to return the balance amount of Rs. 2,21,000/- is concerned, the appeal filed by the defendants have no merit. Once the signature of the defendant are found to have proved on the agreement, there is presumption the defendant signed the document knowing fully the contents of the same. No reliable evidence could be led by the defendant to rebut this presumption in favour of the plaintiff and against the defendant that the plaintiff had paid Rs.

2,21,000/- to the defendant. Therefore, the judgment and decree directing the defendant to return to Rs. 2,21,000/- to the plaintiff does not warrant any interference.

19. In the result, both the appeals are dismissed. Parties shall bear their respective costs. Let separate decree be drawn in two appeals.

Sd/-

**Manindra Mohan Shrivastava**

**Judge**

Sd/-

**Vimla Singh Kapoor**

**Judge**