

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 325 of 2015**

- Smt. Smithi Agrawal W/o Shri Akash Agrawal, Aged About 25 Years R/o Brihaspati Bazar, Bilaspur, Through Power Of Attorney Holder Akash Agrawal S/o Mohan Lal Agrawal, Aged About 29 Years, R/o Brihaspati Bazar, Bilaspur, Tahsil And District Revenue And Civil- Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Sonsai Sahu S/o Late Ramadhar Sahu, R/o Village- Sakri, Tahsil- Takhatpur, District Revenue And Civil- Bilaspur, Chhattisgarh
2. Keshav Prasad Sahu S/o Late Chovaram Sahu, R/o Village- Sakri, Tahsil- Takhatpur, District Revenue And Civil- Bilaspur, Chhattisgarh
3. Fulkunwar D/o Late Ramadhar Sahu W/o Dwarika Prasad Sahu, R/o Village- Sakri, Tahsil- Takhatpur, District Revenue And Civil- Bilaspur, Chhattisgarh
4. Kumari Bai D/o Late Ramadhar Sahu, W/o Balram Sahu, R/o Village- Chhuri, Tahsil- Katghora, District Revenue And Civil- Korba, Chhattisgarh, At Present Village- Sakri, Tahsil- Takhatpur, District Revenue And Civil- Bilaspur, Chhattisgarh
5. Duvala @ Bhama D/o Late Ramadhar Sahu, W/o Mahettaru Sahu, R/o Village- Belmundi, Tahsil- Takhatpur, District Revenue And Civil- Bilaspur, Chhattisgarh
6. State Of Chhattisgarh, Through Collector Bilaspur, Tahsil And District Revenue And Civil- Bilaspur, Chhattisgarh

---- Respondents

For Appellant : Shri R.N.Jha, Advocate

For Respondents 1 to 5 : Shri Somnath Verma with Ms. Ritu Alfred, Advocates

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****22/11/2019****Per Manindra Mohan Shrivastava, J.-**

This appeal is directed against impugned judgment and decree dated

06/08/2015 passed by the 8th Additional District Judge, Bilaspur in Civil Suit No.21-A/15 by which, the learned Trial Court has dismissed plaintiff's suit for decree of specific performance of contract.

2. The appellant / plaintiff filed a suit seeking decree of specific performance on the pleadings that Late Ramadhar Sahu had entered into an agreement of sale with the plaintiff on 20/07/2010 of land admeasuring 3.42 acres situated in Village – Sakri and the plaintiff also paid the entire sale consideration of Rs.34,20,000/-. According to the plaintiff, though Ramadhar Sahu assured to get the sale deed executed as soon as relevant documents for execution of sale deed are ready, but no sale deed was executed and thereafter, the plaintiff came to know about death of Ramadhar Sahu on 05/09/2011 whereafter, he requested the defendants, successors of deceased – Ramadhar Sahu, to execute the sale deed. Further pleading was that even though the defendants assured to get the sale deed executed in favour of the plaintiff on the basis of agreement of sale dated 20/07/2010, later on, the defendants applied for mutation of their names against those very properties on the basis of Will executed in their favour by Ramadhar Sahu which came to the notice of the plaintiff from News Paper report dated 28/09/2011 published in Nav Bharat. The plaintiff filed an objection before the Tahsildar. A registered notice was sent to the defendants on 12/11/2011 for getting sale deed executed within 15 days. The defendants outright denied the very execution of agreement on 20/07/2010. Finally, the plaintiff filed a suit seeking decree of specific performance on the basis of agreement dated 20/07/2010.

3. The defendants resisted claim of the plaintiff by pleading that the so called agreement dated 20/07/2010 alleged to be agreement of sale is a fabricated document. Late Ramadhar Sahu was an old person aged 90 years. He was sick. Ramadhar Sahu never executed any agreement in favour of plaintiff in respect of the disputed property. It is further pleaded that Ramadhar Sahu had executed sale deed in favour of some of the defendants and his successors and on that basis, the

defendants held title and other benefits.

4. Based on the pleadings of the parties, learned Trial Court framed as many as four issues. Foremost of those issues was whether Ramadhar Sahu entered into an agreement with the plaintiff on 20/07/2010 to sell the property and received Rs.34,20,000/-. It also framed specific issue whether the said agreement is binding on the legal representatives of deceased – Ramadhar Sahu namely defendants 1 to 5.

After allowing the parties to lead oral and documentary evidence, learned Trial Court passed an order against the plaintiff by holding that the plaintiff failed to prove due execution of agreement dated 20/07/2010. Since the agreement itself was not found proved, the finding on other issues were recorded against the plaintiff. The finding of the learned Trial Court rested mainly on the ground that the so called agreement dated 20/07/2010 could not be proved by the plaintiff and the same is suspicious. Learned Trial Court held that the other independent witness of the said agreement namely, Vijay Shriwas was not examined by the plaintiff and further that the plaintiff failed to prove that he had available huge fund of Rs.34,20,000/- which he claims to have paid to Late Ramadhar Sahu. The other proved circumstance is that at and around the date of the so called agreement, the other properties of Ramadhar Sahu were sold by his sons – Son Sai / defendant No.1 on the strength of power of attorney which he had received from his father which raises doubt as to why would Sonsai himself execute agreement with the plaintiff he being old, infirm and sick.

5. Learned counsel for the appellant argued that learned Trial Court committed serious illegality and also committed error of fact in not properly appreciating the pleadings and evidence led by the plaintiff. He would argue that the agreement has been proved in accordance with law in as much as the agreement dated 20/07/2010 was signed by two witnesses – Akash Agrawal and one Vijay Shriwas. Akash Agrawal was examined by the plaintiff as first witness and he has proved execution of agreement by clearly stating that in his presence, Ramadhar Sahu executed

agreement in favour of plaintiff – Smithi Agrawal. Merely because Akash Agrawal was the husband of Smithi Agrawal, the plaintiff's evidence could not be set at naught as evidence. According to learned counsel for the appellant, there is no requirement of law that if one of the witnesses is a relative, despite proof of agreement, the agreement cannot be acted upon without proof of its execution by any independent attesting witness. Learned Trial Court has not correctly applied legal position as contained in Section 68 of the Evidence Act. Next submission of learned counsel for the appellant is that mere fact that till the date of death of Ramadhar Sahu, the plaintiff did not take any steps to get the sale deed executed, is misconceived in as much as the plaintiff has led reliable evidence to prove that the agreed sale consideration of Rs.34,20,000/- was paid by the plaintiff to Late Ramadhar Sahu. Therefore, nothing remained to be performed on the part of the plaintiff. It was only when Ramadhar's sons started getting their names mutated in the revenue records on the strength of Will, he filed an objection before the revenue authority and filed a suit. In support of his submission, learned counsel for the appellant placed reliance in the case of **Maria Margarida Sequeria Fernandes and ors. v. Erasmo Jack de Sequeria (dead) through LRs., AIR 2012 SC 1727.**

6. On the other hand, learned counsel for the respondent would argue that the learned Trial Court has recorded specific finding after minute scrutiny of pleading and analysis of evidence on record. He would submit that the plaintiff failed to prove execution of agreement as the Trial Court on valid reasons recorded finding that the agreement itself was suspicious. Learned counsel for the respondent would further argue that the plaintiff has failed to lead any evidence of availability of huge amount on the alleged date of agreement dated 20/07/2010 nor any proof of receipt of such huge money by Ramadhar Sahu from the plaintiff. Next submission is that the learned Trial Court has rightly taken into consideration that the agreement is claimed to have been executed on 20/07/2010 whereas on 16/07/2010 and 21/07/2010, several properties

belonging to Ramadhar Sahu were sold to different purchasers vide Ex.D/1, D/2 and D/3 by defendant No.1-Sonsai as power of attorney which he was holding from his father – Ramadhar Sahu. His further submission is that the plaintiff's case that she had paid huge amount of more than Rs.24 lakhs under an agreement dated 21/07/2010, has rightly been found to be suspicious because ever since 20/07/2010, till the death of Ramadhar Sahu on 05/09/2011, the plaintiff never disclosed to anybody nor got published in the news paper prior to death of Ramadhar Sahu nor specific evidence of she having approached to Ramadhar Sahu towards execution of sale deed in her favour. It is only after Ramadhar Sahu died that the plaintiff came out with the suspicious document of agreement of sale between him and Ramadhar Sahu. It is also argued that the agreement has been found to be suspicious because it is sought to be proved by Akash Agrawal (PW1) husband of the plaintiff and other witness - Vijay Shriwas, has not been examined by the plaintiff. Further submission is that the plaintiff admitted in her evidence that she had arranged a purchaser for Ramadhar Sahu towards sale of one acre land situated in khasra no.888. This also rendered the case of the plaintiff suspicious. In any case, if Ramadhar died, the plaintiff ought to have proved that the document contained signature of Ramadhar Sahu. For all these reasons, learned Trial Court raised suspicion with regard to agreement and therefore, rightly dismissed the suit.

7. The only point arising for determination in this appeal is whether the learned Trial Court has committed error of law and / or fact in holding the agreement dated 20/07/2010 as suspicious one because of the proved attending circumstances.

8. It is undisputed position in the present case that even according to plaintiff's case, an agreement was entered into between the plaintiff – Smithi Agrawal and father of defendant No.1 namely Ramadhar Sahu. Suit has been filed by the plaintiff against legal representatives and successor in interest of Late Ramadhar Sahu. According to plaintiff's pleading and evidence, when the plaintiff came to know that on the basis of

Will, plaintiff's successors have moved Revenue Court for mutation of their names in revenue records, the plaintiff proceeded to file objection, gave notice to defendants for execution of sale deed and when no sale deed was executed, she filed suit. As long as Ramadhar Sahu was alive, the plaintiff did not file any suit claiming decree of specific performance of contract. The agreement, according to the plaintiff, was executed in favour of plaintiff by Ramadhar Sahu on 20/07/2010. Further, it is an admitted position from the pleadings and evidence led by both the parties that Ramadhar died on 05/09/2011. Neither in the pleadings nor in the evidence led by the plaintiff, any clinching documentary evidence either in the form of paper publication or notice has been led to prove that after execution of agreement dated 20/07/2010, the plaintiff kept on insisting Ramadhar Sahu to execute sale deed in his favour. Uptil the date of death of Ramadhar Sahu i.e. 05/09/2011, the plaintiff never made it public much less, raised any claim in any Forum or anywhere else that Ramadhar had executed agreement of sale in his favour. The plaintiff surfaced with his claim only when the defendants being sons and LRs of deceased – Ramadhar Sahu on the strength of Will, applied for mutation of their names before the revenue authorities, notice inviting objections thereof, having been published in the news paper. If the plaintiff's case is to be accepted, he had paid huge amount of Rs.34,20,000/- to Ramadhar Sahu on 20/07/2010. If that was so, absence of any clinching evidence of plaintiff insisting Ramadhar Sahu to execute the sale deed in his favour rendered the plaintiff's case highly improbable. Ordinarily, a person who has paid huge amount of more than Rs.34,00,000/- lakhs would not sit idle for more than one year, taking no steps towards execution of sale deed of the property. Learned Trial Court has very pertinently noted that the proof of execution of agreement is based only on the evidence of Akash Agrawal (PW1) who is one of the signatory to the agreement dated 20/07/2010. Admittedly, he is the husband of the plaintiff- Smithi Agrawal. According to the plaintiff, there were two witnesses. One Akash Agrawal and the other Vijay Shriwas. Vijay Shriwas appears to be an independent witness. However, the plaintiff

did not examine Vijay Shriwas. This again creates serious doubt with regard to the agreement, particularly, when the executor of the document is no longer alive and during his life time, the plaintiff did not raise any claim anywhere and kept mum for one year and two months until death of Ramadhar Sahu on 05/09/2011.

9. Though the plaintiff claims to have paid huge amount of Rs.34,20,000/-, as we see from the finding of the learned Trial Court, the plaintiff has not led any specific evidence with regard to she being possessed of such huge amount in her account nor she has clearly stated as to from where such huge amount has come. No specific document evidencing acknowledgement of receipt of such amount by Late Ramadhar Sahu or any other person including his legal representatives has been led in evidence. There is no other evidence led by the plaintiff to prove payment of Rs.34,20,000/- to Ramadhar Sahu. Indeed, it was a huge amount and when called upon to prove payment of such huge money, if at all, where the plaintiff is claiming execution of sale deed in her favour, she ought to have proved by leading cogent evidence to show payment of such amount. The plaintiff, however, failed to lead clinching and cogent evidence with regard to she being possessed of such huge amount and paid that amount to Ramadhar Sahu.

10. The plaintiff witness Akash Agrawal (PW1), who claims to be power of attorney holder on behalf of the plaintiff, admits in para 25 of his cross-examination that at the time of agreement, Ramadhar Sahu was about 90 years of age. Sonsai (DW1), son of Ramadhar Sahu also stated regarding age of Ramadhar Sahu being more than 90 years in the year 2010 and according to him, his father was sick and infirm. Thus, with regard to age of Ramadhar Sahu being more than 90 years at the time of alleged agreement, there is no dispute between the parties.

11. There is yet another very important evidence which has come on record and that is that the plaintiff's witness – Akash Agrawal (PW1) has admitted in his cross-

examination that he had arranged a purchaser for Ramadhar Sahu as Ramadhar Sahu wanted to sell one acre of land situated in khasra no.888. This attempt on the part of the plaintiff's witness proves that Akash Agrawal was acting as a broker and in that connection, he was meeting Ramadhar Sahu. Therefore, the evidence in the form of admission in para 48 of the cross-examination of Akash Agrawal is that Ramadhar Sahu had sold various properties to different persons. Vide Ex.D/1, Ex.D/2 and EX.D/3, as deposed by Sonsai, Ramadhar Sahu had sold three different properties to Reshma Ansari, Sunita Yadav and one Suraj Soni. These sale deeds bear dates 16/07/2010 and 21/07/2010. From the evidence of Sonsai Sahu (DW1), it is clear that sale deeds were executed by Sonsai in favour of intending purchaser as power of attorney holder of Ramadhar Sahu who was alive at that time. Not only this, there is clear admission on the part of this witness that he was also witness to execution of these three sale deeds executed by Sonsai in favour of Reshma Ansari, Sunita Yadav and Suraj Soni. But then, it has come in the evidence of Akash Agrawal (PW1) and Sonsai (DW1), Sonsai was completely unaware of agreement dated 20/07/2010 claimed to have been executed by Ramadhar Sahu in favour of plaintiff – Smithi Agrawal. The evidence of plaintiff – Smithi Agrawal (PW2) shows that she appears to be only a name lender. There is no evidence of she meeting Ramadhar Sahu or paying consideration towards execution of sale deed and everything appears to be in the hands of her husband – Akash Agrawal (PW1). Between the period from 16/07/2010 to 21/07/2010, number of properties held by Ramadhar Sahu were sold to different persons by his son – Sonsai as power of attorney holder. Therefore, it becomes highly improbable that Ramadhar Sahu himself would execute agreement of sale with the plaintiff during that period, and that too without any notice and knowledge of Ramadhar's successors including his son-Sonsai. This also raises serious doubt on the entire case of the plaintiff and the agreement dated 20/07/2010 appears to be highly suspicious document. The plaintiff gave notice to defendants 1 to 5 only on 12/07/2011 i.e. after death of Ramadhar Sahu.

12. All the aforesaid facts and circumstances have led the Trial Court to record a finding that the agreement dated 20/07/2010 is a suspicious document and has not found to be proved. The finding recorded by the learned Trial Court does not warrant any interference. The appeal is *sans substratum* and is, therefore, dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge