

**HIGH COURT OF CHHATTISGARH, BILASPUR****SA No.395 of 2005**

- Goverdhan Das S/o. Maniklalmal Aged About 32 Years R/o. Motor Stand Ward Dhamtari, District Dhamtari Chhattisgarh.....Plaintiff, District : Dhamtari, Chhattisgarh

**---- Appellant/Plaintiff****Versus**

- Meghraj S/o. Gurumukh Das, (Since Dead) Represented By Legal Heirs-  
1(A) Sheela Asrani W/o Late Meghraj, Aged about 48 years,  
  
1(B) Dinesh Asrani S/o Late Meghraj Aged About 26 Years  
  
1(C) Vijay Asrani S/o Late Meghraj Aged About 24 Years  
  
All R/o. Lal Bagicha Ward Dhamtari Chhattisgarh, District : Dhamtari, Chhattisgarh  
1(D) Rekha Asrani D/o Late Meghraj, W/o Sanjay Willnani R/o. Bharat Jyoti Housing Society Indore Chowk, Nagpur
- Smt. Radha Bai D/o. Suklal Gond, Aged About 40 Years R/o. Nayapara Hitkeshwar Ward Dhamtari, District Dhamtari Chhattisgarh, District : Dhamtari, Chhattisgarh
- Charan (Died) Through Legal Heirs-  
  
3.(i) Hemant Gond S/o Late Shri Charan Gond Aged About 45 Years  
3(ii) Latu Ram Alias Manoj Gond S/o Late Shri Charan Gond Aged About 34 Years  
3(iii) Hemlata Gond D/o Late Shri Charan Gond, Aged About 36 Years  
  
Respondents No.2 & 3 are R/o Village Balod Gahan, Thana Gurur, District Balod Chhattisgarh. 491227, District : Balod, Chhattisgarh
- Smt. Ankalheen Bai W/o. Suklal Gond, Aged About 70 Years (Since Dead And Already Deleted)

**---- Respondents****Present:-**

Shri Amit Soni, counsel for appellant.

Shri Anurag Singh, counsel for respondents No.1(A) &amp; 1(B).

Shri Manoj Paranjpe with Shri Shubhank Tiwari, counsel for respondents No.3(i) to 3(iii).

**Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava**

**JUDGMENT ON BOARD**

**05/03/2020**

Heard.

1. This second appeal is directed against the impugned judgment and decree dated 29-01-2005 passed by the Additional District Judge, Dhamtari in Civil Appeal No.3-A/2005, by which, the plaintiff's appeal against the judgment and decree dated 17-08-1998 passed by the learned trial Court in Civil Suit No.1-A/84 has been dismissed, reversing the judgment and decree passed by the trial Court.

2. The appellant-plaintiff filed a suit seeking decree of specific performance on the pleadings, inter alia, that the original owners of the suit land, namely Ankalheen Bai and Radha Bai entered into an agreement of sale of disputed property on 15-04-1982, for a valid consideration of Rs.1600/-. The disputed property comprised of a house and a plot, as described in Schedule-A, B, C & D of the plaint. Plaintiff's further case was that the defendant instead of honouring the agreement, clandestinely sold the disputed property in favour of 4th defendant-Meghraj, vide sale deed dated 11-10-1983. The plaintiff thereafter, got notice published in the newspaper and also notice was given to Meghraj and then suit was filed on 04-01-1984 seeking decree of specific performance.

On the other hand, the plaintiff's case was opposed by the defendant. Subsequent purchaser-Meghraj came out with a plea that he was bonafide purchaser and till the date of execution of sale deed in his favour by the Original owner on 11-10-1983, the plaintiff had never informed nor any publication was made that the property was under an agreement between the plaintiff and the original owner-Ankalheen Bai and Radha Bai.

3. After framing issues, the learned trial Court recorded a finding that the plaintiff had succeeded in proving the agreement of sale and that he was ready and willing to perform his part of contract and that the original owner-Ankalheen Bai and Radha Bai could not have sold the property in favour of Meghraj-subsequent purchaser. Declaring that subsequent sale deed was not binding on the plaintiff, decree for specific performance was granted in favour of the plaintiff. Aggrieved by the said judgment and decree, the defendant-subsequent purchaser-Meghraj filed an appeal. The learned lower appellate Court recorded a finding that Meghraj was a bonafide purchaser and that as sale deed was executed in his favour, original vendor could not have executed the sale deed in favour of the plaintiff as they have no title over the suit property, set aside the judgment and decree passed by the trial Court, giving rise to this appeal.

4. This appeal was admitted for hearing on following substantial question of law:-

“Whether the first appellate Court was justified in holding that as per agreement between plaintiff and defendants No.1 & 2 dated 15.04.1982 with respect to the suit property shown in the plaint as ‘A’, ‘B’, ‘C’ & ‘D’, the plaintiff is not entitled to get it specifically in view of the fact that the defendants No. 1 & 2 have also thereafter subsequently made sale in favour of defendant No. 4 on 11.10.1983, which runs contrary to the decision rendered by the Supreme Court in the matter of ***Vijay A. Mittal and others Vs. Kulwant Rai (Dead) through legal representatives and another ?***”

5. Assailing legality and validity of the impugned judgment and decree passed by the Court below, learned counsel for the appellant argued that the impugned judgment and decree passed by the Court below is not sustainable in law, because, two premises, on which, the learned lower appellate Court has reversed the judgment and decree, are not made out. He would submit that merely because the property was sold to a third party, the plaintiff could not be

non-suited and it cannot be said that in every such case, the Court is denuded of his power to grant decree of specific performance. Next submission of learned counsel for the appellant is that the finding that as the sale deed was executed by the original owner-Ankalheen Bai and Radha Bai in favour of Meghraj, therefore, the decree of specific performance could not be granted, because they could no longer execute the sale deed in favour of the plaintiff, proceeds on incorrect factual premise and without due advertence of the judgment and decree passed by the trial Court, wherein subsequent sale has been declared as not binding on the plaintiff. Relying on the decision of the Supreme Court in the case of ***Vijay A. Mittal and others vs. Kulwant Rai (Dead) through legal representatives and another***<sup>1</sup>, it has been submitted that once it is found that the plaintiff is entitled to decree of specific performance, subsequent sale, if any made, does not bind and stands nullified.

6. On the other hand, learned counsel for the respondents would submit that the finding recorded by the learned lower appellate Court that till the date, defendant-Meghraj had purchased the property vide sale deed dated 11-10-1983, the plaintiff had not informed nor it had come to the notice of Meghraj that there existed an agreement between the plaintiff and the original vendor, does not suffer from any illegality and is based on evidence on record. He would submit that there is no evidence led by the plaintiff, much less any pleading that prior to 11-10-1983, the subsequent purchaser-Meghraj came to know about the agreement dated 15-04-1982 and that there was also a finding that Meghraj was a bonafide purchaser and the property could not be sold out to the plaintiff. He would submit that the learned lower appellate Court, in fact, exercised discretion not to grant decree of specific performance, taking into consideration that the disputed property was sold in favour of Meghraj even

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1 (2019) 3 SCC 520

prior to filing of the suit by the plaintiff. He would next submit that even if it is held that by virtue of declaration that the sale deed is not binding, the decree of specific performance could be refused as the matter would require consideration on its own merits in the light of the fact that later on, the disputed property was actually sold by the original vendor in favour of Meghraj on 11-10-1983. He would also submit that Meghraj was, right from the beginning, impleaded as defendant and contested the case of the plaintiff. He having raised various grounds in the appeal including those grounds that the plaintiff was not ready and willing to perform his part of contract and other legal grounds, the decree could not be granted. The grounds raised by the defendant are required to be examined on its own merits.

7. I have heard learned counsel for the parties and perused the records.

8. In the present case, subsequent purchaser, who had purchased the disputed property, was impleaded as one of the defendant in the civil suit and also contested the claim of the plaintiff. The trial Court granted decree in favour of the plaintiff for specific performance of contract by recording a finding of proof of the agreement between the plaintiff and the original vendor-Ankalheen Bai and Radha Bai.

9. The learned lower appellate Court reversed the judgment of the trial Court on two counts.

10. Firstly, it was held by the learned lower appellate Court that once the property was purchased by the Meghraj on 11-10-1983, the plaintiff's suit was liable to be dismissed, because by that time, no title passed in favour of the plaintiff under agreement dated 15-04-1982, as it was merely an agreement to sell.

This reasoning of the learned lower appellate Court, is apparently

erroneous in law. The fact that subsequent to agreement executed between the plaintiff and the original vendor, the suit property was not sold to the plaintiff in accordance with the agreement to sell, but it was sold to a third party, would be the relevant factor in the matter of exercise of discretion by the Court on well settled judicially evolved principles, as to whether the decree of specific performance should be granted, because, the plaintiff has made out a case. But, then it is not a rule of thumb that in every case, once it is proved that the disputed property was sold to a third party, the suit for specific performance of contract must fail. Therefore, the finding of the learned lower appellate Court in this regard is purely erroneous and contrary to the settled legal position.

11. The other ground, on which, the learned lower appellate Court has considered it proper to reverse the judgment of the trial Court is that once the property has been sold by the original vendor in favour of the subsequent purchaser, he could not execute the sale deed. This legal position was examined recently by the Supreme Court in the case of **Vijay A. Mittal** (supra), wherein reliance was placed on the earlier decision of the Supreme Court in the case of **Durga Prasad vs. Deep Chand**<sup>2</sup>, the observations made in para 39, are as below:-

**39.** The learned Judge, Vivian Bose, J. examined this issue and speaking for the Bench in his inimitable style of writing, held as under: ( **Durga Prasad Case, AIR p.76**)

“Where there is a sale of the same property in favour of a prior and subsequent transferee and the subsequent transferee has, under the conveyance outstanding in his favour, paid the purchase money to the vendor, then in a suit for specific performance brought by the prior transferee, in case he succeeds, the question arises as to the proper form of decree in such a case. The practice of the Courts in India has not been uniform and three distinct lines of thought emerge. According to one point of view, the

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2 AIR 1954 SC 75

proper form of decree is to declare the subsequent purchase void as against the prior transferee and direct conveyance by the vendor alone. A second considers that both vendor and vendee should join, while a third would limit execution of the conveyance to the subsequent purchaser alone. According to the Supreme Court, the proper form of decree is to direct specific performance of the contract between the vendor and the prior transferee and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the prior transferee. He does not join in any special covenants made between the prior transferee and his vendor; all he does is to pass on his title to the prior transferee.”

12. Even otherwise, in the present case, the learned lower appellate Court declared that the sale deed executed by the original vendor in favour of the subsequent purchaser is not binding on the plaintiff. Therefore, only on this ground also, the learned lower appellate Court was not justified in reversing the judgment of the trial Court.

13. It will be fair to all the parties that even if this Court held that the ground, on which, the learned lower appellate Court reversed the judgment and decree of the trial Court, was not well founded in law, the matter should be remitted to the appellate Court for consideration on all other aspects on merits, because this Court finds that the respondent-defendant had raised many grounds in the appeal, which, the learned lower appellate Court did not consider and only on the two aspects, dealt with hereinabove, the appeal was allowed.

14. At this stage, it would be relevant to remind the first appellate Court the legal requirements embodied under Order 45 Rule 31 of CPC with regard to hearing of appeals. The Supreme Court in the case of ***Malluru Mallappa (D) Through L.Rs. vs. Kuruvathappa & Ors.***<sup>3</sup>, examined the legal position and judgment of the first appellate Court in the matter of formulating points for determination and reiterating the principles, while disposing off a first appeal, as

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3 Civil Appeal No.1485/2020, decided on 12-02-2020

below:-

**16.** Order XLI Rule 31 of the CPC provides the guidelines for the appellate court to decide the matter. For ready reference Order XLI Rule 31 of the CPC is as under: -

“31. Contents, date and signature of judgment.- The judgment of the Appellate Court shall be in writing and shall state—

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

**17.** [In Vinod Kumar v. Gangadhar](#), (2015) 1 SCC 391, this Court has reiterated the principles to be borne in mind while disposing of a first appeal, as under:-

“15. Again in [B.V. Nagesh v. H.V. Sreenivasa Murthy](#) [(2010) 13 SCC 530 : (2010) 4 SCC (Civ) 808] , this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp. 530-31, paras 3-5) “3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. ([Vide Santosh Hazari v. Purushottam Tiwari](#) [(2001) 3 SCC 179 : (2001) 1 SCR 948] , SCC p. 188, para 15 and [Madhukar v. Sangram](#) [(2001) 4 SCC 756] SCC p. 758, para 5.)”

18. [In Shasidhar and Ors. v. Ashwani Uma Mathad and Anr](#), (2015) 11 SCC 269, it was held as under:-

“21. Being the first appellate court, it was, therefore, the duty of the High Court to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law.”

19. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order XLI Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.

15. The learned lower appellate Court was required to frame points for determination and then proceed to decide the appeal in accordance with law. The question of law framed by this Court is in favour of the plaintiff and against the defendant that the appellate Court was not justified in reversing the judgment and decree passed by the trial Court only on the ground that the property was subsequently sold out. However, in view of the aforesaid consideration, the matter is remitted to the learned lower appellate Court to frame appropriate issues for determination and then decide the appeal on such grounds which arise for determination, in view of the grounds raised in this appeal, except those, which have already determined by this Court in this appeal.

16. In view of above, the impugned judgment and decree passed by the appellate Court is set aside and the matter is remitted to the learned lower appellate court to frame appropriate points for consideration and decide the

appeal in accordance with law. The learned lower appellate Court shall do well to decide the appeal within outer limit of three months, which shall run from the date of first appearance of the parties before the first appellate Court. Parties shall appear before the learned lower appellate Court on 13-07-2020 along with certified copy of this judgment. Records of the Court below be remitted to the learned lower appellate Court.

17. In the result, the appeal is allowed. Let appellate decree be accordingly drawn. Costs made easy.

SD/-  
(**Manindra Mohan Shrivastava**)  
**JUDGE**