

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.349 of 2008Judgment reserved on: 8-6-2020Judgment delivered through video conferencing on: 24-6-2020

Smt. Bhagwati Devi, D/o Deendayal Pandey, aged 35 years, R/o Sendari, Tahsil Nawagarh, Distt. Janjgir-Champa (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Suritram (Dead) Through Legal Heirs

(Defendant-1)

1(a) Smt. Chameli Devi, Aged about 70 years, W/o Late Surit Ram

(b) Bhuneshwar, S/o Late Surit Ram, Aged about 48 years

(c) Deepak Rathore, S/o Late Surit Ram, Aged about 40 years

(d) Jyoti Rathore, D/o Late Surit Ram, Aged about 38 years

All R/o Behind Kalika Hotel, Chandaniya Para, Ward No.16, Janjgir, Distt. Janjgir-Champa (C.G.)

2. State of C.G., Through Collector, Janjgir-Champa.

(Defendant-2)
---- Respondents

For Appellant: Mr. Anand Kumar Gupta, Advocate.

For Respondents No.1 (a) to (d): -

None present though served.

For Respondent No.2 / State: -

Mr. Animesh Tiwari, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This plaintiff's / appellant's (herein) second appeal was admitted for hearing by formulating the following substantial question of law, on 28-2-2020: -

“Whether the first appellate Court was justified in holding that agreement (Ex.P-1) is not proved and the plaintiff is not entitled for Rs.30,000/- as earnest money, which is said to have been paid to defendant No.1, by recording a finding which is perverse to the record?”

[For the sake of convenience, parties will be referred hereinafter as per their status shown and nomenclature given in the plaint before the trial Court].

2. The appellant herein / plaintiff filed a suit for specific performance of contract stating inter alia that defendant No.1 entered into agreement to sale with her on 30-4-2001 for alienating the suit property on a cash consideration of ₹ 35,000/- and obtained ₹ 30,000/- in presence of two witnesses by delivering peaceful possession of the suit land to her and promised to execute sale deed which he did not execute leading to serving of notice Ex.P-3 on 3-10-2003 which was replied by defendant No.1 on 16-10-2003 vide Ex.P-6 leading to filing of suit that though she is ready and willing to perform her part of contract, but defendant No.1 is not executing sale deed in her favour which she is entitled to get the sale deed executed through the intervention of the court, therefore, decree for specific performance of contract be granted in her favour.
3. Defendant No.1 filed his written statement stating that on 30-4-2001, he has executed sale deed vide Ex.D-1 in favour of the plaintiff for alienating the land bearing Khasra No.763/5, area 0.60 acre, and taking advantage of that fact, the plaintiff got the agreement to sale executed on which he signed by mistake and it was obtained by playing fraud and no sale consideration was paid to the extent of ₹ 30,000/- to him, as such, the plaintiff is not entitled for decree for specific performance of contract or for refund of earnest money.

4. The trial Court after appreciating oral and documentary evidence available on record, only granted decree for refund of earnest money along with interest holding that the suit land is not registered / mutated in the name of defendant No.1. On appeal being preferred by the plaintiff before the first appellate Court, the first appellate Court reversed the judgment & decree of the trial Court and dismissed the suit leading to filing of second appeal before this Court under Section 100 of the CPC in which substantial question of law has been formulated which has been incorporated in the opening paragraph of this judgment.
5. Mr. Anand Kumar Gupta, learned counsel appearing for the appellant herein / plaintiff, would submit that the first appellate Court fell in grave error in holding that there is no agreement to sale executed by defendant No.1 in favour of the plaintiff and no amount of ₹ 30,000/- was paid by the plaintiff to defendant No.1, therefore, the plaintiff is not entitled for decree for refund of earnest money. He would further submit that the first appellate Court failed to take into account the legal evidence available on record and reached to a perverse finding holding that there is no agreement to sale executed by defendant No.1 in favour of the plaintiff by recording a finding which is perverse to the record and as such, the judgment & decree of the first appellate Court deserve to be set aside and that of the trial Court deserve to be restored.
6. None present for legal heirs of defendant No.1 / respondents No.1(a) to (d) herein, though served.
7. I have heard learned counsel for the parties and considered the submissions made by learned counsel for the appellant herein / plaintiff and went through the record with utmost circumspection.

8. The agreement to sale is Ex.P-1 said to be executed by defendant No.1 in favour of the plaintiff in presence of two witnesses namely, Shri Mahatmaram and Shri Hemlal, by which defendant No.1 is said to have agreed to sale the suit land in favour of the plaintiff for a cash consideration of ₹ 35,000/- and said to have obtained ₹ 30,000/- and also said to have delivered peaceful possession to the plaintiff and promised to get the sale deed executed up to 30-4-2002. Thereafter, for execution of sale deed, notice Ex.P-3 was issued by the plaintiff to defendant No.1 which defendant No.1 replied vide Ex.P-6. One witness to the agreement to sale – Shri Mahatmaram has been examined as PW-2.
9. The trial Court clearly recorded a finding that agreement to sale has been entered into by defendant No.1 in favour of the plaintiff, but declined to grant decree for specific performance as noticed hereinabove for want of mutation of suit land in favour of defendant No.1 and only granted decree for refund of earnest money of ₹ 30,000/- which the first appellate Court reversed to the extent that agreement to sale is not proved to be executed by defendant No.1 in favour of the plaintiff. Defendant No.1 while filing written statement emphatically denied the execution of any such agreement to sale in the shape of Ex.P-1 in favour of the plaintiff and took a categorical stand that since on 30-4-2001 he has executed sale deed alienating other land Ex.D-1 in favour of the plaintiff, therefore, in the garb of signing the sale deed, document Ex.P-1 was fraudulently got signed by the plaintiff as on that day, his daughter was getting married and therefore he was in great hurry and signed the document Ex.P-1. As such, he has admitted in the written statement

and his affidavit under Order 18 Rule 4 of the CPC, the signing of document Ex.P-1 though without reading the said Ex.P-1. In paragraph 12 of his cross-examination before the trial Court, Suritram Rathore (DW-2) has clearly admitted that document Ex.P-1 was signed by him in presence of Mahatmaram (PW-2) and another witness Birendra; though he tried to explain that it was signed by keeping the said document inside the sale deed Ex.D-1, but in the same breath, he has clearly admitted that on Ex.P-1 he has signed from 'C' to 'C' portion in the office of the Registrar in presence of Mahatmaram and Birendra – witnesses to Ex.P-1. As such, from the entire evidence on record, it is quite vivid that execution of Ex.P-1 by defendant No.1 in favour of the plaintiff has clearly been proved on record in accordance with law, rather it is the own admission by defendant No.1 that he has executed the said document in favour of the plaintiff.

10. Mahatmaram has been examined by the plaintiff as PW-2. In cross-examination, in paragraph 10, he has clearly admitted that ₹ 30,000/- was given by the plaintiff to defendant No.1 and ₹ 5,000/- was left outstanding that was recorded in Ex.P-1. The first appellate Court disbelieved the statement of Mahatmaram only on the ground that denomination of notes and number of currency which were given to defendant No.1 by the plaintiff, has not been clearly stated by him; that cannot be a ground for discarding the statement of a witness. He is consistent in his statement and it is the plaintiff's own witness namely, Mahatmaram (PW-2), who has clearly deposed that ₹ 30,000/- was given to defendant No.1 by the plaintiff. As such, the plaintiff has clearly established that agreement to sale Ex.P-1 was executed by

defendant No.1 in her favour and ₹ 30,000/- was given to defendant No.1 towards the sale consideration which is duly proved by pleadings of the parties and by admission of plaintiff's witness Mahatmaram (PW-2) and also by defendant's own version, which is clear admission in paragraph 12 of his statement before the Court.

11. At this stage, it would be appropriate to notice Section 58 of the Indian Evidence Act, 1872 which provides as under: -

“58. Facts admitted need not be proved.—No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

12. Section 58 of the Evidence Act postulates that things admitted need not be proved. The Supreme Court in the matter of Nagindas Ramdas v. Dalpatram Iccharam alias Brijram and others¹ has clearly held that admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

1 AIR 1974 SC 471

13. Reverting to the facts of the case finally in the light of the legal analysis made herein-above, it is quite vivid that it is sufficiently and duly proved on record by the plaintiff by leading cogent evidence that defendant No.1 entered into agreement to sale with the plaintiff for alienating the suit property and obtained ₹ 30,000/- in the presence of Mahatmaram (PW-2), but failed to perform the part of contract by executing sale deed which led to service of notice by the plaintiff to defendant No.1 and the trial Court rightly held that agreement to sale is duly proved and obtaining of money by defendant No.1 to the extent of ₹ 30,000/- is also clearly proved. The first appellate Court recorded a finding which is perverse to the record ignoring the evidentiary admission made before the Court and by recording a perverse finding, reversed the judgment & decree of the trial Court and thereby committed a legal error which deserves to be set aside. As such, the first appellate Court is absolutely unjustified in reversing the judgment & decree of the trial i.e. for refund of earnest money by the plaintiff to defendant No.1.
14. In view of the aforesaid, the judgment & decree of the first appellate Court are set-aside and that of the trial Court are restored and consequently, the substantial question of law is answered accordingly.
15. The second appeal is allowed to the extent indicated herein-above. No order as to cost(s).
16. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge