

HIGH COURT OF CHHATTISGARH, BILASPUR**F.A. No. 136 of 2007****Reserved on 11.12.2020****Pronounced on 14.12.2020**

Vijay Grih Nirman Sahkari Samiti Maryadit, Katora Talab, Raipur, a society duly registered under the relevant provisions of the C.G. Cooperative Societies Act, 1960 having its registration No. Pai/R-109/84/85 through its President Tej Kumar Bajaj, son of Shri Choithram Bajaj, resident of Katora Talab, Raipur. (Plaintiff) **---- Appellant**

Versus

Babulal S/o Balmukund Satnami R/o Gogaon, Tah And Distt Raipur C.G. (Defendant)

---- Respondent

For Appellant:	Shri B. P. Sharma, learned Advocate appears along with Shri Sameer Oraon and Ms. Anmol Sharma, Advocates
For Respondent:	Shri H. B. Agrawal, learned senior counsel along with Shri Amit Tirkey, Advocate

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Judgment / Order**

1. This appeal has been preferred by the Plaintiff-Society under Section 96 of the Code of Civil Procedure, 1908 questioning the legality and propriety of the judgment and decree dated 27.07.2007 passed by Third Additional District Judge, Raipur (C.G.) in Civil Suit No.24-A/2007, whereby the said Court has dismissed the claim for specific performance of contract. The parties to this appeal shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated the facts of the case are that the Plaintiff-Society, known as Vijay Grih Nirman Sahkari Samiti Maryadit registered under Chhattisgarh Cooperative Societies Act, 1960 (hereinafter referred to as 'the Act, 1960') having its registration No. उप पं./R-109/84-85 instituted a suit through its President Tej Kumar Bajaj claiming specific performance of

contract by submitting, *inter alia*, that an agreement to sale (Ex.P.1) was executed by Defendant Babulal on 16.04.2004 agreeing to alienate the property in question, i.e., part of Khasra No.175 admeasuring 0.33 acres of land situated at village Gogaon, Tehsil and District Raipur at the rate of Rs.3,50,000/- per acre upon receiving the earnest amount of Rs.500/- in its favour. According to the terms and conditions stipulated therein, a registered deed of sale was required to be executed within a period of one month from its release from the provisions prescribed under the Urban Land Ceiling Act (hereinafter referred to as 'the Act'), as it was vested therein at the relevant time. According to the Plaintiff, despite the reversion of it in 2006 and in spite of issuance of notice dated 07.08.2006, the Defendant has failed to execute the same giving rise to the institution of the claim in the instant nature, instituted on 16.04.2007.

3. Despite service of summons of the suit, the Defendant has failed to appear and the trial Court after considering the statement of Tej Kumar Bajaj (PW1), observed that in absence of any authority letter, said Tej Kumar Bajaj cannot be held to be authorised to institute the suit. It held further that the sale deed was required to be executed within the stipulated period of one month upon the reversion of the land in question from the said Act, however, in absence of any order showing its reversion as such, the sale deed cannot be executed. It observed further while considering the receipts (Ex.P.4 to Ex.P.10) that some of them do not show that the part of sale consideration was received by Defendant Babulal. As a consequence, the trial Court has dismissed the claim.

4. Learned counsel appearing for the Plaintiff-society submits that the findings of the trial Court holding that the said Tej Kumar was not

authorised to institute the suit and the property in question was not reverted from the said Act, are apparently contrary to law. According to him, in absence of rebuttal of the evidence led by the Plaintiff, it ought not to have held that the land in question was not reverted from the said Act nor could it be said that the sum of Rs.14,000/- towards part payment of sale consideration was not received by the Defendant from time to time.

5. On the other hand, learned senior counsel appearing for the Respondent/Defendant has supported the impugned judgment and decree as passed by the trial Court.

6. I have heard learned counsel for the parties and perused the entire record carefully.

7. From perusal of the record, it appears that an agreement to sale dated 16.04.2004 (Ex.P.1) was executed by Defendant Babulal agreeing to alienate the land in question in favour of the Plaintiff-Society at the rate of Rs.3,50,000/- per acre upon receiving the earnest amount of Rs.500/-. It appears further, as reflected from the alleged agreement to sale, that the property in question sought to be sold was vested under the Act and the sale deed was agreed to be executed within a period of one month from its reversion. It was, thus, a condition precedent for the execution of the sale deed. According to the bald statement of the Plaintiff, it was reverted from the said Act in 2006 and it is to be noted, as mentioned in the memo of appeal, that it was reverted by the Land Ceiling Authorities vide order dated 30.03.2006. However, nothing was placed in this regard on record so as to hold that the land in question was reverted as alleged by the Plaintiff. Pertinently to be noted here further that the Plaintiff-society is a registered society under the Act, 1960 and in absence of authorisation

letter authorising the said Tej Kumar Bajaj to institute the suit, the suit cannot be held to be legally sustainable.

8. That apart, receipts (Ex.P.4 to Ex.P.10) have been placed on record in order to show that a sum of Rs.14,000/- was paid to Defendant Babulal towards part payment of the sale consideration. However, a bare perusal of some of it, i.e., receipts (Ex.P.5, Ex.P.7 & Ex.P.10) would show that only thumb impression of someone is shown to be depicted therein but in absence of any evidence showing that it is that of Babulal, it cannot be held to be received by him.

9. Consequently, I do not find any substance in this appeal. The appeal being devoid of merits is accordingly dismissed. No order as to costs.

10. A decree be drawn accordingly.

Sd/-

(Sanjay S. Agrawal)
JUDGE