

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No. 174 of 2006****Reserved on 5-3-2020****Delivered on 9-3-2020**

Puneet Ram Sahu, aged about 61 years, son of Shri Sukhnandan Sahu, R/o. Village Nimora, Tehsil Abhanpur, Distt. Raipur.

---- Appellant**Versus**

1. Smt. Punribai, aged about 60 years, widow of late Manglu Verma, R/o. Village Nimora, Tehsil Abhanpur, Distt.
2. Smt. Hemkali alias Hemin Verma, aged about 25 years, (daughter of late Manglu Verma), R/o. Village Bartori, Tehsil Tilda, Distt. Raipur.

---- Respondents

For Appellant	: Mr. M.L. Saket, Adv.
For Respondents	: None.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV JUDGMENT**

1. Appellant has preferred this Appeal against the impugned judgment and decree dated 31-07- 2006 passed by 11th Additional District Judge, FTC, Raipur in Civil Suit No.9-A/2006 whereby and whereunder he partly disallowed his suit.

2. This is admitted by respondents that they are legal heirs of late Manglu Verma, who died on 20.07.2003 at village Nimora.

3. In brief, the appellant's case is that late Manglu Verma was the owner of a house and courtyard situated at village Nimora which are the disputed property. During his lifetime, he executed written agreement with him on 11-12-2000 to sell disputed property for consideration Rs.65,000/-. He paid him Rs.14,010/-. Thereafter, he paid him Rs.6,000/-, Rs.2,500 on account of remaining consideration. He was ready and willing to execute registered sale deed. He made several requests to him and he always assured him. On 09.03.2002 he gave notice to him but he did not reply. After the death of Maglu Verma he requested the respondents to execute the registered sale deed but they did not do so.

4. In brief, the respondents' case is that the relief of specific performance is discretionary and cannot be claimed as a matter of right. Late Manglu Verma had not executed any agreement for sale and not received any

consideration. Alleged agreement was not the final agreement for sale and purchase. Late Manglu Verma had not sole right to dispose of disputed property. It is also not signed by the appellant thus it is not enforceable.

5. **Point for determination:-**

There are following points for determination in the case in hand:-

- (i) Whether the appellant had always been ready and willing to perform the essential terms of contract vide Ex. P-1 ?
- (ii) Whether the appellant had sole right to execute Ex. P-1 ?
- (iii) Whether Ex. P-1 is binding upon respondents ?
- (iv) Reliefs and costs.

Point for determination No.(i) -Finding with reasons:-

6. As per the provisions of Section 16(c) of Specific Relief Act, 1963, specific performance of a contract cannot be enforced in favour of a person who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

7. P.W. 1 Punit Ram Sahu says in para 7 of his statement given on oath that late Manglu Verma was giving assurances for performance of Registry, when she did not make registry then he approached to Patel, Patel persuaded him, thereafter he called a meeting of Panchayat where villagers and head of the village again persuaded him.

8. P.W. 3 Hem Kumar Dewangan says in para 2 of his statement given on oath that when late Manglu refused to execute the registered sale deed then appellant called the meeting of society, people persuaded him.

9. In the matter of **Thakamma Mathew -v- M. Azamathulla Khan and ors.** [1993 Suppl. (4) SCC 492] Hon'ble Supreme Court has laid down following judicial precedent in para 9 which reads as under :-

“9. In order that decree for specific performance of a contract may be passed it is necessary to consider whether such a relief can be granted in view of Section 16 of the Specific Relief Act, 1963. In other words the person seeking such a decree has to satisfy that Section 16 of the Specific Relief Act does not bar the grant of such a relief and the person against whom the decree is passed can show

that the relief of specific performance cannot be granted in view of the provisions of Section 16 of the Specific Relief Act. Clause (c) of Section 16 postulates that the person seeking specific performance of the contract must file a suit wherein he must aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him....”

10. In the matter of **Aniglase Yohannan -v- Ramlatha and ors.** [2005(7) SCC 534] Hon'ble Supreme Court has laid down following judicial precedent-

“Any person seeking benefit of specific performance of contract must manifest that his conduct had been unblemished throughout.”

11. In the matter of **Mehboob Ur Rehman (dead) through Lrs -v- Ahsanul Ghani** [2019 SCC Online SC 203], Hon'ble Supreme Court observed in para 14 which reads as under :-

“14. Though, with the amendment of the Specific Relief Act, 1963 by Act No. 18 of 2018, the expression “who fails to aver and prove” is substituted by the expression “who fails to prove” and the expression “must aver” stands substituted by the expression “must prove” but then, the position on all the material aspects remains the same that, specific performance of a contract cannot be enforced in favour to the person who fails to prove that he has already performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than the terms of which, the performance has been prevented or waived by the other party.....”

12. In the matter of **Ravi Setia -v- Madanlal and ors.** [2019(9) SCC 381], Hon'ble Supreme Court observed in para 10 which is extracted below :-

“10. The grant of relief for specific performance under Section 16(1)(c) of the Act is a discretionary and equitable relief. Under Section 16(1) (c), the plaintiff has to demonstrate readiness and willingness throughout to perform his obligations under the contract.....”

13. In the case in hand, appellant failed to prove that before the notice Ex. P-2 dated 9-3-2002, within reasonable time he had told late Manglu Verma either orally or in writing that on such date he will appear in the office of the Registrar for execution of registered sale deed of disputed property and he will also come in the office of the Registrar on that date and receive balance

amount from him or he may fix the date for that purpose on that day, he will positively come along with the remaining consideration. More over appellant had not filed any civil suit regarding that matter within reasonable time. For not doing so there is no plausible explanation from appellant. In these circumstances, this Court finds that aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Thakamma Mathew** (supra), **Aniglase Yohanna** (supra), **Mehboob Ur Rehman** (supra) and **Ravi Setia** (supra) are applicable against the appellant. Thus, this Court finds that appellant does not get any help from the aforesaid statements of P.W. 1 Punitram Sahu, P.W. 3 Hem Kumar Dewangan, regarding this point for determination.

14. After appreciation of the evidence discussed herebefore this Court finds that appellant had not always been ready and willing to perform the essential terms of the contract vide Annexure P-1. Thus, this Court decides point for determination No. (i) accordingly.

Point for determination No. (ii)- Finding with reasons:-

15. P.W. 1 Punitram Sahu says in para 15 during his cross-examination that this is true that disputed property was in existence at the time of father of late Manglu. Disputed property is ancestral property.

16. In the matter of **Arshnoor Singh Vs. Harpal Kaur & Ors.** passed in **Civil Appeal No.5124/2019** on **01st July, 2019** later part of para No. 7.4 is relevant which reads as under:-

“74. In **Yudhishter -v- Ashok Kumar** [1987 (1) SCC 204 this Court held that :-

11.This Court observed that this position has been affected by Section 8 of the Act 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Kar of his own undivided family but takes it in his individual capacity.”

17. In the matter of **Arshnoor Singh** (supra) in para No.7.5 the following judicial precedent has been laid down by Hon'ble Supreme Court -

“7.5 After the Act 1956 came into force, this position has undergone a change. Post - 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired

property, and does not remain coparcenary property.”

18. Looking to the provision of Section 8 of Act of 1956, second part of para No.7.4 and 7.5 of the case of **Arshnoor Singh** (supra), this Court finds that after the commencement of Act of 1956, succession opens and if a person inherits a self acquired property from his parental ancestors, the said property becomes his self acquired property and does not remain coparcenary property.

19. In the case in hand this is not the appellant's case that the father of late Manglu died before the commencement of Hindu Succession Act, 1956 hence regarding appellant No. 2 succession was opened before the commencement of Hindu Succession Act, 1956 and disputed property regarding appellant no. 2 governs from Mitakshara Sakha of old Hindu law. Thus, respondents do not get any help from aforesaid statement of P.W. 1 Punitram Sahu.

20. After appreciation of the evidence discussed herebefore, this Court finds that, the appellant had sole right to execute Ex. P-1. Thus, this Court decides point for determination No. 2 accordingly.

Points for determination No. 3 - Finding with reasons:-

21. Trial Court has already given finding that late Manglu Verma had executed Ex. P-1 and received Rs. 22,510/- as consideration regarding agreement of sell of disputed property. This has been earlier decided that applicant had sole right to execute Ex. P-1. Thus, this Court finds that, Ex. P-1 is binding upon respondents. Thus this Court decides point for determination No. 3 accordingly

Point for determination No. 4 – Finding with reasons :-

22. This has been earlier decided that appellant had not been always ready and willing to perform the essential terms of contract vide Ex. P-1. Thus, this Court finds that appellant has failed to establish his appeal. Hence, appeal deserves to be and is hereby dismissed.

Appellant shall bear his own cost and cost of the respondents also.

A decree be drawn accordingly.

(Sharad Kumar Gupta)
Judge