

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No. 222 of 2019****Reserved on 4-2-2020****Delivered on 7-2-2020**

Lalit Yadav S/o Shri P. L. Yadav Aged About 37 Years R/o Rajeev Nagar, Durg, Tahsil And District Durg CG

---- **Appellant**
(Plaintiff)

Versus

1. Smt. Bina Sahu W/o Shri Sewaram Sahu Aged About 52 Years R/o LIG 570, Padamnabhpur, Durg, Tahsil And District Durg CG.
2. State Of Chhattisgarh Through Collector / Ex-Officio Secretary, District Office, Durg, District Durg CG
3. Sunil Chandrakar S/o Lalji Chandrakar R/o Telibandha, Raipur District Raipur CG

---- **Respondents**
(Defendants)

For Appellant	: Mr. H.B. Agrawal, Sr. Advocate with Ms. Richa Dwivedi, Adv.
For Respondents No.1 & 3	: None present, though served
For Respondent No.2/State	: Ms. Deepti Shukla, Panel Lawyer

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV JUDGMENT

1. Appellant has preferred this Civil Appeal against the impugned judgment and decree dated 27.03.2019 passed by IInd Additional District Judge to First Additional District Judge, Durg (CG) in Civil Suit No.53-A/2012 whereby and whereunder he partly disallowed the appellant's suit.

2. This is admitted by respondent No.1 that she and appellant had entered into an agreement for sale on 19-12-2011 of the piece of Khasra No. 78/5 and 79/6 measuring 541 sqft situated at Potiyakala, Tahsil and District Durg (herein after it would be called as 'disputed land'). The consideration was Rs. 4,01,111/-. On very day, an agreement was written. She was the owner of the disputed land. She had received cash of Rs. 1,00,000/- on very day as Bayana. Both the parties were agreed that she will receive balance consideration at the time of registry. On 5-2-2012 she had received Rs.50,000/- from him. They were also agreed that registered sale deed

would be executed till 30.03.2012 after the demarcation. Demarcation did not take place after agreement. He had sent her registered notice dated 28.6.2012 through his counsel. She had replied on 23.7.2012 to the said notice through her counsel.

3. In brief, the appellant's case is that respondent No.1 did not initiate the demarcation process and failed to perform her part of the said contract. He himself was ready and prepared to comply his part of contract. He had mentioned in his notice that after getting done demarcation, she would intimate him about the date of registration. By reply she refused to perform the said contract stating that time was the essence of the said contract. Thus, respondent No.1 may be directed to perform the said contract after the demarcation and receiving the balance amount of consideration. The vacant possession of the disputed land be given to him from her and permanent injunction be also granted in his favour.

4. In brief, the respondent No.1's case is that except admitted facts, other facts of the plaint are denied. He had promised that he shall pay the remaining part of the consideration till 30.03.2012 but he failed to do so. During that period he never told her to get done demarcation.

5. In the impugned judgment and decree, the trial Court gave finding that the appellant is not entitled to get the decree of the specific performance, vacant possession of disputed land, in lieu thereof, trial Court ordered that respondent No.1 shall pay him Rs.1,50,000/- along with interest.

6. Being aggrieved of dismissal of suit of specific performance, possession and injunction, the appellant has preferred this appeal.

7. In brief the appellant's case regarding appeal is that the trial Court has not appreciated the evidence available on record in proper perspective regarding issues No.4 to 7. The finding of the trial Court regarding issues No.4 to 7 are perverse and deserve to be set aside.

8. **Point for determination:-**

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

- (I) Whether appellant had always been ready and willing to perform the essential terms of the contract vide Annexure P-1 ?
- (ii) Whether appellant is entitled to get executed registered sale deed of

disputed land from respondent No. 1 after demarcation and after payment of the balance amount of consideration ?

(iii) Whether appellant is entitled to get the vacant possession of the disputed land from the respondent No. 1 ?

(iv) Whether appellant is entitled for permanent injunction against respondent No. 1 ?

(v) Relief and costs.

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

9. It is manifest from Ex. P-1 that after the demarcation of disputed land appellant will get executed registered till 30-3-2012.

10. 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.

11. 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....”

12. 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.”

13. 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.....”

14. 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.....”

15. In Ex. P-1 it has not been recited clearly that it is the respondent No. 1 who will get done demarcation of the disputed land.

16. As per the provision of Section 129 of CG Land Revenue Code, 1959, the Tehsildar or any other revenue officer empowered to act may, on the application of a party interested, demarcate the boundaries of a survey number or of a sub-division or of a plot number and construct boundary mark thereon.

17. As per the case of both the parties, it is explicit that appellant is also the interested party for demarcation of disputed land.

18. In the case in hand, appellant failed to prove that allegedly he had initiated demarcation process of disputed land by competent revenue officer, he had intimated to respondent No. 1 about said process, ultimately he got done demarcation. For not doing so, there is no plausible explanation from

him.

19. Moreover, appellant failed to prove that before the notice Ex. P-3 dated 28-6-2012 he had either orally or in writing told to appellant that on such date he will appear in the office of the Registrar for execution of registered sale deed of disputed land she will also come in the office of the Registrar on that date and received balance amount from him or she may fix the date for that purpose, on that date he will come along with the remaining consideration. For not doing so there is no plausible explanation from him.

20. Looking to the above mentioned facts and circumstances of the case, 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.

21. After the 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:-

22. This has been earlier decided that appellant had not always been ready and willing to perform the essential terms of the contract vide Annexure P-1. Aforesaid judicial precedents laid down by Hon'ble Supreme Court are applicable against the appellant's case. Thus, this Court finds that appellant is not entitled to get executed registered sale deed of disputed land from respondent No. 1 after demarcation and after payment of the balance amount of consideration. Thus, this Court decides point for determination No. (iii) accordingly.

Points for determination No. (iii) and (iv)- Finding with reasons:-

23. Issue no. (vi) covers the scope of point for determination No (iii).

24. The Trial Court has not framed issue regarding point for determination No. (iv) though it ought to have been by the Trial Court. The evidence available on record shows that the respondent No. 1 and the appellant have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point for

determination does not cause any prejudice to either of the parties. Thus, looking to the provisions Order 41 Rule 24 of the CPC, this Court finds that it may pronounce the judgment in this appeal.

25. This has been earlier decided that appellant is not entitled to get executed registered sale deed of disputed land from respondent No. 1 after demarcation and after payment of the balance amount of consideration. Hence, he is also not entitled to get the vacant possession of the disputed land from her and also not entitled for permanent injunction against her. Thus, this Court decides points for determination No. (iii) and (iv) accordingly.

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

26. After complete and full appreciation of the evidence discussed hereinbefore, this Court finds that appellant is failed to prove his appeal. There is no substance in the appeal. Appeal deserves to be and is hereby dismissed. The judgment and decree of the trial Court are affirmed to the extent discussed hereinbefore, and regarding dismissal of the suit of appellant in part.

27. A decree be drawn accordingly.

**Sd/-
(Sharad Kumar Gupta)
Judge**