

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 123 of 2018****Reserved on 19.02.2020****Pronounced on 06.03.2020**

- Gurmeet Singh Saluja S/o Amrica Singh Saluja Aged About 40 Years R/o Panjabipara, Bemetara, Tahsil And District Bemetara Chhattisgarh. (Defendant No. 9) **---- Applicant**

Versus

1. Ujjawala Malaki W/o Shri Anil Malaki, Aged About 69 Years Occupation - Agriculturist, R/o Mohbatta Road, Bemetara, P.S. Tahsil And District Bemetara Chhattisgarh. (Plaintiff),
2. Kumar Verma S/o Itwari Verma Aged About 50 Years Agriculturist, Village - Kurmipara, Bemetara, Tahsil And District Bemetara Chhattisgarh.
3. Kali Bai D/o Itwari Verma Aged About 60 Years Agriculturist, Village - Kurmipara, Bemetara, Tahsil And District Bemetara Chhattisgarh.
4. Kala Bai D/o Itwari Verma Aged About 55 Years Agriculturist, Village - Kurmipara, Bemetara, Tahsil And District Bemetara Chhattisgarh.
5. Dukhiya Bai D/o Itwari Verma Aged About 37 Years Agriculturist, Village - Kurmipara, Bemetara, Tahsil And District Bemetara Chhattisgarh.
6. Kumari Bai D/o Itwari Verma Aged About 40 Years Agriculturist, Village - Kurmipara, Bemetara, Tahsil And District Bemetara Chhattisgarh.
7. Kunwariya Bai W/o Itwari Verma Aged About 70 Years Agriculturist, Village - Kurmipara, Bemetara, Tahsil And District Bemetara Chhattisgarh.
8. Ghanshyam Sukhwani, S/o Jamunadas Sukhwani Aged About 40 Years R/o Sindhi Para, Bemetara, Tahsil And District Bemetara Chhattisgarh.
9. Rajesh Sharma S/o Damodar Sharma Aged About 43 Years R/o Krishna Vihar Colony, Bemetara, Tahsil And District Bemetara Chhattisgarh.
10. State Of Chhattisgarh Through The Collector, Bemetara Tahsil And District Bemetara Chhattisgarh. (Defendants No. 1 To 10 Except Def. No. 9). **---- Non-applicants**

For Applicant:	Shri Viprasen Agrawal, Advocate.
For Non-applicant No.1:	Shri Vishnu Koshta, Advocate.
For State/Non-applicant No.10:	Smt. Deepti Shukla, Panel Lawyer.

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

1. This Revision Petition has been preferred by Defendant No.9 under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the legality and propriety of the order dated 09.10.2018 passed by First Civil Judge Class-II, Bemetara in Civil Suit No.39A/2018, whereby the learned trial Court, while rejecting Applicant's application filed under Order 7 Rule 11 of CPC, has refused to reject the plaint. The parties to this petition shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated the facts of the case are that the Plaintiff Ujjawala Malaki instituted a suit claiming declaration of title and injunction alleging *inter alia* that Defendant No.1 Kumar Verma has agreed to alienate the property in question bearing Khasra No.1364 and 1365 admeasuring respectively as 0.267 hectares and 0.069 hectares situated at village Bemetara in her favour by executing an agreement to sale dated 20.04.2000 for a consideration of Rs.40,000/- upon receiving earnest amount of Rs.20,000/- and by putting her in possession thereon. According to the Plaintiff, the said Defendant instead of executing a registered deed of sale in her favour in pursuance of the alleged agreement to sale, sold the same to Defendant No.7 Ghanshyam Sukhwani on 12.05.2014, who, in turn, sold it to Defendant No.9 Gurmeet Singh Saluja on 11.07.2014. The Plaintiff has, therefore, been constrained to institute the suit in the instant nature claiming declaration of title after the cancellation of the alleged sales on the basis of her long peaceful possession and for injunction restraining the Defendants from interfering in her peaceful

possession.

3. Upon receiving the summons of the suit, Defendant No.9 moved an application enumerated under Order 7 Rule 11 of CPC seeking rejection of the plaint by alleging therein that the suit as framed and instituted claiming declaration of title and injunction based upon an agreement to sale, is not maintainable and deserves to be rejected.

4. The aforesaid application has been opposed by the Plaintiff and the trial Court, vide order impugned, has rejected the same by observing that the principles of law laid down in the case laws referred by the counsel for Defendant No.9 are distinguishable from the facts involved in the present case and as a consequence, refused to reject the plaint under Order 7 Rule 11 of CPC.

5. Being aggrieved, Defendant No.9 has preferred this petition. Shri Viprasen Agrawal, learned counsel for the Applicant/Defendant No.9 submits that the suit as framed claiming declaration of title and injunction based upon an agreement to sale cannot be held to be maintainable and is hit by the provisions prescribed under Section 38 and clause (h) of Section 41 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act, 1963') especially when efficacious remedy is available to institute a suit for specific performance of contract. In support, he placed his reliance upon the decision rendered in the matter of **Ramlal vs. Trilochan and others** reported in **2019 CGLJ (1) 320** and **Rajdeepak Pandey vs. Sudarshan Lal Sahu and others** passed in **FA No. 282 of 2018** decided on 06.10.2018.

6. Countering the aforesaid contention, Shri Vishnu Koshta, learned counsel appearing for Non-applicant No.1/Plaintiff submits that looking to

the averments made in the claim, it cannot be rejected under the said provision and the order impugned is, therefore, not liable to be interfered.

7. I have heard learned Counsel for the parties and perused the entire relevant papers annexed with this petition carefully.

8. A suit for declaration of title and injunction has been made on 18.05.2018. According to the Plaintiff, she was put in possession over the suit land in pursuance of the alleged agreement to sale dated 20.04.2000, said to have been executed in her favour by Defendant No.1 Kumar Verma. However, instead of executing the deed of sale in her favour, it was sold to Defendant No.7 Ghanshyam Sukhwani on 12.05.2014, who, in turn, sold it to defendant No.9 Gurmeet Singh Saluja (present Applicant) on 11.07.2014.

9. It, therefore, appears from perusal of the aforesaid averments that an agreement to sale for alienation of the property in question was made by said Defendant (Kumar Verma) in favour of the Plaintiff Ujjawala Malaki agreeing to alienate the same in her favour. It appears further that instead of executing the registered deed of sale in her (the Plaintiff) favour, it was sold to others, yet the Plaintiff has chosen to institute a suit for declaration of title and injunction and that too for cancellation of sale instead of filing a suit for specific performance of contract based upon the alleged agreement to sale dated 20.04.2000. The efficacious remedy available to the Plaintiff under such circumstances was to institute a suit for specific performance of contract and, therefore, the suit as framed cannot be held to be maintainable. At this juncture, the provisions prescribed under Section 38 and Section 41(h) of the Act, 1963 are to be seen which read as under:-

38. Perpetual injunction when granted.—

- (1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.
- (2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.
- (3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:—
 - (a) where the defendant is trustee of the property for the plaintiff;
 - (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
 - (c) where the invasion is such that compensation in money would not afford adequate relief;
 - (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

41. Injunction when refused.—An injunction cannot be granted—

xxxx xxxx xxxx xxxx xxxx xxxx

- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

xxxx xxxx xxxx xxxx xxxx xxxx

10. The combine reading of the aforesaid provisions, vis-a-vis, the averments made in the plaint, reliefs as claimed could be granted only in a suit for specific performance of contract as the same was the only efficacious remedy available to the Plaintiff and in absence thereof, the suit in the instant nature cannot be held to be sustainable. The word 'efficacious' has been interpreted by the Coordinate Bench of this Court in the matter of *Ramlal vs. Trilochan and others* (supra) as relied upon by

Shri Agrawal, where at paragraph 11, it has been observed as under:-

“11..... The word 'efficacious' means which would put the plaintiff in the same position in which he would have been if he had not asked for a relief of injunction. It refers to the relief being capable of obtaining by another usual mode of proceedings able to produce the same result intended by the plaintiff; and based on the same set of facts and allegations as constitute the foundation of a suit for injunctions. The usual mode of proceeding where there is an agreement capable of being specifically enforced is obviously in a suit for specific performance of contract under Section 19 of the Act of 1963.”

11. Pertinently to be noted here further that by virtue of Section 54 of the Transfer of Property Act, 1882, the alleged agreement to sale, an unregistered document, does not create any title in favour of the Plaintiff, yet a claim has been made for cancellation of the sale alleged to have been executed by Defendant No.1 instead of availing the efficacious remedy for filing a suit for specific performance of contract. At this juncture, the observations made by the Division Bench of this court in the matter of **Rajdeepak Pandey Vs. Sudarshan Lal Sahu and others** (supra) are to be seen where under such circumstances, it has been observed at paragraphs 5 & 6 as under:-

“5. Although the trial Court has decided the suit after a full blown trial, in our considered opinion, the suit itself was wrongly framed without there being any entitlement in favour of the plaintiff to seek permanent injunction or to challenge the sale deed executed by defendant Nos. 1 and 2 in favour of defendant No.3.

6. We say so because a prospective purchaser can maintain a suit of this nature only when he seeks a relief for specific performance of the agreement. In such a suit, if the court decides to issue a decree in favour of the plaintiff directing the defendant for specific performance of the agreement by executing the sale deed, subsequent prayer for declaration of sale deed as null and void or

for issuance of permanent injunction against the defendant can be issued. However, in the absence of the basic prayer for specific performance being made in the plaint, there was no entitlement in favour of the plaintiff to seek two other reliefs which were dependent on the first relief for specific performance of the agreement.”

12. Considering the averments made in the plaint in the light of the aforesaid observations, it is evident that the efficacious remedy available to the Plaintiff would lie somewhere else and the suit in the instant nature cannot be held to be maintainable which is, thus, liable to be and is accordingly rejected under Order 7 Rule 11 of CPC.

13. Consequently, the revision petition is allowed. A decree be drawn up accordingly. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE