

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.3 of 2011****Reserved on 02.03.2021****Pronounced on 17.03.2021**

- Munnalal Agrawal, S/o Chaganlal Agrawal, aged about 39 years, Occupation Hotel Business, R/o Ward No.13, Kali Ward, Kawardha, District Kabirdham (CG) ---- **Appellant/Plaintiff**

Versus

1. Smt. Sobhna Chourasiya, D/o Late Shri (Dr.) Sushil Kumar Chourasiya, R/o E-2, 314, Arora Colony Bhopal, District Bhopal (MP)
2. Smt. Saraswati Yadav, W/o Narayan Yadav, R/o Ward No.15, Kawardha, Tahsil & District Kabirdham (CG)

---- Respondent/Defendants

For Appellant	:	Shri B.D.Guru with Shri Anurup Panda, Advocate
For Respondents	:	None, though served

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V. Judgment/Order**

1. This appeal has been preferred by the Plaintiff under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the legality and propriety of the judgment and decree dated 28.10.2010 passed in Civil Suit No.07A/2007, whereby the learned trial Court has dismissed the Plaintiff's claim for specific performance of contract. The parties to this appeal shall be referred hereinafter as per their description before the Court below.
2. The facts, which are essential for adjudication of this appeal, are that the Plaintiff – Munnalal Agrawal instituted a suit claiming specific performance of contract by submitting, inter alia, that an agreement to sale dated 26.12.2001 was executed in his favour by Defendant No.1 – Smt. Sobhna Chourasiya agreeing to

alienate the suit land admeasuring 42.25 square meter, which is the part of godown constructed in total area of 165.75 square meters situated at Sheet No.17 Plot No. 12 of village Kawardha. It was agreed to be sold at the rate of Rs.350/- per square meter, i.e., for a total consideration of Rs.1,59,110/- upon receiving the earnest amount of Rs.20,000/-. According to the Plaintiff, since the suit land was occupied by a tenant, therefore, a condition was stipulated therein, by which, it was got to be vacated by the said Defendant within the period of 6 months and a sale deed was to be registered thereafter within the period of 7 days from the date of receiving the information in this regard. Further contention of him is that despite repeated requests being made, no action was initiated by the said Defendant for obtaining the vacant possession of the suit premises, as required under the terms and conditions of the alleged agreement to sale even despite the issuance of notices dated 28.05.2002 and 21.03.2003, which led to the institution of the suit in the instant nature, instituted on 17.05.2003. It is pleaded further by way of incorporating the amendment in the plaint that during pendency of the suit, the said Defendant has sold the same to Defendant No.2 – Smt. Saraswati Yadav, wife of the tenant Narayan Yadav by executing a registered deed of sale dated 31.03.2004 and which is, therefore, not binding upon him.

3. While contesting the claim, it was stated by Defendant No.1 – Smt. Sobhna Chourasiya that the property in question was agreed to be sold at the rate of Rs.700/- per square foot, i.e., for a total consideration of Rs.3,17,926/- upon receiving the earnest amount of Rs.20,000/- and half of the sale consideration was to

be paid by the Plaintiff within the period of 6 months, else the earnest amount of Rs.20,000/- paid by him shall be forfeited. It is pleaded further that the alleged amount of Rs.350/- instead of Rs.700/-, was mentioned therein at the instance of the Plaintiff so as to save the registration charges and stamp duty by him. The real transaction was, however, for alienation of the land in question at the rate of Rs.700/- per square foot and half of the sale consideration was to be paid by him within the period of 6 months. It is contested further on the ground that as the Plaintiff has failed to deposit the half of the sale consideration within the period of 6 months, therefore, the alleged agreement to sale has come to an end and the Plaintiff's suit is, therefore, liable to be dismissed.

4. The Defendant No.2 – Smt. Saraswati Yadav has contested the claim on the ground that she being the bona fide purchaser acquired her valid right, title and interest over the suit land on the basis of the registered deed of sale dated 31.03.2004 as she was not aware regarding the execution of the alleged agreement to sale dated 26.12.2001 with the Plaintiff.
5. The Plaintiff has examined himself as P.W.1 and the attesting witness to the alleged agreement to sale (Ex.P.1), namely, Goutam Sahu (P.W.2) and also the document writer of it, namely Duregesh Kesharwani (P.W.3) in support of his claim. While, Defendant No.1 has examined herself as D.W.1 apart from her witness, namely, Ajay Sharma (D.W.2) and Defendant No.2 – Saraswati Yadav has examined herself and that of her husband, in rebuttal.

6. The trial Court, after considering the evidence led by the parties, arrived at a conclusion that the property in question was agreed to be sold under the alleged agreement to sale (Ex.P.1) at the rate of Rs.700/- per square foot and not at the rate of Rs.350/- per square foot, as alleged by the Plaintiff and observed further that half of the sale consideration was to be paid by the Plaintiff within the period of 6 months from the date of its execution. It held further that the alleged agreement to sale was terminated by Defendant No.1 orally, therefore, Defendant No.2 has acquired her valid interest over the property in question from her on the strength of the registered deed of sale dated 31.03.2004. As a consequence of it, the trial Court has dismissed the suit, which has been assailed by the Plaintiff by way of this appeal.

7. Shri B.D.Guru, learned counsel appearing for the appellant/Plaintiff submits that the finding of the trial Court holding that the property in question was agreed to be sold at the rate of Rs.700/- per square foot and half of the sale consideration was to be paid within the period of 6 months even in absence of any terms and conditions stipulated in the alleged agreement to sale (Ex.P.1), is apparently contrary to law. While inviting attention to the terms and conditions stipulated therein and the evidence of its attesting witness (P.W.2) and document writer (P.W.3), it is contended by him that once the parties reduce the terms of their contract into writing, the Court can only look at the writing alone in order to construe what the terms of the contract were and in support, has placed his reliance upon the principles laid down by the Supreme Court in the matter of ***“Nanjappan vs. Ramasamy and another and Durga Prasad***

and another vs. ***Deep Chand and others*** reported in **(2015) 14 SCC 341** and **A.I.R 1954 SC 75**” respectively. It is contended further that the Plaintiff was always ready and willing to perform his part of the contract, yet his claim has been dismissed by the Court below.

8. No one appears on behalf of the Respondents despite service of notice of this appeal.
9. I have heard learned counsel for the Appellant and perused the entire record carefully.
10. The main questions which arise for determination in this appeal are:-

(A) Whether the finding of the Court below holding that the property in question was agreed to be sold at the rate of Rs.700/- per square foot and half of the sale consideration was to be paid by the Plaintiff within the period of 6 months in variance and contrary to the terms and conditions stipulated in the alleged agreement to sale, dated 26.12.2001 (Ex.P.1), is perverse?

(B) Whether Plaintiff was ready and willing to perform his part of the contract (Ex.P.1)?

11. Perusal of the alleged agreement to sale dated 26.12.2001 (Ex.P.1), purported to have been executed by Defendant No.1 – Smt. Sobhna Chourasiya in favour of the Plaintiff – Munnalal Agrawal, would show that the property in question described therein was agreed to be sold at the rate of Rs.350/- per square foot, i.e., for a total consideration of Rs.1,59,110/- upon receiving the earnest amount of Rs.20,000/- from the Plaintiff. It appears further that since it was occupied by a tenant, therefore, a

condition was stipulated therein, marked as “D to D” that it was first got to be vacated by the vendor from him within the period of 6 months and an information in this aspect along with a duly certified map of the suit land was to be furnished by her and in the said event, the registered deed of sale in pursuance thereof was to be executed within the period of 7 days and in case of its failure on the part of the Plaintiff, the said earnest amount of Rs.20,000/- shall be forfeited. According to Defendant No.1 – vendor, it was, however, to be sold at the rate of Rs.700/- per square foot and half of the sale consideration was required to be paid by the Plaintiff within the period of 6 months.

12. In view of the aforesaid contentions, it, thus, appears that the execution of the alleged agreement to sale (Ex.P.1) is not in dispute. What is disputed is the alleged rate by which, the property in question was to be sold. According to the Plaintiff and in view of the terms and conditions stipulated in the alleged agreement to sale (Ex.P.1), it was to be sold at the rate of Rs.350/- per square foot and the vendor has to obtain the vacant possession of it from her tenant within the period of six months and a sale deed was to be registered thereafter within the period of 7 days from the date of receiving the information in this regard. It was, however, disputed by Defendant No.1, as observed herein.
13. In order to establish the terms and conditions stipulated in the alleged agreement to sale (Ex.P.1), it was stated by the Plaintiff in his evidence that Defendant No.1 has agreed to alienate her property in question at the rate of Rs.350/- per square foot and

was assured by her (Smt. Sobhna Chourasiya) that after obtaining the vacant possession of it, she will inform him and the sale deed shall be executed thereafter within the period of 7 days. He deposed further that no action for its vacation was taken by the said Defendant despite of his oral requests being made and even by issuance of notice on 28.05.2002 and 21.03.2003. It is stated further by him that instead of acting according to the alleged agreement to sale, it was sold during the pendency of suit to her tenant's wife, namely, Smt. Saraswati Yadav by executing a registered deed of sale dated 31.03.2004 (Ex.D.1). In his cross-examination, he denied specifically that the property in question was to be sold at the rate of Rs.700/- per square foot and / or half of the sale consideration was to be paid by him within the period of 6 months, as alleged by the said Defendant – Smt. Sobhna Chourasiya. In support of his contention, the Plaintiff has examined the attesting witness of the alleged agreement to sale and the document writer of it. According to the attesting witness, namely, Goutam Sahu (P.W.2), it was made in his presence, as per the instructions of said Defendant – Smt. Sobhna Chourasiya and which reveals further from his testimony that she had offered to alienate the same at the rate of Rs.350/- per square foot and that was accepted by Plaintiff – Munnalal Agrawal. In his cross-examination, he denied that it was to be sold at the rate of Rs.700/- per square foot and half of the sale consideration was to be paid within the period of 6 months. More or less, similar is the statement of its document writer, namely, Duregesh Kesharwani (P.W.3). According to him, some person was sent

by Defendant – Sobhna Chourasiya, who informed him that she agreed to alienate her land at the rate of Rs.350/- per square foot and he denied the fact, as revealed from his cross-examination that the alleged agreement to sale was written as per the instructions of the Plaintiff Munnalal Agrawal.

14. In view of the aforesaid statements, the version of the Plaintiff that the property in question was agreed to be sold by the said Defendant at the rate of Rs.350/- per square foot, as stipulated in the alleged agreement to sale (Ex.P.1), appears to be duly established and it cannot be said that half of the sale consideration was to be paid within the period of 6 months. Although Defendant No.1 has taken a plea and has deposed in her evidence that the property in question was, in fact, agreed to be sold at the rate of Rs.700/- per square foot and half of the sale consideration was to be paid by the Plaintiff within the period of 6 months. However, alleged version of her is neither supported by her witness – Ajay Sharma (D.W.2) nor both the conditions are found place in the alleged agreement to sale (Ex.P.1). According to her said witness (D.W.2), as it appears from his cross-examination-in-chief that the property in question was agreed to be sold in his presence at the said rate of Rs.700/- per square foot, however, this fact has come to his knowledge from the said Defendant – Smt. Sobhna Chourasiya, as reflected from para 3 of his cross-examination. In view of that, it cannot be said that the property in question was agreed to be sold at the said rate, as alleged by her.

15. Pertinently to be observed here further that the execution of the

alleged agreement to sale (Ex.P.1) is not in dispute. What is disputed by the said vendor Smt. Sobhna Chourasiya is only with regard to the rate, by which, the property in question was to be sold. This is, however, only her oral assertion, which is not only varying the terms and conditions stipulated therein but is also not found to be supported by her witness, as observed herein above.

16. According to the provisions prescribed under Sections 91 & 92 of the Indian Evidence Act, 1872, when the terms of a contract, or of any other disposition of property, have been reduced to the form of a document, no evidence shall be given or permitted to be adduced in proof of the terms of such contract or other disposition of the property, except the document itself and the oral evidence in proof of terms of the contract is thus excluded. Here, in the instant matter, the validity regarding the execution of the alleged agreement to sale (Ex.P.1) has not been disputed, and therefore, the vendor of the property in question, namely, Smt. Sobhna Chourasiya cannot be permitted to lead any evidence contrary to the express recitals of it as the aforesaid provisions specifically bar the proof of variations in terms of a transaction contained therein.
17. The aforesaid observation is fortified by the principles laid down by the Supreme Court in the matter of ***Tamil Nadu Electricity Board and another vs. N. Raju Reddiar and another*** reported in **(1996) 4 SCC 551** wherein it was observed at paragraph 7 as under:-

“7. At the outset it must be borne in mind that the agreement between the parties was a written agreement and therefore the parties are bound by the terms and conditions of the agreement. Once a contract is reduced to writing, by operation of Section 91 of the Evidence Act, 1872 it is not open to any of the parties to seek to prove the terms of the contract with reference to some oral or other documentary evidence to find out the intention of the parties. Under Section 92 of the Evidence Act where the written instrument appears to contain the whole terms of the contract then parties to the contract are not entitled to lead any oral evidence to ascertain the terms of the contract. It is only when the written contract does not contain the whole of the agreement between the parties and there is any ambiguity then oral evidence is permissible to prove the other conditions which also must not be inconsistent with the written contract.”

18. Similar is the view taken in the matter of **Nanjappan vs. Ramasamy and another** (supra) wherein while dealing with the similar situation, it was observed at paragraph 9 as under:-

“9. As per Section 92 of the Evidence Act, when the terms of any such contract have been reduced to the form of a document, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting from, its terms. The courts have recorded concurrent findings rejecting the stand of the appellant that the actual sale price was rupees three lakhs and for the purpose of stamp duty and registration charges, lesser amount was written and this is well in accordance with Section 92 of the Evidence Act and we do not find any reason warranting interference in the said concurrent findings of the courts below.”

19. In the light of the aforesaid principles, the contention of the vendor that the property in question was to be sold at the rate of Rs.700/- per square foot, which even otherwise not supported by her witness, is precluded to establish the alleged terms and conditions contrary to and/or in variance of the alleged agreement to sale (Ex.P.1) and it is accordingly held that the

property in question was agreed to be sold at the rate of Rs.350/- per square foot, as mentioned therein. The first question is thus answered in positive by holding that finding of the trial Court in this regard is not sustainable in the eye of law.

20. Now, in so far as the readiness and willingness of the Plaintiff is concerned, it appears from the averments made in the plaint coupled with the issuance of notices (Ex.P.2 and Ex.P.3), issued on 28.05.2002 and 21.03.2003 and which have not been replied, that the Plaintiff, who had all material times, was always ready and willing to perform his part of contract. In fact, the vendor herself has failed to perform her part of contract, as required under the terms and conditions stipulated in the alleged agreement to sale (Ex.P.1) as she failed to furnish information regarding the vacant possession of the suit premises from her tenant. Not only this, she has sold the suit property to her tenant's wife, namely, Smt. Saraswati Yadav, even during the pendency of the suit on 31.03.2004, who was not only aware of the execution of the alleged agreement to sale but was also aware of the pendency of the suit, and therefore, merely upon the bald statement of her and her husband's statement, it cannot be said that she was the bona fide purchaser of the property in question. In view of that, the second question is thus answered in positive by holding that the Plaintiff was always ready and willing to perform his part of the contract.
21. What could now be the nature of the decree, in view of the aforesaid findings, is answered by the Supreme Court in the matter of **Durga Prasad and another v. Deep Chand and**

others (supra), wherein it has been held at para 42 as under:-

“(42) In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in – 'Kafiladdin v. Samiraddin', A.I.R. 1931 Cal 67 © and appears to be the English practice. See Fry on Specific Performance, 6th Edn. Page 90, paragraph 207; also – 'Potter v. Sanders', (1846) 67 ER 1057 (D). We direct accordingly.”

22. Consequently, the appeal is allowed and the judgment and decree dated 28.10.2010 in Civil Suit No. 07A/2007 is hereby quashed and the Plaintiff is accordingly entitled to a decree for specific performance of contract in the light of aforesaid principles as under:-

- i. that Defendant – Smt. Sobhna Chourasiya shall execute the registered deed of sale with regard to the property in question, i.e., 6.50 meter x 6.50 meter = 42.25 square meter, forming part of godown constructed over 6.50 meter x 25.50 meter = 165.75 square meters, as mentioned in the alleged agreement to sale (Ex.P.1), within a period of 2 months from the date of this judgment/order;
- ii. that Defendant No.2 – Smt. Saraswati Yadav shall join the said conveyance and would handover the vacant possession of it to the Plaintiff immediately thereafter.

23. No order as to costs.

24. A decree be drawn accordingly.

Sd/-
(**Sanjay S. Agrawal**)
Judge