

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 85 of 2012****Reserved on 17/06/2021****Pronounced on 02/08/2021**

- Vijay Laxmi aged 44 years daughter of late Shri Jagdish Prasad, caste Brahmin, resident of village Dagori, Tahsil Bilha, District Bilaspur (CG) (Plaintiff)

---- Appellant**Versus**

1. Beduram aged 55 years, son of Kolhau caste Kurmi, resident of village Dagori, Tahsil Bilha, District Bilaspur (CG)
2. State of Chhattisgarh through the District Collector, Bilaspur (CG) (Defendants)

---- Respondents

For Appellant	:	Shri Somnath Verma, Advocate
For Respondent No.1	:	None, though served
For Respondent No.2/State	:	Shri Devesh Verma, Govt. Advocate

Single Bench : Hon'ble Shri Justice Sanjay S. Agrawal**C A V Judgment**

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 25.01.2012, passed in Civil Suit No.21-A/2011, 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. Briefly stated, the facts of the case, are that the Plaintiff instituted a suit claiming specific performance of contract submitting, *inter alia*, that an agreement to sale was executed by Defendant No.1 in her favour on

13.05.2010 with regard to the part of his Khasra No.1026, admeasuring area 0.73 acres situated at village Dagori, Tahsil Bilha, District Bilaspur (CG), agreeing to alienate the same for a consideration of Rs.2,20,000/- upon receiving earnest amount of Rs.25,000/- from her by delivering the possession of it. It is pleaded in the plaint that as per the terms and conditions stipulated therein, the registered deed of sale was required to be executed within a period of 15 days from it and despite her several requests being made and when it was not executed, a legal notice dated 21.06.2010 was served upon him with a request for its execution. He, however, has, failed to execute the registered deed of sale in her favour despite the service of notice, therefore, she has been constrained to institute the suit in the instant nature, instituted on 16.08.2010.

3. Despite service of summons of the suit, Defendant No.1 failed to appear, therefore, he was proceeded *ex parte* by the trial Court.
4. In support, the Plaintiff has examined herself and both the attesting witnesses of the alleged agreement to sale and, the trial Court after considering the same, dismissed the suit by holding, *inter alia*, that since the Khasra number and area of the suit land as mentioned in the alleged agreement to sale are different with that of the revenue papers like *Kishtbandi Khatoni*(Ex.P-2) and *Khasra Panchashala*(Ex.P-3) as produced by the Plaintiff, therefore, it cannot be said that the Defendant No.1 was competent to alienate the same. As a consequence of it, the claim has been dismissed, which has been impugned by way of this appeal.
5. Learned counsel for the Appellant/Plaintiff submits that the finding of the Court below holding that the Khasra number and area mentioned in the alleged agreement to sale and the revenue papers of it are differently mentioned, therefore, the said Defendant was not competent to alienate

the same is apparently contrary to law. While inviting attention to the alleged agreement to sale dated 13.05.2010, it is contended by him that the vendor had agreed to alienate a piece of his land bearing Khasra No.1026, admeasuring 0.73 acres while mentioning its boundaries, therefore, the trial court ought not to have non-suited the Plaintiff merely on the ground that the Khasra number and area are differently mentioned there in the alleged agreement (Ex.P-1) and its revenue papers (Ex.P-2 and Ex.P-3), as such.

6. No one appears on behalf of the Defendant/Respondent No.1 despite service of notice.
7. I have heard learned counsel for the Appellant/Plaintiff and perused the entire record carefully.
8. The question which arises for determination in this appeal is as to whether the trial Court has erred in dismissing the Plaintiff's claim for specific performance of contract merely on the ground that the Khasra number and the area of it has been differently mentioned in the alleged agreement to sale (Ex. P-1) and its revenue papers (Ex.P-2 and Ex.P-3)?
9. From perusal of the record, it appears that an agreement to sale dated 13.05.2010 (Ex.P-1) was executed by Defendant No.1 in favour of the Plaintiff agreeing to alienate his part of Khasra No.1026, admeasuring area 0.73 acres of land while mentioning its boundaries thereon in presence of the two witnesses for a consideration of Rs.2,20,000/- upon receiving earnest amount of Rs.25,000/- from her. According to the Plaintiff and the attesting witnesses of the alleged agreement to sale (Ex.P-1), the alleged suit land as described therein was to be sold within a period of 15 days from its execution as stipulated therein. The suit land as described in the alleged agreement to sale was the part of Khasra

No.1026, admeasuring area 0.73 acres and was described by its boundaries, and in revenue papers (Ex.P-2 and Ex.P-3), it has been shown to be recorded in the name of Defendant No.1 as Khasra No.1026/1, area 0.295 acres. It is true, as evidenced by those documentary evidence that there are some discrepancies in the particulars of the land in question sought to be alienated but, identity of it has not been disputed by the Defendant No.1. That apart, the alleged Khasra number is recorded in the name of Defendant No.1 and in absence of its rebuttal, it cannot be said, as observed by the trial court, that the Defendant No.1 was not competent to alienate the same.

10. Considering the unrebutted averments made in the plaint, and considering further the boundaries mentioned in the alleged agreement to sale (Ex.P-1) with regard to the part of Khasra No.1026, admeasuring area 0.73 acres, *vis-a-vis*, showing the name of Defendant No.1 in the revenue papers (Ex.P-2 and Ex.P-3), it cannot be said that the said Defendant was not competent to alienate the same as per the terms and conditions stipulated in the alleged agreement to sale dated 13.05.2010(Ex.P-1).

11. Consequently, the appeal is allowed and the Appellant/Plaintiff is accordingly held to be entitled to get the sale-deed executed in her favour with regard to the part of Khasra No. 1026, admeasuring area 0.73 acres situated at village Dagori, Tehsil Bilha, District Bilaspur (CG) as mentioned in the alleged agreement to sale dated 13.05.2010 (Ex.P-1).

12. A decree be drawn accordingly.

Sd/-

(Sanjay S. Agrawal)
JUDGE