

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 14-12-2020Judgment delivered on 18-01-2021FA No. 202 of 2016

1. Bhagirathi Dewangan S/o Kheduram Dewangan, Aged About 40 Years R/o Pahadi Chowk, Gudhiyari, Tahsil And District Raipur [Wrongly Mentioned as Mahasamund] Civil And Revenue District Raipur, Chhattisgarh

---- Appellant (Plaintiff)

Versus

1. Jhaduram (Dead) Through LRs.

1(1)	Kamla Bhatt W/o Shri Nandkumar Bhatta Aged About 55 Years
1(2)	Bimla Bai W/o Shri Johar Lal Kosariya Aged About 53 Years
1(3)	Nirmala Bai W/o Shri Premshankar Banjare Aged About 51 Years
1(4)	Ramhala Bai W/o Shri Arvind Dhritlahre Aged About 49 Years
1(5)	Rajkumar Kurre S/o Jhaduram Kurre Aged About 47 Years
1(6)	Rajkumari Banjare W/o Shri Dilip Singh Banjare Aged About 45 Years
1(7)	Rajesh Khanna Kurre S/o Shri Jhaduram Kurre Aged About 39 Years
1(8)	Ku. Rajeshwari Kurre D/o Shri Jhaduram Kurre Aged About 39 Years
1(9)	Rameshwari Jangde W/o Shri Mahesh Kumar Jangde Aged About 36 Years

1(10)	Ku. Jageshwari Kurre D/o Shri Jhaduram Kurre Aged About 34 Years 1(1) to 1(10) are R/o Village Gudhiyari, Raipur, District Raipur Chhattisgarh.
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2. Khedabai D/o Keshlal, Aged About 55 Years R/o Village Gudhiyari, District Raipur, Chhattisgarh
3. State Of Chhattisgarh, Through the Collector Raipur, District Raipur (CG).

--- Respondents (Defendants)

And

FA No. 260 of 2016

1. Jhaduram (Dead) Through LR's.

1(1)	Kamla Bhatt W/o Shri Nandkumar Bhatta Aged About 55 Years
1(2)	Bimla Bai W/o Shri Johar Lal Kosariya Aged About 53 Years
1(3)	Nirmala Bai W/o Shri Premshankar Banjare Aged About 51 Years
1(4)	Ramhala Bai W/o Shri Arvind Dhritlahre Aged About 49 Years
1(5)	Rajkumar Kurre S/o Jhaduram Kurre Aged About 47 Years
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1(8)	Ku. Rajeshwari Kurre D/o Shri Jhaduram Kurre Aged About 39 Years
1(9)	Rameshwari Jangde W/o Shri Mahesh Kumar Jangde Aged About 36 Years
1(10)	Ku. Jageshwari Kurre D/o Shri Jhaduram Kurre Aged About 34 Years

	1(1) to 1(10) are R/o Village Gudhiyari, Raipur, District Raipur Chhattisgarh.
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2. Kheda Bai, W/o Keshlal, Aged About 55 Years R/o Village-Gudhiyari, District- Raipur, Chhattisgarh

---- Appellants (Defendants No.1 & 2)

Versus

1. Bhagirathi Dewangan S/o Kheduram Dewangan, Aged About 40 Years R/o Pahadi Chowk, Gudhiyari, Tahsil And District-Mahasamund, Chhattisgarh.....(Plaintiff)
2. State Of Chhattisgarh, Through Collector Raipur, District- Raipur, Chhattisgarh.

---- Respondents

For Plaintiff	Mr. B.P. Sharma, Advocate with the plaintiff Bhagirathi Dewangan
For Defendants No.1 & 2	Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal & Ms Preeti Yadav, Advocates
For State	Mr. Ayaz Naved, Govt. Advocate

Hon'ble Mr. Prashant Kumar Mishra, J.

Hon'ble Mrs. Rajani Dubey, J.

CAV Judgment

The following judgment of the Court was delivered by ***Prashant Kumar Mishra, J.***

1. Since both the appeals are arising out of same impugned judgment and decree, they are being considered and decided by this common judgment.
2. These two first appeals are arising out of the same judgment and decree dated 30-4-2016 passed by the 9th Additional District Judge, Raipur, in civil suit No.77-A/12 (Bhagirathi Dewangan v Jhaduram & Others) partly allowing the suit preferred by the plaintiff - Bhagirathi Dewangan (henceforth 'the plaintiff'). The

trial Court, while refusing to pass a decree for specific performance has directed for refund of amount to the tune of Rs.14,25,000/- [along with interest at the rate of 6% per annum from the date of filing of suit i.e. 27-2-2003 till the date of actual payment] paid by the plaintiff to the defendants No.1 & 2 namely; Jhaduram & Kheda Bai, respectively (henceforth 'the defendants No.1 & 2') at the time of agreement.

3. While the plaintiff has preferred FA No.202 of 2016 praying for a decree for specific performance, the defendants No.1 & 2 have preferred FA No.260 of 2016 against the trial Court's judgment & decree for refund of Rs.14,25,000/- along with interest at the rate of 6% per annum from the date of filing of suit i.e. 27-2-2003 till the date of actual payment.
4. The parties entered into an agreement dated 25-7-2002 for sale of land admeasuring 0.841 hectares bearing khasra No.491 at village Gogaon for a sum of Rs.14,25,000/-. It was stipulated in the agreement that the defendants No.1 & 2 shall return the amount to the plaintiff by 31-12-2002 failing which the plaintiff shall be entitled to get the sale deed registered on or before 31-1-2003 with further stipulation that if the sale deed is not executed by the said date the agreement shall fail. According to the plaintiff he paid Rs.14,25,000/- to the defendants No.1 & 2 and obtained physical possession of the land, but the defendants No.1 & 2 neither repaid the amount nor executed the sale deed, therefore, the suit was filed. It was also pleaded that the plaintiff purchased the requisite stamp papers on 24-1-2003 and the draft sale deed was typed, but the defendants No.1 & 2 appeared before the Sub Registrar to refuse execution of sale deed.
5. The plea of defendants No.1 & 2 is that the plaintiff has a tailoring shop and is also engaged in money lending. The defendant No.1 was in need of funds for marriage of his daughter, therefore, he

had obtained loan of Rs.70,000 - 80,000/- in installments from the plaintiff. Being in a dominating position the plaintiff obtained signatures of the defendants No.1 & 2 on blank stamp papers for purchase of the suit land for Rs.14,25,000/- albeit the market value of the suit land was about Rs.22.00 - 24.00 lacs on the date of agreement. They also denied that possession of the suit land was delivered to the plaintiff.

6. Initially the trial Court framed 9 issues for determination and after regular trial dismissed the suit bearing civil suit No.16-A/2004 vide judgment and decree dated 29-3-2005 rendered by the 12th Additional District Judge, FTC, Raipur. Challenging the said judgment & decree the plaintiff preferred FA No.89 of 2005, which was allowed by this Court by judgment dated 3-7-2012 and the matter was remitted back to the trial Court after framing issues on the question of readiness & willingness, breaches committed by the parties, grant of alternative relief, etc. The present impugned judgment & decree has been passed after trial on the basis of remand order passed by this Court.
7. Mr. B.P. Sharma, learned counsel appearing for the plaintiff, would submit that the agreement having been proved and the trial Court having found that the plaintiff has already paid Rs.14,25,000/-, the entire suit should have been decreed. According to him, the trial Court's denial to pass a decree for specific performance is contrary to the settled principles governing specific performance. The plaintiff has proved his case, therefore, the plaintiff's appeal deserves to be allowed. Mr. Sharma would further submit that the appeal preferred by the defendants No.1 & 2 challenging the decree of refund also deserves to be dismissed.
8. Mr. H.B. Agrawal, learned senior counsel appearing for the defendants No.1 & 2, would submit that there being no stipulation

in the agreement for refund of the amount of Rs.14,25,000/-, the trial Court has committed serious error in directing refund of the amount.

9. We have heard learned counsel for the parties at length and perused the record.
10. In course of trial the plaintiff Bhagirathi examined himself as PW-1, Khedu Ram (PW-2), U.M. Toppo (PW-3), Dr. Sunada Dege (PW-4) and Kumar Dewangan (PW-5). On the other hand, defendant No.1 Jhaduram himself examined as DW-1, Kheda Bai (DW-2) and Rajesh Khanna Kurre (DW-3).
11. On appreciation of evidence the trial Court has found that the defendants No.1 & 2 have admitted their signature on the agreement (Ex.P/1) and their plea that their signatures were taken on blank stamp papers is not acceptable because they have not filed any complaint before any authority in this regard. The agreement is also signed by two witnesses namely; Khedu Ram (PW-2) and Rajesh Khanna Kurre (PW-3).
12. Although DW-3 Rajesh Khanna Kurre says that his signature was taken on blank stamp paper, but Khedu Ram (PW-2) says that the stamp was typed. Both these witnesses are related to the corresponding parties, therefore, the statement of PW-5 Kumar Dewangan is important because he is an independent witness. According to this witness, he was present at the time of agreement and the transaction was in relation to the plaintiff lending an amount of Rs.5,25,000/- + Rs.9,00,000/- to the defendants No.1 & 2.
13. The cumulative effect of the statement of witnesses definitely points out to the effect that the typed agreement was signed by the defendants No.1 & 2 and they have accepted the loan amount of Rs.14,25,000/-.

14. In so far as the plea for specific performance is concerned, the trial Court appears to have rightly denied the said part of the prayer for the simple reason that the agreement itself recites that loan of Rs.14,25,000/- is being advance to the defendants No.1 & 2, which they shall return by 31-12-2002 after selling the subject land for which the plaintiff will have no objection, but if the defendants No.1 & 2 failed to sell the land to some other person and at the same time failed to return the amount to the plaintiff by 31-12-2002 the plaintiff can get executed the sale deed by 31-1-2003. The sale agreement was, therefore, primarily a security for advancement of loan and not an agreement to sale simplicitor.
15. It is the settled law that a decree for specific performance cannot be granted merely because of execution of agreement is proved. The Court is bound to look upon the real intent of the parties at the time of execution of agreement. If it is found that the agreement, *prima facie*, is for some other purpose than for sale of the land and the sale agreement becomes operative as a consequence or fall out of failure of the land holder either to repay the loan amount or to do some other act in favour of the plaintiff, the trial Court in its judicial discretion is not bound to pass a decree.
16. When the appeal is preferred against exercise of judicial discretion by the trial Court it is necessary for the appellant to demonstrate before the Court that exercise of judicial discretion while denying the decree for specific performance is an absurd proposition in the facts and circumstances of the case. However, such being not the case before us and the subject agreement being seemingly for advancement of loan, the trial Court has rightly denied decree for specific performance.
17. At the same time, from the statement of witnesses it is found that an agreement was, in fact, executed by the defendants No.1 & 2

and they have obtained loan of Rs.14,25,000/- from the plaintiff, which they have failed to repay, therefore, the trial Court has rightly passed the decree against the defendants No.1 & 2 for refund of amount to the tune of Rs.14,25,000/- in favour of the plaintiff along with interest at the rate of 6% per annum from the date of filing of suit i.e. 27-2-2003 till the date of actual payment

18. In view of the above discussion, both the appeals, *sans substratum*, are liable to be and are hereby dismissed. No order as to cost(s).

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge

Gowri