

HIGH COURT OF ORISSA : CUTTACK

RSA NO.178 OF 2019

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree dated 10.04.2019 and 25.04.2019 receptively passed by the learned Second Additional District Judge, Berhampur in RFA No.22 of 2017 in confirming the judgment and decree dated 09.01.2017 and 24.01.2017 respectively passed by the learned Additional Senior Civil Judge, Berhampur in Civil Suit No.142 of 2012.

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Sri Nabin Chadnra Mohanta

:::: Appellant.

-:: VERSUS ::-

Smt. Vishnupriya Panigrahi

:::: Respondent

Advocate(s) who appeared in this case by hybrid arrangement
(virtual/physical) mode.

For Appellant

... M/s. S. Mishra, A. Mohanty,
N.Sharma, B. Jena,
G.N. Parida & M. Mohanty
(Advocates).

For Respondent

... M/s.A.K. Biswal & R.K. Muduli,
(Advocates).

CORAM :

MR. JUSTICE D.DASH

Date of Hearing: 13.10.2022 :: Date of Judgment: 23.12.2022

D.Dash,J. The Appellant by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code') has assailed the judgment and decree passed by the learned 2nd Additional District Judge, Berhampur. By the same, the Appeal filed by the present Appellant being the aggrieved Defendant in Civil Suit No.142 of 2012 of the court of the learned

Additional Senior Civil Judge, Berhampur under section 96 of the Code **has been dismissed.**

2. The Respondent as the Plaintiff had filed the suit, i.e., C.S. No.142 of 2012 for specific performance of contract, seeking a direction to the Appellant (Defendant) to execute the registered sale deed in respect of the suit land in her favour on receipt of balance consideration of Rs.30,07,998/- The suit having been decreed, the above Appellant (Defendant) being aggrieved by the same had carried the First Appeal. The First Appellate Court has also dismissed the Appeal and thereunder, the judgment and decree passed by the Trial Court have been confirmed.

3. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

4. Plaintiff's case is that the Defendant being the owner was in possession of the suit property. He intended to sale the same for consideration so as to discharge his debt, purchase a residential house and meet his other needs. The Defendant became interested to purchase the same. So, the Plaintiff approached her and after negotiation, the consideration was fixed at Rs.18,11,001/- They entered into an agreement for sale on 17.09.2009. The Plaintiff paid a sum of Rs.3,03,003/- on that date to the Defendant towards part consideration as an advance. It was agreed thereunder that within a period of 11 months with effect from

17.09.2009, the Plaintiff would pay the balance consideration amount when the deed of sale would be registered in the Office of the Sub-Registrar, Berhampur. It was also agreed that the Defendant in the meantime would take all steps into change the record of right in his favour in respect of the suit property. However, after receipt of the advance consideration, the Defendant again approached the Plaintiff for payment further sum of Rs.2,00,000/- Accordingly, the Plaintiff on 23.01.2010 paid the said sum. It is stated that thereafter in spite of the fact that the Plaintiff was ever ready and willing to perform her part of the contract and obtain the registered sale deed in her favour by paying the balance consideration to the Defendant; the Defendant did not perform his part of the contract. He rather demanded an additional amount of Rs.7,00,000/- towards the consideration, over and above what had been agreed. Therefore, the Plaintiff served a notice upon the Defendant to execute the sale deed. The Defendant, however, avoided to receive the same. The suit thus was filed.

5. The Defendant in his written statement without denying the factum of execution of the sale deed pleaded that the Plaintiff and her husband as per the instruction did not make the record of right ready within the stipulated period. He also stated that in spite of his request to the Plaintiff for registration of sale deed on payment of balance consideration, it was the Plaintiff who remained silent. While agreeing the receipt of the advance consideration under the agreement, he further admitted to have received

advance of a sum of Rs.2,00,000/- on 23.01.2010. It is his case that from out of this amount, he had paid a sum of Rs.1,000/- to one Ranjit Mohapatra for purchasing a house site at Baripada town and as the Plaintiff did not pay the remaining consideration amount by getting the sale deed registered in respect of the suit property from him, he could not pay the balance amount to that Ranjit Mohapatra for which he rescinded the agreement and the advance amount of consideration of Rs.3,00,000/- paid to Ranjit for purchase of a house site at Baripada was forfeited. He further stated that having received the notice from the Plaintiff, he had immediately shown his willingness to execute the sale deed and contacted the Plaintiff on 08.08.2010. But the Plaintiff remained silent by not showing her readiness and willingness to pay the balance consideration and obtain the sale deed from him at any point of time after the agreement either intimating him orally or in writing to that effect.

6. On the above rival pleadings, the Trial Court has framed as many as five issues. The core issue as to whether the Plaintiff was all along after the time of agreement was ready and willing to perform her part of contract has been answered by the Trial Court on examination of evidence and their detail discussion. The result on that issue in favour of the Plaintiff is as under:

“Therefore from the evidence on record, it is crystal clear that the agreement vide Ext.1 was duly executed by the Defendant

on 17.09.2009 and the Defendant agreed to sale the suit properties to the Plaintiff for a consideration of Rs.18,11,001/- and on the date of execution of the said agreement, the Plaintiff has paid Rs.3,03,003/- and on 23.01.2010 paid Rs.2,00,000/- to the Defendant and Plaintiff has agreed to pay the balance consideration amount at the time of registration of the sale deed. Further the Plaintiff is always ready and willing to perform her part of contract, but the Defendant was avoiding to perform his part of the contract. Since the Plaintiff has no fault in the execution and registration of the sale deed as per the agreement dated 17.09.2009, therefore the contention of the Defendant that he has paid Rs.3,00,000/- to one Ranjit Kumar Mahaptra of Baripada for the purchase of a house and due to the fault of the Plaintiff the said amount have been forfeited cannot be believable.”

Accordingly, the Trial Court decreed the suit of the Plaintiff. The Defendant being aggrieved by the decision of the Trial Court having preferred the First Appeal has been unsuccessful. The First Appellate Court has also held on re-appreciation of evidence independently at its level has also returned the same answer and accordingly, it affirmed the finding of the Trial Court on that issue. Hence, the present Second Appeal.

7. The Appeal has been admitted to answer the following substantial question of law:-

“Whether the finding of the courts below on that the Plaintiff was/is ready and willing to perform his part of the

contract is based on perverse appreciation of evidence completely loosing sight of the totality of the surrounding facts and circumstances which are relevant as also upon erroneous consideration of the settled position of law holding the field”?

8. Learned counsel for the Appellant (Defendant) submitted that the evidence let in from the side of the Plaintiff are not sufficient to conclude that she was all along ready and willing to perform her part of the contract in getting ready with the balance consideration of Rs.13,07,998/- and other expenses towards stamp duty and registration fees so as to enable the Defendant to execute the sale deed and register the same. He submitted that the Plaintiff has not proved any evidence that from a particular time she was having such amount payable as balance consideration to the Defendant with her so as to conclusively prove her readiness and willingness. It was submitted that the Defendant on the other hand has tendered evidence that for such non-payment of the balance consideration by the Plaintiff the very objective sought to be achieved at his end in purchasing a house site at his native place could not materialize and, therefore, he rather suffered for having entered into such agreement which was counterproductive. He in the alternative submitted that at present the bench mark valuation which is even much less than the market price, i.e., prevailing for such type of land like the suit land is Rs.30000000/- per acre comes to Rs.1,98,00,000/- if we take the extent of the suit land into

account. In this connection, he has referred to the true copy of the basic register containing the bench mark valuation statement for the year 2022-2024. He submitted that the valuation of the property in the locality has undergone tremendous escalation, particularly in last few years in the locality and its likely to increase manifold in the coming years to come. He submitted that when the consideration of the property in suit under the agreement (Ext.1) had been fixed at Rs.18,00,000/- and that has increased at a galloping speed during the period and, therefore, in the facts and circumstances of the case which emerged from the evidence on record after lapse of long period of time, the Court should exercise the discretion vested in it by virtue of the provision contained in section-20 the Specific Relief Act, 1963 in granting appropriate compensation to the Plaintiff.

9. Learned counsel for the Respondent (Plaintiff) submitted that the concurrent finding of fact recorded by the Courts below is the outcome of just and proper appreciation of evidence that the Plaintiff was all along ready and willing to perform her part of the contract and it is the Defendant, who had failed to perform his part of the contract for which the contract could not be fructified leading to the execution and registration of the sale deed in respect of the suit property. He, therefore, submitted that said finding is not liable to be interfered with in this Second Appeal and it is not so permissible as there surfaces no such perversity. He submitted that the Courts below had taken into account each and every tit bit of evidence

let in by the parties in showing that the Plaintiff was all along ready and willing to perform her part of contract in further holding the case projected by the Defendant that for the failure of the Plaintiff that he had to face the forfeiture of a sum of Rs.3,00,000/- which he had paid for purchasing a house site at his native town and he also could not alternatively purchase has not been proved by the Defendant. There is absolutely no infirmity much less to say the perversity therein.

In response to the alternative submission of the learned counsel for the Appellant he contended that the Defendant having failed to perform his part of contract from the year 2009 and onwards, pursuant to the agreement (Ext.1) as contemplated therein and thereafter, having contested the litigation right for last two decades, merely because, the market price of the real estate in the locality has undergone huge escalation, for no fault on the part of the Plaintiff, she would be made to suffer in case of exercise of discretion vested in the Court under section-20 of the Specific Relief Act. It was submitted that the facts and circumstances of the case do not justify the exercise of the discretionary power vesting with the Court under Section 20 of the Specific Relief Act and it would be inequitable and unjust at this point of time to deny the decree to the Plaintiff after both the courts have decided the core issue in favour of the Plaintiff. He, therefore, submitted that the exercise of the discretion as contended by the learned

Counsel for the Appellant would amount to causation of the injustice to the Plaintiff.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement and perused the evidence both oral and documentary.

11. The Defendant here admits to have executed the agreement for sale of the suit land to the Plaintiff on 17.09.2009 for a consideration of Rs.18,11,001/- under Ext.1. He also does not deny to have received the advance consideration of Rs.3,30,003/- on that very day. It has also been admitted by the Defendant that subsequent to the agreement on 23.01.2010, he had taken further sum of Rs.2,00,000/- from the Plaintiff towards the agreed consideration. The Plaintiff thus has paid a sum of Rs.5,03,003/- to the Defendant, which he admits and the balance consideration amount as per the agreement for sale of the suit land stands at Rs.13,07,998/-. On expiry or the period of 11 months stipulated in the agreement for concluding the contract by achieving the end result, the Plaintiff in the case has issued a notice to the Defendant which has been admitted in evidence and marked Ext.5. It has been pleaded by the Plaintiff that prior to the date of completion of the period of 11 months from the date of agreement, the Plaintiff has expressed thereunder her readiness and willingness to pay the balance consideration and has asked the Plaintiff to come and execute the sale deed and register the same and that the Defendant had been asked to

intimate the date on or before 14.08.2010 so that everything would be put in place on that date. The Defendant, on the other hand, has pleaded and deposed that he had contacted the Plaintiff on 08.08.2010 and shown his willingness to execute the sale deed on receipt of balance consideration and the Plaintiff assured to arrange the money and invite him to execute the document and thereafter she did not, for which on 15.08.2010 the Defendant personally contacted the Plaintiff, who pleaded her inability in the matter. The Plaintiff when has proved the service of notice (Ext.5) upon the Defendant, the Defendant during evidence has admitted that he has never intimated the Plaintiff about he being ready with all the documents for execution of the sale deed in respect of the suit property and its registration. The Plaintiff being asked during her examination in court has stated that she was having the money in her account. But then the Defendant has taken no further step in asking the Plaintiff to disclose the account details in calling for all those from the concerned Bank so as to show that such statement of the Plaintiff was false. The Defendant except giving his bald statement has also not led any other evidence especially by examining that person with whom he had the agreement for purchase a house site at his native town by utilizing the consideration money towards the sale of the suit property to show that he had to suffer on that score for the forfeiture.

With the obtained evidence on record, this Court finds no such infirmity with the concurrent finding of the courts below on this issue of readiness and willingness of the Plaintiff in performing her part of the contract. The findings do not suffer from the vice of perversity in as much as, the Courts below in arriving at such conclusion have neither overlooked any material evidence available on record nor have taken into account something extraneous to the evidence in support of such conclusion so as to say that had those not been done; the finding would have been otherwise.

12. Now coming to the alternative submission of the learned counsel for the Appellant, it would be profitable to refer to the cited decision of the Apex Court in case of ***Parakunnam Veetill Joseph's Son Mathew Vrs. Nedumbara Kuruville's Son***, AIR, 1987 SC 2328.

It is no more res integra that a decree for specific performance of contract is not automatic and is one of the discretions of the court and for the purpose the court has to consider whether it would be still fair, just and equitable. The court is guided by principle of justice, equity and good conscience come into play. It has been held in case of P.V. Joseph's Son Mathew(supra) that the Court should meticulously consider all facts and circumstances of the case and motive behind the litigation should also be considered.

The discretion to direct specific performance of agreement and that too after elapse of at a great distance of time, undoubtedly has to be exercised on sound reasonable, rational and acceptable principles. The parameters for the exercise of the discretion vested by section 20 of the Specific Relief Act cannot be entrapped within any precise expression of language and the cantores thereof will always depend on the facts and circumstances of each of the case. The ultimate guiding test would be the principles of fairness and reasonableness as may be detected by the peculiar facts of any given case which features the experience to judicial mind can perceive without any real difficulty. It must however, be emphasized that afflux of time and escalation of price of property by itself cannot be a valid ground to deny the relief of specific performance ***Satya Jain (Dead) through LRs. & Others Vrs. Anis Ahmed Rushdie (Dead) through LRs. and Others***, (2013) 8 SCC 131. We may again profitable to refer to Paragraph 41 of the decision of Satya Jain (supra):-

“The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalizing the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had

been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final court.”

13. Adverting to the instant case, it is seen that no such evidence is available on record nor it has been pleaded by the Plaintiff that the Defendant tries to wriggle out of the contract because of escalation in prices of real estate properties. This Court is not in a position to say that the Plaintiff has taken any undue or unfair advantage over the Defendant. Thus, it would be inequitable and unjust at this distant point of time to deny the decree to the Defendant after both the Courts below have decided in her favour which has stood the tests. The Plaintiff here is not, however, stating to have deposited the balance consideration in the Trial Court while putting the decree to execution. It is not denied that the property is situated within the jurisdiction of Berhampur Municipal Corporation, which is still said to be the financial capital of the State. As against the valuation agreed upon by the parties on the date of agreement, i.e., 17.09.2009, the present bench mark valuation is standing at Rs.1,98,00,000/- when judicial notice of the fact that although the same is only adhered to for the purpose of registration, yet the actual consideration paid mostly, remains more. Giving my anxious and thoughtful consideration to all these above facets; I am of the humble view that to mitigate the hardship of the Defendant; the ends of justice would require little intervention in a balanced manner by directing

the Defendant to pay the market price of the suit property as on the date when the decision was rendered in the suit, i.e., on 19.09.2013 when the plaint was admitted. As no material whatsoever is available before this Court to enable to take the correct assessment of the market value of the suit property in the then prevailing facts and circumstances concerning the suit property as on that date, I would direct the learned Court in seisin of the Execution Proceeding (Execution Case No.05 of 2017) to undertake the said exercise with such expedition as may be possible.

14. The Appeal is accordingly disposed of in terms of the above conclusions and directions.

**(D. Dash),
Judge.**

Himansu