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HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on - 07.08.2026

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FA No. 50 of 2014

Shrimati Rajvansh Kaur W/o Joginder Singh Randhawa Aged About 70 Years R/o E.W.S. 440 Thana- Vaishali Nagar, Bhilai C.G., Chhattisgarh

... Appellant

versus

1 - Smt.Lata Batra W/o Bheesham Batra Aged About 40 Years R/o 136 Sundar Nagar, Thana- Kohka, Bhilai, Tah. And Distt. Durg C.G., Chhattisgarh

2 - Chattisgarh Housing Board Through- Executive Engineer, Chhattisgarh Housing Board, Division- Durg, Thana, Tah. And Distt. Durg C.G., District : Durg, Chhattisgarh

... Respondents

For Appellant	:	Mr. N. K. Malviya, Advocate
For Respondent No. 1	:	Mr. K. N. Singh, Advocate
For Respondent No. 2		Mr. Sanjay Patel, Advocate

(Hon'ble Shri Justice Sachin Singh Rajput)

CAV Judgment

1. The unsuccessful defendant No. 1 who is the appellant before this Court has preferred the instant appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, "the CPC") calling in question the legality, correctness and validity of the judgment and decree dated 25.02.2014 passed by the learned 6th Additional District Judge, Durg, District Durg (C.G.) (hereinafter referred to as "the learned Trial Court") in Civil Suit No. 33-A/2013.

2. For the sake of convenience, the parties shall hereinafter be referred to their original status before the learned Trial Court.

3. By the impugned judgment and decree, the learned Trial Court decreed the suit instituted by respondent No. 1/plaintiff and granted a decree for specific performance of the agreement to sell dated 29.05.2006 in respect of House No. EWS-440 situated at Vaishali Nagar, Supela, Bhilai, District Durg (C.G.) in favour of the plaintiff.

4. The case set forth by the plaintiff in the plaint is that an agreement to sell dated 29.05.2006 was executed between the plaintiff and defendant No. 1 in respect of House No. EWS-440 situated at Vaishali Nagar, Supela, Bhilai, District Durg (C.G.), for a total sale consideration of Rs.4,50,000/- out of which a sum of Rs.1,00,000/- was paid by the plaintiff to defendant No. 1 as advance consideration. As per the terms and conditions of the said agreement, the sale deed was required to be executed within a period of four months from the date of the agreement. It was further pleaded that, within the stipulated period, the plaintiff arranged the balance sale consideration of Rs.3,50,000/- and also submitted an application to defendant No. 2 for issuance of a No Objection Certificate (NOC). It was further pleaded that on 29.08.2006, the plaintiff issued a notice to defendant No. 1 intimating his readiness and willingness to get the sale deed executed and registered in her favour. By the said notice, defendant No. 1 was called upon to fix a date for appearing before the competent registration authority with an assurance that the plaintiff would remain present before the Sub-Registrar, Durg, along with the requisite amount and necessary documents for execution and registration of the sale deed. The said notice was received by defendant No. 1 on 12.09.2006. Thereafter, on 23.09.2006 another notice was sent by under the Universal Postal Certificate (UPC) calling upon defendant No. 1 to execute the sale deed on any date before 29.09.2006 upon receipt of the balance sale consideration of Rs.3,50,000/-. However, as defendant No. 1 did not respond to the said notices, the plaintiff instituted the suit seeking specific performance of the agreement to sell.

5. Defendant No. 1 contested the suit by filing a written statement wherein she denied the execution of the agreement to sell as well as the claim of the plaintiff. She further disputed her ownership over the suit property asserting that the title thereto vested in defendant No. 2 and therefore she was not competent to transfer the same in favour of the plaintiff. On the aforesaid grounds, defendant No. 1 contended that the agreement to sell was void and sought dismissal of the suit.

6. Defendant No. 2 also filed a written statement and pleaded that in view of the provisions of Section 54 of the Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972 compliance with the prescribed requirement of notice was mandatory and that in the absence of such notice, the suit against defendant No. 2 was not maintainable. It was further contended that defendant No. 1 had never submitted any application before defendant No. 2 seeking permission for the sale of the suit property. The remaining averments made in the plaint were also denied, and dismissal of the suit was sought.

7. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues for adjudication:

Sl. No.	वाद-प्रश्न	निष्कर्ष
1.	क्या दिनांक 29/05/2006 को वादी से प्रतिवादिनी क.-01 ने अपने पति की उपस्थिति में सलाह कर वादग्रस्त अपना मकान ई.डब्लू. एस. 440, वैशाली नगर, सुपेला जिला-दुर्ग को 4,50,000/- रूपये (चार लाख पचास हजार रूपये) में विकय करने का सौदा किया?	साबित।
2.	क्या वादी से प्रतिवादिनी क.-01 ने उक्त सौदा के पेटे एक लाख रूपये बयाना साक्षियों से प्राप्त किया?	साबित।
3.	क्या उक्त सौदे के एवज में एक बिकी अनुबंध दिनांक 29/05/2006 को ही प्रतिवादिनी कमांक-01 ने निष्पादित किया था?	साबित ।
4.	क्या मकान छत्तीसगढ़ गृह निर्माण मंडल के स्वामित्वाधीन होने से प्रतिवादिनी क.-01 को विक्रय करने का सौदा करने हेतु अयोग्य है?	साबित नहीं हुआ।

5.	क्या संविदा अधिनियम की धारा-23 के अंतर्गत यह दावा अपोषणीय है?	साबित नहीं हुआ।
6.	क्या वादी ने वाद का उचित मूल्यांकन कर उचित न्यायशुल्क चस्पा किया है?	हां।।
7.	सहायता एवं व्यय?	कंडिका कमांक-27 के अनुसार।

8. Upon appreciation of the evidence led by the parties, the learned Trial Court allowed the suit and decreed in favour of the plaintiff which is reproduced herein under:

> "It is ordered and decreed that वादी ने अपने वाद को सिद्ध करने में सफल रही है। फलस्वरूप उसे निम्नानुसार अनुतोष प्रदान किया जाता है-
>
> *(a) प्रतिवादी क.-01 दो माह के भीतर वादग्रस्त मकान ईडब्लू.एस. 440, वैशाली नगर, सुपेला जिला-दुर्ग के संबंध में प्रतिवादी क.-02 से अनुमति लेने की आवश्यकता होने पर अनुमति प्राप्त कर वादी के पक्ष में विकय पत्र पंजीबद्ध करावे एवं वादग्रस्त मकान का कब्जा सौंपे।*
>
> *(b) वादी, प्रतिवादी क.-01 को संविदा अनुसार शेष राशि प्रतिवादी क.-01 को वादग्रस्त मकान के पंजीबद्ध होने दिनांक को भुगतान करेगा एवं विकय पत्र निष्पादन में होने वाले व्यय का वहन, वादी करेगा।*
>
> *(c) प्रतिवादी क.-01 वादग्रस्त मकान का वादी के पक्ष में पंजीबद्ध किये जाने का दिनांक निश्चित कर वादी को सूचित करेगा। यह दिनांक इस निर्णय के दिनांक के दो माह के भीतर का होगा।*
>
> *(d) प्रतिवादी क.-01 वादी का भी वाद व्यय वहन करेगा।*
>
> *(e) अधिवक्ता शुल्क प्रमाणित होने पर नियमानुसार देय हो।"*

9. Aggrieved by the impugned judgment and decree, this appeal has been preferred.

10. Learned counsel for the appellant/defendant No. 1 submits that the finding recorded by the learned trial Court on Issue Nos. 1 to 3 is perverse, unjustified, contrary to the evidence available on record and, therefore, unsustainable in law. He submits that from the written statement filed by defendant No. 1 and the evidence adduced by her,

it is apparent that the agreement to sell (Ex. P/1) was never executed by her. According to him, defendant No. 1 is an aged lady who does not understand much and is conversant only with the Punjabi language. He submits that in such circumstances, the alleged signature of defendant No. 1 on the agreement to sell (Ex. P/1) is highly doubtful. He further submits that the alleged payment of Rs. 1,00,000/- which forms the subject matter of Issue No. 2 has also not been proved in accordance with law. Accordingly, the findings recorded by the learned trial Court on Issue Nos. 1 to 3 suffer from patent illegality and are liable to be set aside. He further submits that EWS House No. 440 is held on lease by defendant No. 1 and, therefore, no such agreement could have been executed in respect of the suit property. Consequently, the finding recorded on Issue No. 4 is also liable to be set aside. He, therefore, submits that the impugned judgment and decree deserve to be set aside. Alternatively, learned counsel submits that even if this Court is not inclined to accept the aforesaid submissions, the decree for specific performance being a discretionary relief, this Court may decline to exercise its discretion in favour of the plaintiff. He points out that the agreement to sell was executed in the year 2006, the decree was passed in the year 2014 and the appeal has remained pending for several years thereafter. In view of the aforesaid circumstances, he submits that this Court may decline the relief of specific performance in favour of the plaintiff and, instead, exercise its discretion in favour of defendant No. 1. Thus, he prays that the appeal may be allowed and impugned judgment and decree may be set aside.

11. Per contra, learned counsel for respondent No. 1 vehemently opposes the submissions advanced by learned counsel for the appellant. He submits that the plaintiff was always ready and willing to perform her part of the contract. In fact, defendant No. 1 has not approached the Court with clean hands and has falsely denied her signature on the agreement to sell (Ex. P/1). In order to establish the execution of the agreement, the plaintiff examined Dr. Kumari Sunanda Dhenge (PW-2) a handwriting expert who after comparing the disputed signature appearing on Ex. P/1 with the admitted signatures of defendant No. 1 categorically opined that

both signatures were made by one and the same person. He further submits that the attesting witnesses to the agreement namely Satish Singh (PW-3) and Bhisham Lal Patra (PW-4) have also duly proved the execution of the agreement to sell and the receipt of an advance amount of Rs. 1,00,000/- by defendant No. 1. Apart from this, he submits that the plaintiff had also moved an application seeking permission from defendant No. 2. In due course, and without any undue delay, the plaintiff issued two notices calling upon defendant No. 1 to execute the sale deed. The plaintiff had sufficient funds at her disposal for registration of the sale deed. Thus, the findings recorded by the learned trial Court are based on proper appreciation of the evidence available on record and do not warrant any interference by this Court.

12. In reply to the submission advanced by Mr. Malviya regarding the exercise of discretion in favour of defendant No. 1, learned counsel for respondent No. 1 submits that although the relief of specific performance is discretionary, such discretion ought to be exercised in favour of a party who approaches the Court with clean hands. In the present case, despite execution of the agreement to sell (Ex. P/1), defendant No. 1 with dishonest intent, denied her signature on the agreement. Even after receiving the advance amount of Rs. 1,00,000/-, she did not respond to the legal notices issued by the plaintiff. This conduct, according to learned counsel, demonstrates that the intention of defendant No. 1 was dishonest from the very inception. He further submits that even after passing of the judgment and decree in favour of the plaintiff, notices were issued by learned counsel for the plaintiff calling upon defendant No. 1 to execute the sale deed, and execution proceedings were also initiated. He further submits that these circumstances clearly demonstrate the continuous readiness and willingness of the plaintiff to perform her part of the contract. Had there been no interim order passed by this Court, the decree could have been executed. He submits that the plaintiff has from the very inception made all possible efforts to purchase the suit property. Merely because the litigation has continued for a considerable period, the plaintiff ought not to be deprived of the rights which have already crystallised in

her favour under the impugned judgment and decree. He prays for dismissal of the appeal.

13. Learned counsel appearing for respondent No. 2 submits that the dispute is essentially between the private parties.

14. I have heard learned counsel for the parties and have perused the record with due care and attention.

15. The point for determination before this Court that as to whether the learned trial Court was justified in granting decree of specific performance of contract and it can sustain the judicial scrutiny of this Court?

16. The first submission advanced by Mr. Malviya is that the findings recorded by the learned trial Court on Issue Nos. 1 to 3 are perverse and contrary to the evidence available on record. Issue Nos. 1 to 3 relate to the execution of the agreement to sell in respect of the suit property and the payment of the advance consideration. The burden of proving these issues was upon the plaintiff. In order to discharge the aforesaid burden, the plaintiff examined herself as PW-1. She deposed in consonance with the averments made in the plaint and stated that the agreement to sell was executed on 29.05.2006 and that, on the very same day, an amount of Rs. 1,00,000/- was paid to defendant No. 1. She further deposed that the said amount was paid in the presence of the husband and son of defendant No. 1 and that the agreement was executed voluntarily, without any fear, favour or coercion. She further deposed that after execution of the agreement, she arranged the remaining consideration of Rs. 3,50,000/- and on 30.06.2006 issued a legal notice to defendant No. 1 calling upon her to execute the sale deed and to fix a date for the same. The husband of defendant No. 1 was also informed in this regard. The said notice was received by defendant No. 1 on 12.09.2006. Another notice was also sent by UPC which was received by defendant No. 1 and her husband. However, neither of them responded to the same. Thereafter, on 23.09.2006 a further notice was sent to defendant No. 1 and her husband by registered post. However, no response was received thereto either. The

plaintiff also caused a publication to be made in the daily newspaper 'Navbharat' on 26.09.2006 regarding registration of the sale deed. Despite these efforts, defendant No. 1 did not show any inclination to perform her part of the contract in terms of the agreement to sell dated 29.05.2006. The plaintiff further deposed that she continued to remain in contact with defendant No. 1 for execution of the sale deed, but defendant No. 1, with dishonest intent, continued to avoid the same. She also stated that she had the remaining amount of Rs. 3,50,000/- available with her in cash and was ready to get the sale deed executed and perform her part of the contract. Although the plaintiff was subjected to cross-examination, nothing material could be elicited therein to discredit or demolish the testimony given by her in her examination-in-chief. She also proved the agreement to sell (Ex. P/1), the notices issued to defendant No. 1 (Ex. P/2), the receipt (Ex. P/3) and the subsequent notices (Ex. P/4 and Ex. P/5). Thus, her testimony indicates that from the very inception, she was conscious of her obligations under the agreement to sell and was ready and willing to perform her part of the contract.

17. One of the attesting witnesses to the agreement to sell namely Satish Singh (PW-3) was also examined. He deposed in consonance with the pleadings and supported the case set up by the plaintiff. He categorically stated that defendant No. 1 had voluntarily received an amount of Rs. 1,00,000/- and thereafter appended her signature to the agreement to sell (Ex. P/1). He further deposed that one Geetpal Singh had also signed the agreement to sell. He further stated that he had been informed by the plaintiff, her husband, defendant No. 1 and her husband to remain present at the time of execution of the sale deed. In his cross-examination, an attempt was made on behalf of defendant No. 1 to discredit his testimony by putting questions relating to the typing of the agreement and other incidental aspects. However, nothing material could be elicited to dislodge his categorical statement regarding execution of the agreement to sell.

18. Since defendant No. 1 denied her signature appearing on the agreement to sell (Ex. P/1), the plaintiff examined Dr. Kumari Sunanda Dhenge (PW-2), a handwriting

expert who submitted her report (Ex. P/11). In her deposition before the Court, she stated that she had compared the disputed signature appearing on the agreement to sell with the admitted signatures of defendant No. 1. For ready reference, the opinion of Dr. Kumari Sunanda Dhenge (Ex. P-11) is reproduced hereinbelow:

> "C) Opinion: In my opinion that the writer of questioned signature marked as Q1, Q2 on Ekrarnama in stamp no. 448810 for date 29/05/06 with blue ball pen, is the same person, who wrote admitted signature A1 on Vakaltnama dated 08/10/09, A2 on RAD dated 08/10/09, A3-A4 on Affidavit dated 08/10/09 made with black ball pen specimen signature N1-N10 before hon'ble court dated 30/09/11, Namely as Rajbans Kaur."

19. Thus, upon cumulative assessment of the evidence available on record particularly the testimony of the handwriting expert and her report (Ex. P/11), this Court is of the considered view that the findings recorded by the learned trial Court on Issue Nos. 1 to 3 are findings of fact based on proper appreciation of the evidence. The same cannot be characterised as perverse or contrary to the material available on record. This Court does not find any cogent reason to take a view different from the one taken by the learned trial Court. Once the execution of the agreement to sell and payment of the advance amount of Rs. 1,00,000/- stand established on the basis of the evidence available on record, and no sufficient material has been brought on record to dislodge the findings recorded by the learned trial Court, the findings on Issue Nos. 1 to 3 deserve to be affirmed.

20. This brings this Court to the next submission advanced by learned counsel for the appellant regarding the nature and ownership of the suit property. The said submission is also liable to be rejected. It is defendant No. 2 who claims rights in respect of the suit property, whereas defendant No. 2 is merely a formal party to the proceedings. The suit property was granted on lease with a right to sell, and the only procedural requirement was to obtain permission from defendant No. 2. In any event, the learned trial Court, while deciding Issue No. 4 has categorically held that the said

issue was not proved. This Court does not find any reason to take a view different from that taken by the learned trial Court.

21. The last submission advanced by learned counsel for the appellant is with regard to the exercise of discretion in granting the relief of specific performance. In this regard, Mr. Malviya submits that having regard to the considerable lapse of time since execution of the agreement to sell, the decree for specific performance ought not to be maintained. Per contra, learned counsel for respondent No. 1 submits that having regard to the conduct of defendant No. 1, the discretion ought to be exercised in favour of the plaintiff.

22. It is true that the grant of a decree for specific performance of a contract involves the exercise of judicial discretion. However, the manner in which such discretion is required to be exercised has been considered by the in case of **Kamal Kumar Vs. Premlata Joshi and others** reported in **(2019) 3 SCC 709** laid down the parameters with regard to specific performance as follows:-

> *"7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are:*
>
> *7.1 First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property;*
>
> *7.2 Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract;*
>
> *7.3 Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;*
>
> *7.4 Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;*

7.5 Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds."

23. The agreement to sell was executed on 29.05.2006 stipulating a period of four months for its performance within which the sale deed was required to be executed and registered. From the material available on record, it is evident that an amount of Rs. 1,00,000/- was paid by the plaintiff to defendant No. 1 towards advance consideration. It further appears that immediately after expiry of the stipulated period, the plaintiff issued a notice to defendant No. 1 calling upon her to execute the sale deed. The record further establishes that two to three notices were subsequently issued by the plaintiff, followed by a publication in the newspaper, all of which indicate her continuous readiness and willingness to perform her part of the contract. Significantly, none of the aforesaid notices was replied to by defendant No. 1. As the sale deed was not executed by the defendant No. 1, the plaintiff filed the suit for specific performance of contract. Interestingly, defendant No. 1 denied her signature on the agreement to sell, however, the expert evidence established the contrary. Thus, despite having entered into the agreement to sell and received the advance sale consideration, defendant No. 1 failed to perform her part of the contract even after receipt of notice calling upon her to do so. Instead, she raised a false plea before the learned trial Court and denied the execution of the agreement which stood disproved by the expert evidence. The conduct of defendant No. 1 does not inspire confidence. It is a settled principle that a person seeking equity must do equity. Undoubtedly, the litigation has remained pending for more than 15 years. However, the mere passage of time, by itself, cannot constitute a sufficient ground to deny the plaintiff the relief of specific performance of the contract. The plaintiff has patiently pursued the litigation to secure the fruits of the decree passed in her favour and denying her the relief at this stage would result in grave injustice. Therefore, having regard to the evidence and material available on record and the principles laid down by the Hon'ble Supreme Court in *Kamal Kumar (**supra**)*, this Court is not inclined to

exercise its discretion to refuse the decree of specific performance in favour of the plaintiff. Accordingly, the contention advanced by Shri Malviya in this regard deserves to be and is hereby rejected.

24. At the same time, this Court is conscious of the fact that by now the market value of the property must have increased manifold. Therefore, having regard to the principles laid down by the Hon'ble Supreme Court in ***Basavraj v. Padmavathi and Another,*** **(2023) 4 SCC 239**, this Court considers it appropriate to direct the plaintiff to pay an additional sum of Rs. 1,00,000/- (Rupees One Lakh only) to defendant No. 1 over and above the sale consideration stipulated in the agreement to sell.

25. Consequently, subject to the aforesaid modification regarding payment of additional consideration, the appeal fails and is hereby dismissed.

26. The appellant shall bear the costs of the appeal. Let the decree be drawn accordingly.

Sd/-

(Sachin Singh Rajput)
JUDGE

H. Ansari