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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 93 of 2020

Narendra Kumar S/o Laxminarayan, Aged About 27 Years, R/o Village - Umreli, Ward No.- 7, Bazarpara (Sadakpara), Tehsil - Kartala, District - Korba Chhattisgarh.

... Appellant

versus

1 - Kirtichand (Died) Through Lrs.,

1(A) Smt. Rampyari Dewangan, W/o Late Kritichand Dewangan, Aged About 62 Years, R/o Mai Pardeshi Dewangan Ke Niwas Sthan Shiv Mandir Ke Pass, Nayapara, Janjgir - Champa, District - Janjgir - Champa Chhattisgarh.

2 - Laxmichand, S/o Laxman Prasad, Aged About 55 Years, R/o Village - Umreli, Ward No. - 7, Bazarpara (Sadakpara), Tehsil - Kartala, District - Korba Chhattisgarh.

3 - State of Chhattisgarh Through - Collector, Korba, District - Korba Chhattisgarh.

... Respondent(s)

For Appellants	:	Mr. Sanjay Patel, Advocate
For Respondent No.1 and 2	:	None
For Respondent No.3/State	:	Mr. Anand Gupta, Dy. G.A.

Hon’ble Shri Justice Sachin Singh Rajput

Judgment on Board

27/10/2026

1. Invoking the first appellate jurisdiction of this Court under Section 96 of the Code of Civil Procedure, 1908 (for short ‘the CPC’), this appeal has

been filed by the appellant/plaintiff assailing the legality, correctness and judicial propriety of the judgment and decree dated 22.01.2020 passed by the 1st Additional District Judge, Korba, District – Korba (C.G.) in Civil Suit No.39-A/2014.

2. By the impugned judgment and decree, the learned Trial Court dismissed the civil suit instituted by the appellant/plaintiff seeking specific performance of the contract in respect of the suit properties bearing Khasra Nos. 1417/3, 1419/2, 1150/1, 1151/1 and 171/1, admeasuring 0.328, 0.032, 0.020 and 0.012 hectares, respectively, situated at Village Umreli, P.H. No. 10, Tehsil Kartala, Up-Tehsil Barpali, District Korba (C.G.) (for short 'the suit property').

3. The parties are hereinafter referred to their status before the Trial Court.

4. According to the pleadings, the suit property was initially recorded in the name of Kirtichand and Lakshmichand, the original defendant No.1 and 2 respectively which was received in partitioned by the original defendant No.1. The original defendant No.1 for his domestic need, entered into an agreement to sell on 11.11.2011 with the appellant/plaintiff for a consideration of Rs.3,00,000/- and after receiving the entire sale consideration, executed agreement to sell and possession of the suit property was also handed over. Further pleadings reflects that according to wish of the plaintiff, the original defendant No.1 agreed to execute and register the sale deed of the suit property. Despite repeated request, when the execution and registration of the sale deed was not done by the original defendant No.1, the suit was filed. The original defendant No.1 had died and his legal representative defendant No.1a was substituted on record. The

defendants No.1 and 2 were proceeded ex-parte and have not filed any written statements.

5. On the basis of the above pleadings, the learned Trial Court framed the following points for determination:

> *"1. Whether the defendant No. 1, having agreed to sell the suit land for a consideration of Rs. 3,00,000/-, received the said amount from the plaintiff and executed an agreement to sell in favour of the plaintiff on 11.11.2011?*
> *2. Whether the plaintiff is in possession of the suit land?*
> *3. Whether the defendant No. 1 is avoiding and delaying the execution of the registered sale deed in respect of the suit land?*
> *4. Whether the suit land is owned by the plaintiff?*
> *5. Whether the plaintiff is entitled to get the registered sale deed of the suit land executed in his favour?*
> *6. Relief and costs of the suit?"*

6. The plaintiffs examined as many as three witnesses and exhibited nine documents.

7. The learned Trial Court, after proper appreciation of the evidence available on record, dismissed the Civil Suit filed by the plaintiffs. Hence, this First Appeal.

8. Mr. Patel, learned counsel for the appellant/plaintiff submits that the impugned judgment and decree dated 22.01.2020 is bad in law, perverse, erroneous and is contrary to the evidence available on record. He submits that the findings on Issue No.1 is contrary to the evidence. The plaintiff by leading cogent and prudent evidence has been able to prove the execution of the agreement to sell. He further submits that no written statement has been filed by the defendant No.2. There being no one to rebut the allegation of the plaintiff, the

defendants remained ex-parte and the Trial Court ought to have allowed the suit. The learned Trial Court has failed to properly appreciate the oral and documentary evidence adduced by the parties. Accordingly, the appeal deserves to be allowed.

9. Learned State counsel submits that the dispute is between the private parties and State is the formal party.

10. Heard learned counsel for the parties and perused the evidence available on record.

11. The point for determination before this Court is as to whether the learned Trial Court was justified in dismissing the suit of the plaintiff and the plaintiff is entitled for decree of specific performance of contract or not?

12. In order to succeed in case of specific performance of contract, the plaintiff was required to prove the Issue No.1 by leading cogent and prudent evidence. The learned Trial Court held it to be not proved. The reason best known to the plaintiff, the agreement to sell dated 11.11.2011 upon which the suit was based was not filed in original neither exhibited. As the original agreement to sell was not placed on record, the learned Trial Court has rightly decided the first point of determination as not proved. Ofcourse, the notarized copy of the agreement to sell was placed on record, however, the notary has not been examined. Thus, the suit was dismissed and the other points for determination was also decided against the appellant/plaintiff.

13. In the considered opinion of this Court, the findings recorded by the learned Trial Court are just and proper. The appellant/plaintiff has failed to discharge the burden of proving the execution of the agreement to sell. Merely because the defendants did not file their written statements

or lead any evidence in respect of the suit property, the appellant/plaintiff cannot be absolved of the burden of proving his own case by leading cogent and reliable evidence. The absence of a contest from the defendants does not, by itself, entitle the plaintiff to a decree for specific performance. It is a settled principle of law that the plaintiff must succeed on the strength of his own case and not on the weakness of the defence. Accordingly, the findings recorded by the learned Trial Court on the aforesaid issue do not call for any interference by this Court.

14. Accordingly, the present appeal fails and is hereby dismissed. No order as to cost. Decree be drawn accordingly.

Sd/-

(Sachin Singh Rajput)
Judge

Prakash