CGHC010365172024

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on 15.07.2026

Judgment pronounced on 28.10.2026

Judgment uploaded on 28.10.2026

FA No. 202 of 2024

Ashok Kumar Shrivastava S/o Late Shri Ayodhya Prasad, aged about 68 years R/o Village Pali, P.S. Pali, Dist - Korba Chhattisgarh

…Appellant/defendant

versus

Bhaiyalal Jaiswal S/o Late Shri Mannulal Jaiswal, aged about 66 years R/o Village Pali, P.S. And Tah. Pali, Dist - Korba Chhattisgarh

... Respondent/plaintiff

For appellant	**:**	Shri Ravindra Sharma and Shri Sahil Sahu Advocates
For Respondent	**:**	Shri Viprasen Agrawal, Advocate

DB:Hon. Shri Justice Parth Prateem Sahu and

Hon. Shri Justice Sachin Singh Rajput,

C A V Order

This appeal has been filed by the appellant/defendant against the judgment and decree dated 30.08.2024 passed by learned First District Judge Katghora, District Korba (CG) (hereinafter referred to as “Trial Court”)

in Civil Suit No. 02-A/2024 decreeing the suit instituted by the respondent/plaintiff for specific performance of contract.

Facts in short: The respondent/plaintiff had filed a suit for specific performance of contract dated 24.11.2011 stating that the appellant/defendant was the owner of the suit land bearing Khasra No. 16/5 area 0.25 acre situated at village Pali, P.S. and Tahsil Pali, District Korba (CG). On 24.11.2011 the appellant/defendant entered into an agreement to sale in presence of the witnesses with respect to the above suit land for total sale consideration of Rs.12,50,000/-. Out of that, an amount of Rs. 6,00,000/- was paid by respondent/plaintiff in advance and the appellant/defendant delivered the possession thereof to him. Document to this effect was notarized on same day at Katghora. As per the condition of the agreement the sale deed was to be executed by 31 March. In the agreement it was also mentioned that as the suit property was situated in the scheduled area, permission would be obtained from the District Collector Korba by the defendant to sell the same, and that after receiving the remaining sale consideration the appellant/defendant would execute the sale deed in favour of the respondent/plaintiff. The plea of the respondent/plaintiff has been that the appellant/defendant had received an amount of 2,60,000/- till 01.03.2014 in addition to what was received on the date of agreement.

2. According to the respondent/plaintiff, he was in contact with the appellant/defendant regularly, and whenever inquired about the permission for sale of the suit property he kept assuring that sale deed would be executed in his favour once the permission for the same was granted by the Collector. It was the case of the respondent/plaintiff that though the requisite permission was granted by Collector, Korba on 23.05.2014 in revenue case

No. 78/A-21/2011-12, it was not disclosed to him by the appellant/defendant, and that it is in the year 2016 he came to know about the same. Thereafter, he sent a legal notice on 10.06.2016 through his counsel and also got the public notice published in daily newspaper "Navbharat". Plaintiff took a plea that in between 2011 and 2016 the value of the property went up and it is for that the appellant/defendant was evading execution of sale deed although he had already received an amount of Rs. 9,50,000/-. Respondent/plaintiff took a plea that he was always ready and willing to perform his part of contract, and for that he had published a public notice in daily news paper on 01.06.2016. This however has been denied by the appellant/defendant by publishing the counter notice on 07.06.2016.

4. The appellant/defendant filed his written statement and refuted the claim of the respondent/plaintiff stating that he did not execute the agreement to sale dated 24.11.2011 in favour of the respondent/plaintiff, nor he signed the same. He pleaded that the respondent/plaintiff had forged his signature and therefore the agreement dated 24.11.2011 was not binding upon him. He has also denied the receiving of any amount from the respondent/plaintiff, delivering possession of the suit land to him or making an application before the Collector seeking permission to sell the that land. The appellant/defendant also stated that as the suit was not instituted within limitation, it ought to have been dismissed on that count alone and there was no question of readiness and willingness to be established by the respondent/plaintiff. The appellant/defendant has also pleaded that the respondent/plaintiff did not properly value the suit as prescribed under the law, therefore, it was sought to be dismissed.

5. On the aforesaid pleadings, the following issues were framed by the trial Court:-

क्रमांक	वादप्रश्न	निष्कर्ष
1	क्या प्रतिवादी अशोक कुमार श्रीवास्तव ने ग्राम पाली, पह० नं० 09/23 रा०नि०म० पाली तहसील पाली जिला कोरबा में स्थित भूमि ख०नं० 16/5 रकबा 0.25 एकड़ भूमि को वादी भैय्यालाल जायसवाल को 12,50,000/- रु० में विक्रय करने का सविदा किया गया था?	हाँ
2	क्या प्रतिवादी अशोक कुमार श्रीवास्तव ने उक्त वादभूमि को वादी भैय्यालाल जायसवाल के पक्ष में विक्रय करने हेतु अग्रिम राशि क्रमशः 6,00,000 + 2,60,000 + 50,000 + 40,000 कुल 9,50,000/-रु० प्राप्त किया है?	कुल 8,60,000/-रु० प्रतिवादी, वादी से प्राप्त किया था।
3	क्या वादी भैय्यालाल जायसवाल उक्त वादभूमि का संविदा पालन कराने का अधिकारी है?	हाँ
4	क्या वाद का मूल्यांकन उचित रूप से किया गया है?	हाँ
5	क्या वाद समयावधि में है?	हाँ
6	सहायता एवं वाद व्यय ?	अंतिम कंडिका 44 के अनुसार ।
	अतिरिक्त वाद प्रश्न	
7	क्या वाद प्रस्तुती दिनाँक 19.01.2017 को यह वाद इस न्यायालय की सुनवाई क्षेत्राधिकार में थी?	हाँ

6. Learned trial Court has decided all the issues in favour of the respondent/plaintiff and held that he is entitled to get the decree of specific performance of contract and to get the sale deed executed after payment of remaining amount (in addition Rs. 8,60,000/-) within a period of two months. Learned trial Court also held the defendant liable to bear the cost of registration of sale deed. Hence this appeal.

7. Learned counsel for the appellant/defendant submits that the judgment and decree dated 30.08.2024 passed by learned trial court is bad on facts and law. He submits that learned trial Court has failed to properly appreciate the oral and documentary evidence available on the record. He further submits that learned trial Court failed to consider that the appellant/defendant has specifically denied the execution of agreement dated 24.11.2011 stating that it was forged and fabricated and he never signed the same. According to the counsel for the appellant/defendant, learned trial Court erred in ignoring the fact that the agreement was executed on 24.11.2011 and the suit instituted on 19.01.2017 and therefore it was barred by limitation. Learned counsel submits that trial Court erred in ignoring the fact that the agreement to sale between the parties was contingent upon condition that the sale would be subject to the permission from the Collector and therefore such agreement is not enforceable and the appellant/plaintiff is not entitled to get the decree of specific performance of contract on the basis of such agreement. According to him, learned trial Court erred in ignoring that the time is essence of contract and the present suit has been filed much after expiry of period mentioned in the agreement to sale therefore the respondent/plaintiff is not entitled to get the decree of specific performance of contract. He submits that respondent/plaintiff is a practicing lawyer and was aware about the legal complexities and therefore he has prepared the document as per his convenience. Learned trial Court is argued to have failed to appreciate the fact that the respondent/plaintiff has neither averred in the plaint nor produced any material regarding the availability of fund, and thus he has not proved his readiness and willingness to perform his part of the contract, and for that also he is not entitled to get the decree of specific performance of contract.

8. On the other hand, counsel for the respondent/plaintiff supports the impugned judgment and decree to be fully justified and submits that learned trial Court has appreciated the evidence on record in its proper perspective, and therefore, the same is not required to be interfered with in this appeal.

9. Heard counsel for the parties and perused the material available on record.

10. The controversy needs to be examined in the light of competing claims of the parties, the evidence adduced and the applicable legal principles.

11. As regards the legality and validity of the agreement to sale dated 24.11.2011, the plaintiff who examined himself as PW-1 has stated that it bears signature of the appellant/defendant, that of himself and the witnesses namely Kaushal (PW-2), Bandhan Das (PW-3) and Nandu (PW-4). He has further stated that in addition to Rs. 06,00,000/- he paid Rs. 03,50,000/- in installments, and as the defendant had not issued any receipt for that, an endorsement to this effect is there on the back side of the agreement itself. These witnesses (PW-2 to PW-4) have also admitted their signature on the agreement to sale as also on its back side. They have also stated that appellant/defendant also put his signature in their presence. Since no personal vengeance on the part of these witnesses towards him has been pleaded, their testimony has has been rightly acted upon by the trial Court. The appellant/defendant is also stated to have received an amount of Rs. 08,60,000/- in advance from the respondent/plaintiff which is reflected in the order passed by the Collector Korba dated 23.05.2014 passed in permission proceedings in respect of sale of the suit land. Likewise, the Notary namely Satya Narayan Kashyap (DW-2) has stated that the sale agreement was authenticated by him in presence of the aforesaid three witnesses though he

could not produce the Notary Register and Receipt being smitten by termite. From the evidence of this witness, it is also evident that apart from the witnesses, both the parties had also signed the sale agreement and that after accepting an amount of Rs. 06,00,000/- in advance from the respondent/plaintiff, the appellant/defendant had told to execute the sale deed by 31st of March.

12. Though the handwriting expert Dr. Sunanda Dhenge (DW-3) examined by the appellant/defendant has stated that the signature present on the sale agreement was not of the person whose sample was given to her to be matched, another expert examined by the respondent/plaintiff namely Imran Khan (PW-5) has stated that the signatures of the sale agreement and that on the samples were of the same person. Since two different opinions have been given by the handwriting experts, the three witnesses referred to above become material who have categorically stated that the plaintiff and defendant put their signature on the sale agreement before the Notary (DW-2). Notary has also stated that both the parties put their signature on the sale agreement in presence of three witnesses. This has been confirmed by Imran Khan (PW- 5) inThe opinion given is from Ex.P. 15. Due to which it is proved that the agreement Ex.P. 01 bears the signature of the defendant Ashok Kumar Srivastava and this agreement has been executed by him. Thus there remains no dispute that the appellant/defendant had executed the sale agreement dated 24.11.2011 in respect of the suit land.

13. Respondent/Plaintiff has further stated in his affidavit that the appellant/defendant did not execute the sale deed for a period of two years from the date of agreement even after obtaining permission of the Collector, and continued to beguile him saying that he had not received the said

permission. According to him, in November 2013 he came to know that the appellant/defendant was trying to sell the suit land to someone else and on being asked, he told him that the permission case was sent to the Tehsildar Pali for inquiry where he (plaintiff) was required to go for giving statement. He then went to the Court of Tehsildar and got his statement recorded. Since he did not receive any information about the permission from the appellant/defendant, he personally went to the District Magistrate's office Korba on 31.05.2016 to inquire and came to know that the sale permission had already been granted on 23.05.2014, on the same day he obtained a certified copy thereof, published an advertisement in a daily newspaper, and on 10.06.2016 sent a registered notice to the appellant/defendant asking him to execute the sale deed after obtaining the remaining balance of Rs 03,00,000/- in his favor by 17.06. 2016 but he did not show any interest. The respondent/plaintiff is stated to have been always ready and willing to abide by the terms of the sale agreement. The appellant/defendant is stated to have been avoiding the execution of the sale deed on account hike of the value of the suit land. Public notice was also published in the daily newspaper Navbharat on 01.06 2016. Counter notice was also published by the appellant/defendant on 07.06.2016 in Navbharat daily newspaper. In that counter notice the appellant/defendant has mentioned that he executed the sale greement with the respondent/plaintiff on 24.11.2011 and an advance of Rs. 08,60,000/- was also received by him. By mentioning sequence of events already referred to above, he ultimately has stated that it is respondent/plaintiff who was reluctant in executing the sale deed though requested by him many a time. Though from the judgment under challenge the appellant/defendant is reflected to have issued a notice to the respondent/plaintiff on 17.07.2024 through his advocate asking him if he did

not take any interest in execution of the sale deed, he (defendant) would be free to sell the suit land to some other party by cancelling the agreement dated 24.11.2011 yet there is no pleading on record to this effect. According to the appellant/defendant, since the respondent/plaintiff did not take any interest, the sale agreement automatically stood cancelled. Be that as it may, even from the counter notice it is apparent that sale agreement dated 24.11.2011 was duly executed by the defendant, that he received an amount of Rs. 08,60,000/- from the respondent/plaintiff in advance as is clear from his cross examination itself. Though the appellant/claimant claims to have informed the respondent/plaintiff about the permission of sale having been granted by the Collector, Korba, there is nothing in evidence on record to show that the appellant/defendant ever gave in writing to the respondent/plaintiff the copy of the permission granted by the Collector, Korba regarding sale of the suit property. On the contrary, it is the respondent/plaintiff who after obtaining copy of the permission from the office of Collector, Korba insisted upon the appellant/defendant by issuing notice through advocate and getting the public notice published in newspaper to execute the sale deed after accepting the remaining consideration of Rs. 03,00,000/-. Readiness and willingness on the part of the respondent/plaintiff to execute the sale deed thus gets established and therefore the finding to this effect recorded by learned trial Court appears to be based on correct appreciation of the evidence of the witnesses.

14. As regards the issue of deficit court fee, since the appellant/defendant has not been able to prove as to on what basis he asserts this claim, and further looking to the fact that the sale consideration agreed upon was Rs. 12,50,000/-, the respondent/plaintiff affixed the court fee of Rs. 97,300/-

appears to be correct and in conformity with the provisions of Court Fee Act, 1870. This finding also appears to be fully justified. Likewise, the finding recorded by the trial Court on the issue of jurisdiction also appears to be correct. As regards the issue of limitation, the appellant/defendant has pleaded that the suit instituted on 19.01.2017 was barred by limitation because the agreement was executed on 24.11.2011 and stipulated execution of the sale deed by 31 March. This Court does not find any merit in this limb of the argument because Article 54 of the Limitation Act, 1963, prescribes a period of three years, which in this case commenced from the date when the respondent/plaintiff came to know about the order of the Collector i.e. on 31.05.2016. The finding of the trial Court on this issue also appears to be fully justified.

15. Thus what comes out in short is that though the appellant/defendant has denied execution of the agreement dated 24.11.2011 and alleged that the document is forged and fabricated yet the respondent/plaintiff who is examined as PW-1 has specifically deposed regarding execution of the agreement and the signatures of the parties. His testimony is duly corroborated by the evidence of Kaushal (PW-2), Bandhan Das (PW-3) and Nandu (PW-4) who have identified their signatures on the agreement and stated that the appellant/defendant signed the document in their presence. The evidence of the Notary (DW-2) also supports the respondent's case who has stated that the agreement was authenticated by him and that the parties signed it in the presence of the witnesses. Although the handwriting experts examined by the respective parties have expressed conflicting opinions, their say cannot be seen in isolation, and if seen in the light of testimony of the witnesses including that of the Notary, it provides sufficient support to the

case of the respondent/plaintiff. As already referred to above, the counter-notice dated 07.06.2016 also acknowledges the agreement and receipt of advance consideration of Rs. 08,60,000/- In view of the cumulative effect of the oral and documentary evidence, we find no sufficient ground to disbelieve the witnesses or to hold that the agreement was forged.

16. The Supreme Court in the matter of **J.P. Builders v. A. Ramadas Rao** reported in **(2011) 1 SCC 429** reiterating its earlier decision in the matter of **N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao** reported in **(1995) 5 SCC 115** explained that readiness and willingness are distinct but related requirements. Relevant portion reads thus:

> 20. Section 16 of the Specific Relief Act, 1963 provides for personal bars to relief. This provision states that specific performance of a contract cannot be enforced in favour of a person-
>
> a) who would not be entitled to recover compensation for its breach; or
>
> b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
>
> c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.
>
> Explanation.- For the purposes of clause (c),-
>
> (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or

to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

21. Among the three sub-sections, we are more concerned about sub-section(c). "Readiness and willingness" is enshrined in clause (c) which was not present in the old Act of 1877. However, it was later inserted with the recommendations of the 9th Law Commission's report. This clause provides that the person seeking specific performance must prove that he has performed or has been ready and willing to perform the essential terms of the contract which are to be performed by him."

"22. The words "ready" and "willing" imply that the person was prepared to carry out the terms of the contact. The distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness."

17. Readiness principally concerns financial capacity whereas willingness is assessed from the plaintiff's conduct and intention to perform the contract. The readiness and willingness must be considered from the evidence as a whole and not merely from the absence of a particular document demonstrating the availability of funds. Upon consideration of the evidence relied upon by the trial Court, we find no sufficient reason to interfere with its conclusion that the respondent established his entitlement to specific performance. So far as the case in hand is concerned, the respondent/plaintiff, as is evident from the record, has always been ready and willing to perform his part of the contract. It is he who after obtaining certified

copy of the collector's order two years after it having been passed, remained persistent in persuading the appellant/defendant to execute the sale deed. Not only this, major chunk of the sale consideration amounting to Rs. 08,60,000/- was already paid by the respondent/plaintiff and only Rs. 03,00,000/- remained which he always had with him.

18. In aforesaid view of the matter, this Court is of the considered opinion that the findings recorded by learned trial Court on all the issues are based on due apprecation of the evidence available on record. This Court does not find any flaw much less the legal one worth interference in this appeal.

19. Appeal thus being without any substance is liable to be and is hereby dismissed. The judgment and decree dated 30.08.2024 passed by the learned trial Court decreeing the suit for specific performance of the agreement to sale dated 24.11.2011 are hereby affirmed. No order as to costs. Decree to be drawn accordingly.

Sd/- **Sd/-**

(Parth Prateem Sahu) **(Sachin Singh Rajput)**
Judge **Judge**

Jyotishi

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