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HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal No. 193 of 2016

S. M. Umak (Sanjay Madhukarrao Umak) S/o Shree M.G. Umak, Aged About 40 Years, R/o 144, Street 11, Ward No.11, Ramnagar Kohka, P.S., P.O.- Supela, Bhilai, District Revenue And Civil-Durg, Chhattisgarh.

... Appellant/Plaintiff

versus

1 Kalu Ram (Died) Through L.R.S. As Per The Hon'ble Court Order Dated 22-10-2021.

1.1 - Kanta Prashad Sinha @ Parghania S/o Late Shri Kalu Ram R/o Village Bhardakala, Police Station Arjunda, Tahsil Gunderdehi, District Durg Chhattisgarh.

2 - Yoganandan Yadav S/o Late Shree Ramprashad Yadav, R/o 12- Adarsh Nagar, P.S. And District- Purvi Singh Bhumi Jamshedpur, Jharkhand.

3 - State Of Chhattisgarh, Through Collector, Durg, District- Durg, Chhattisgarh.

... Respondents/Defendants

For Appellant : Mr. Yogesh C. Pandey, Advocate
For Respondent No. 1 : None though served
For Respondent No. 2 : Mr. Hanuman Prasad Agrawal,
Advocate
For Respondent No.3 : Mr. Rahul Tamaskar, G.A.
(State)

DB- Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Sachin Singh Rajput
Judgment On Board
04.08.2025

Sanjay K. Agrawal, J.

1. Appellant/plaintiff has preferred this first appeal under Section 96 of CPC calling in question the legality, validity and correctness of impugned judgment and decree dated 26/08/2015 passed by learned 6th Additional District Judge, Durg in Civil Suit No. 49-A/2013 by which plaintiff's suit has been dismissed by that Court finding no merit.

(For the sake of convenience, the parties will hereinafter be referred to as per their status and ranking given in the plaint before the trial Court.)

2. Plaintiff filed a suit for specific performance of contract and for declaration that the sale deed dated 24/06/2008 executed by defendant No. 1 in favour of defendant No. 2, thereby, alienating a part of the suit land, is null and void and for permanent injunction and possession stating *inter alia* that he entered into an agreement of sale with defendant No. 1 on 29/05/2003 (Ex. P/1) with regard to suit land bearing Khasra No. 5243 area 2.02 hectares i.e. 5.05 acres situated at Village Kohka, Shantinagar for which he paid an advance amount of Rs. 50,000/- and it was agreed that defendant No. 1 will get the suit land demarcated within two years from the date of the agreement i.e. 31/05/2005 and get it registered in favour of the plaintiff and thereafter, receive the remaining consideration amount at the rate of Rs. 3,50,000/- per acre which totals to Rs. 17,17,000/- (excluding Rs. 50,000/-), but even after completion of the two years, defendant No. 1 did not carry out demarcation of the suit land and therefore, the sale deed could not be executed. It has further been pleaded by the plaintiff that he was ready and willing to

perform his part of the contract but on 24/06/2008, defendant No. 1 executed a sale deed in favour of defendant No. 2 and sold a part of suit land bearing Khasra No. 5243 area 0.80 hectare i.e. 2 acres to him which led to the filing of the instant suit for above-mentioned reliefs.

3. Defendant No. 1 filed his written statement and opposed the plaint averments stating that plaintiff did not have requisite sale consideration and therefore, he was not ready and willing to perform his part of the contract. It was further stated that he executed the sale deed in favour of defendant No. 2 with the consent of the plaintiff, as such, suit deserves to be dismissed.
4. Defendant No. 2 also filed his written statement and stated that he is *bona fide* purchaser of the suit land as the period for specific performance of contract ended on 31/05/2008 and thereafter, he has purchased 2 acres of suit land from defendant No. 1 on 24/06/2008. He has further stated that plaintiff's suit is barred by

limitation, therefore, it deserves to be dismissed.

5. Learned trial Court framed as many as 8 issues and answered them as stated below :-

वाद प्रश्न	निष्कर्ष
1) क्या वादी एवं प्रतिवादी क्र 1 के मध्य वादग्रस्त भूमि ख. न. 5243 रकबा 5.02 एकड़ बाबत दिनांक 29/05/2003 को विक्रय अनुबंध निष्पादित हुआ था ?	"हाँ"
2) क्या उक्त विक्रय अनुबंध के परिपेक्ष्य में वादी द्वारा प्रतिवादी क्र. 1 को 50,000/- रुपये (पचास हजार रुपये) की अग्रिम राशि बतौर बयाना दी गयी थी ?	"हाँ"
3) क्या वादी उभयपक्षों के मध्य निष्पादित विक्रय अनुबंध दिनांक 29/05/03 के मर्मभूत निबंधनों का, जो उसके द्वारा पालन किये जाने हैं, उसने पालन कर दिया है, अथवा पालन करने के लिये वह सदा तैयार और रजामंद रहा है ?	"नहीं"
4) क्या वादी द्वारा नियमानुसार न्यायशुल्क अदा नहीं किया गया है ?	"हाँ"
5) क्या इस न्यायलय को सुनवायी का छेत्राधिकार प्राप्त नहीं है ?	"नहीं"
6) क्या प्रस्तुत वाद समयावधि में है ?	"नहीं"
7) क्या वादी वांछित अनुतोष प्राप्त करने का अधिकारी है ?	"नहीं"
8) सहायता एवं वाद व्यय ?	वादी का दावा कंडिका 39 के अनुसार अस्वीकार

6. In sum and substance, the trial Court has held that plaintiff and defendant No. 1 entered into an agreement of sale on 29/05/2003 with regard

to suit land bearing Khasra No. 5243 area 5.05 acres for which plaintiff paid an advance of Rs. 50,000/- to defendant No. 1, however, plaintiff was not ready and willing to perform his part of the contract. It has further been held that the plaintiff has not paid proper court fee and his suit is barred by limitation, which led to the filing of this first appeal by the plaintiff.

7. Mr. Yogesh C. Pandey, learned counsel appearing on behalf of the appellant/plaintiff, would submit that the suit was well within limitation as prescribed under Article 54 of Schedule to the Limitation Act, 1963 and since defendant No. 1 did not carry out demarcation of the suit land as agreed in the agreement to sale, the sale deed could not be executed and defendant No. 1 is liable for breach of terms of the contract as he alienated a part of the suit land in favour of defendant No. 2, which is arbitrary and illegal. He would further submit that proper court fee has been paid by the plaintiff as he has only sought declaration of sale deed dated 24/06/2008 executed by defendant No. 1 in favour of defendant No. 2 to be null and void and he

himself was not a party to the sale deed, therefore, the impugned judgment and decree deserve to be set aside. He would rely upon the decision rendered by the Supreme Court in the matter of Rathnavathi and Another v. Kavita Ganashamdas¹ to buttress his submission.

8. None appeared on behalf of respondent/defendant No. 1, though served.

9. Mr. Hanuman Prasad Agrawal, learned counsel appearing on behalf of respondent/defendant No. 2, would submit that defendant No. 2 is *bona fide* purchaser of part of the suit land which he has purchased from defendant No. 1 after making due consideration that too, on 26/06/2008 i.e. after the period of specific performance of contract ended on 31/05/2008, as such, the instant appeal is liable to be dismissed.

10. We have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the record with utmost circumspection.

11. After hearing learned counsel for the parties and after going through the record, following

¹ (2015) 5 SCC 223

are the points for determination in this appeal :-

(1) Whether the trial Court is justified in holding that plaintiff was not ready and willing to perform his part of the contract ?

(2) Whether plaintiff's suit was barred by limitation ?

(3) Whether proper court fee has been paid by the plaintiff ?

Answer to Question No. 1 :-

12. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 16(c) of the Specific Relief Act, 1963 (hereinafter the "Act of 1963") prior to its amendment dated 01/10/2018, which states as under :-

"16. Personal bars to relief. - Specific performance of a contract cannot be enforced in favour of person -

(a) and (b)

(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."

13. In order to enforce the plea of specific performance of a contract, it is incumbent on the party to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. Section 16(c) of the Act of 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. In a suit for specific performance, the onus is on the plaintiff to prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract.

14. There is a distinction between the terms "readiness" and "willingness" and while both are requisites for a suit for specific performance, "readiness" means one's capacity to perform the contract which would also include his financial position whereas "willingness" relates to the conduct of such party. For examining "readiness and willingness", the party's conduct prior to and subsequent to filing of the suit becomes relevant. We will discuss both the terms i.e.

"readiness" and "willingness" in context of the present case one by one.

"Readiness"

15. In the instant case, suit land bearing Khasra No. 5243 area 5.05 acres originally owned by defendant No. 1 was made the subject of agreement to sale dated 29/05/2003 and it was agreed that plaintiff will pay an amount at the rate of Rs. 3,50,000/- per acre which totals to Rs. 17,67,000/- and defendant No. 1 will get the said suit land demarcated within two years, however, only Rs. 50,000/- has been paid by the plaintiff to defendant No. 1 as advance amount and there is no averment in the plaint that thereafter he has made any payment to defendant No. 1 or that he has the financial capacity to pay the remaining balance amount to defendant No. 1 nor any document like his bank passbook, etc. has been filed to prove that he is financially able to make payment of sale consideration in favour of defendant No. 1. Plaintiff ought to have demonstrated his readiness from the date of agreement to sale till the date of decree that he was having

requisite fund and had the financial capacity to pay the amount in question i.e. Rs. 17,17,000/- (excluding Rs. 50,000/-) in order to perform his part of the contract, however, no evidence has been brought on record in this regard to demonstrate his readiness to perform his part of the contract. He has only blamed defendant No. 1 for not getting the suit land demarcated and stating that as such, he could not perform his part of the contract and execute the sale deed. As such, plaintiff has miserably failed to prove that he was ready to perform his part of the contract by showing that he was financially able and sound to make payment of the sale consideration amount.

"Willingness"

16. Admittedly, the agreement to sale was executed by plaintiff and defendant No. 1 on 29/05/2003 (Ex. P/1) and the date fixed for performance of contract by that agreement was two years from the date of agreement i.e. 31/05/2005. Thereafter, plaintiff did not take any action, not even a legal notice was issued and served to defendant No. 1 and ultimately, the suit was filed by him as late as on 29/07/2008 i.e. after

completion of 5 years from the date of agreement to sale. Moreover, nothing has been brought on record by the plaintiff to prove that he has ever contacted defendant No. 1 in this period of 5 years from the date of agreement to sale till the date of filing of the suit to make payment of balance consideration amount to perform his part of the contract and no reasonable explanation has been given by the plaintiff in this regard.

17. At this stage, the decision rendered by the Supreme Court in the matter of Pydi Ramana alias Ramulu v. Davarasety Manmadha Rao² may be noticed herein profitably wherein their Lordships of the Supreme Court have held that steps taken by the plaintiff from the date of agreement to the date of filing suit will have to be explained and observed as under :-

“19. The ratio of the above judgment in all force would be applicable to the facts on hand in the instant case. The agreement of sale (Ext. A-1) was executed on 7-6-1993 and the date fixed for execution of the sale deed was one year from the date of measurement of the suit scheduled property. Undisputedly no such measurement was carried out and the plaintiff has not raised his little finger in this regard from the date of execution of agreement

2 (2024) 7 SCC 515

till he got issued legal notice dated 30-5-1996 that is almost for a period of 3 years and suit came to be filed only on 9-6-1997 at the fag end of the expiration of the limitation. The long unexplained delay in not taking any reasonable steps as is expected from a reasonable person is itself sufficient to disentitle the plaintiff to an equitable relief.³ It is no doubt true that suit for specific performance can be filed even on the last date of the limitation as prescribed under Article 54 of the Limitation Act. However, the steps taken by the plaintiff during this period, namely, from the date of agreement till date of filing of suit will have to be explained in the plaint and proved in the evidence which is lacking in the instant case."

- 18.** In the instant case, plaintiff has failed to explain the delay of five years from the date of agreement to sale i.e. 29/05/2003 (Ex. P/1) till the date of filing suit i.e. 29/07/2008 and what steps had been taken by him to perform his part of the contract in the said period and thus, for the aforesaid reasons, we hold that plaintiff has failed to prove his willingness to perform his part of the contract and the finding recorded by the trial Court in this regard that plaintiff was not ready and willing to perform his part of the contrary is well-merited and we

3 U.N. Krishnamurthy v. A.M. Krishnamurthy, (2023) 11 SCC 775

hereby affirm the said finding recorded by the trial Court.

Answer to Question No. 2 :-

- 19.** Admittedly, vide agreement dated 29/05/2003 (Ex. P/1), the period for performance of contract was within two years i.e. 31/05/2005 and within that period, demarcation was to be done by defendant No. 1 and plaintiff had to pay Rs. 17,17,000/- in favour of defendant No. 1 as sale consideration but neither demarcation was done by defendant No. 1 nor sale consideration was paid by the plaintiff and ultimately, suit was filed by the plaintiff on 29/07/2008 i.e. after completion of 5 years from the date of agreement to sale.
- 20.** At this stage, the provision contained under Article 54 of the Schedule to the Limitation Act may be noticed herein profitably :-

	Description of Suit	Period of Limitation	Time from which period begins to run
54.	For specific performance of a	Three years	The date fixed for the performance,

	contract.		or, if no such date is fixed, when the plaintiff has notice that performance is refused.
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21. A careful perusal of the aforesaid Article would show that when the time has been fixed for performance of contract, the time begins to run from the date expressly fixed by the parties.

22. In the matter of Ahmadsahab Abdul Mulla (2) (Dead) by proposed LRs. v. Bibijan and Others⁴, the question for consideration before their Lordships of the Supreme Court was “whether the use of the expression “date” use in Article 54 of the Schedule to the Limitation Act, 1963 is suggestive of a specific date in the calender ?” to which their Lordships answered in affirmative and observed in paragraphs 10, 11 and 12 as under :-

- “10. “Fixed” in essence means having final or crystallised form or character not subject to change or fluctuation.
- 11. The inevitable conclusion is that the expression “date fixed for the performance” is a crystallised notion. This is clear from the fact that the

4 (2009) 5 SCC 462

second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

12. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression "date" used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits."

- 23.** Reverting to the facts of the case, it is quite vivid that the trial Court has expressly held that the parties herein had fixed the date for performance of the contract i.e. within two years from the date of agreement i.e. upto 31/05/2005 and thereafter, the period of limitation which is three years, as provided under Article 54 of the Schedule to the Limitation Act, began to run from the date fixed for performance of the contract i.e. from

31/05/2005 and it ended on 30/05/2008, however, the suit was filed by the plaintiff on 29/07/2008 and it was apparently hit by first part of Article 54 of the Schedule to Limitation Act. Thus, the said finding recorded by the trial Court that plaintiff's suit is evidently barred by limitation is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record. We hereby affirm the said finding of the trial Court. In view of the aforesaid discussion, the decision relied upon by learned counsel for the appellant in the matter of Rathnavathi (supra) is distinguishable and would not be applicable in the facts of the present case.

Answer to Question No. 3 :-

- 24.** Lastly, the trial Court has held that plaintiff has not paid proper court fees as though he has sought the relief of declaration of sale deed dated 26/06/2008 executed by defendant No. 1 in favour of defendant No. 2 as null and void but no cancellation of the said sale deed has been

sought and therefore, requisite court fees has not been paid by him.

25. The Supreme Court, in the matter of Suhrid Singh alias Sardool Singh v. Randhir Singh and Others⁵, has held that when the plaintiff is non-executant/is not party to sale deed, seeking relief of declaration of sale deed would be sufficient and he need not pay ad valorem court fees on the sale consideration mentioned in the sale deed.

26. In the facts of the present case, the finding recorded by the trial Court that plaintiff has not paid proper court fees is incorrect. As plaintiff, being the non-executant in the sale deed, had only sought declaration of sale deed dated 26/06/2008 as null and void, therefore, we are of the opinion that requisite court fees has been paid by him and the finding recorded by the trial Court in this regard is not correct.

Conclusion :-

27. In view of the aforesaid legal discussion and analysis, we are of the considered opinion that learned trial Court has rightly dismissed the

⁵ (2010) 12 SCC 112

suit of the appellant/plaintiff holding it to be barred by limitation and further holding that plaintiff was not ready and willing to perform his part of the contract. We do not find any infirmity/illegality warranting interference with the impugned judgment and decree in exercise of jurisdiction under Section 96 of CPC.

28. This first appeal, being devoid of merits, deserves to be and is hereby dismissed. No cost(s).

29. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Sachin Singh Rajput)
Judge