



CGHC010105702014

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 186 of 2014

1 - Rajendra Kumar S/o Jethuram Aged About 35 Years R/o Village- Sodhi Nijam, Tah. Mungeli, Distt. Mungeli At Presently R/o Government Higher Secondary School, Pathariya, Tah. Pathariya, Distt. Mungeli C.G.

... Appellant(s)

versus

1 - Surendra Kumar S/o Baisakhu Aged About 24 Years R/o Village- Sodhi Nijam, Post Office- Sildaha, P.S. And Tah. Pathariya, Distt. Mungeli C.G.

2 - State Of Chhattisgarh Thru- Collector, Mungeli, Distt. Mungeli C.G.

... Respondent(s)

For Appellant(s)	: Shri C.K.Sahu, Advocate
For Respondent No.1	: Shri Parth Shrivastava, Adv. through V.C.
For Respondent/State	: Ms. Veethika Choubey, Panel Lawyer

{{Hon'ble Shri Justice Sachin Singh Rajput}}

Judgment on Board

21/08/2026

This is an appeal under Section 96 of the Civil Procedure Code, 1908 (for short 'CPC') assailing legality, correctness and judicial propriety of judgment and decree dated 31/10/2014 passed in Civil Suit No.22-A/2012 by the Additional District Judge, Mungeli, District-Mungeli (CG).

2. The appellant is the defendant No.1 and respondent No.1 is the plaintiff before the learned trial Court. The parties are hereinafter referred to as their status

before the trial Court. The plaintiff filed a suit for specific performance of contract in respect of the suit property which is comprised in piece of khasra no.64 and 65 total area 1.31 acres situated at Village-Sodhi, P.H.No.37, RIC and Tahsil-Pathariya, Dist.-Mungeli, CG. The plaintiff entered into an agreement to sell with defendant No.1 for a consideration of Rs.1,83,400/- in respect of the suit property on 02/07/2010 and in presence of the witnesses, received Rs.1,80,000/- by defendant No.1 from the plaintiff. It was agreed upon that after receiving remaining amount of sale consideration on 13/07/2010, the sale deed of the suit property would be executed by defendant No.1 in favour of the plaintiff. Despite that, the defendant No.1 failed to execute the sale deed.

3. On 16/11/2020, a legal notice was sent by the plaintiff to defendant No.1 and requested to get the sale deed registered and after receipt of notice, defendant No.1 assured execution of sale deed, however, the same was done despite repeated oral requests made by the plaintiff. The plaintiff was always ready and willing to execute the sale deed and thus, seeking relief of specific performance of contract, the suit was filed.

4. Defendant No.1, by filing written statement, denied the averments of the plaint and stated that the suit property was not recorded in his name. Neither any agreement to sell was executed on 02/07/2010. It is pleaded that the stamp was purchased on 19/05/2010 and forged agreement and there is no signature of defendant No.1 on the same.

5. On the basis of above broad pleadings, the learned Tribunal framed following substantial question of law -

	Issues	Conclusion
1	Whether the defendant No.1 had executed a firm deal to sell the land owned and possessed by him in Khasra No.64 and 65 measuring 1.31 acres, situated in village Sodhi, P.H. No. 37, R.N.M., Tehsil and District Mungeli to the plaintiff for Rs.1,83,400/-?	Yes
2	Whether the defendant No.1 received Rs.1,80,000/- from the plaintiff as per the sale deed dated 2/7/2010 and executed the agreement on 3/7/2010?	Yes

6. The plaintiff examined himself and two other witnesses whereas the defendant No.1 examined himself and one other witness.

7. After assessment of evidence available on record, learned trial Court passed the decree which led to filing of this appeal.

8. Learned counsel for the appellant submits that the finding recorded by the learned trial Court is absolutely unjustified, perverse and contrary to the evidence available on record. He submits that the respondent/plaintiff could not prove the execution of sale agreement and receipt of the said amount and despite of that, decree was passed. He further submits that the plaintiff could not prove his readiness and willingness to perform his part of contract and thus, no decree of specific performance could be passed.

9. Learned counsel for respondent No.1 submits that the plaintiff has proved his pleadings by leading cogent and prudent evidence. The execution of agreement has been proved along with the receipt of the said amount. He submits that the plaintiff is always ready and willing to perform his part of contract. This agreement was executed on 02/07/2010 and according to which, the sale deed was to be executed on 13/07/2010. When the same was not done, immediately on 16/11/2010, a legal notice was sent. Despite repeated requests, execution of sale deed could not be done by defendant No.1. Thus, the suit was filed within a reasonable period of time. Thus, the decree of specific performance should be granted dismissing the appeal.

10. Learned State counsel submits that the dispute is essentially between the private parties and the State is a formal party.

11. Heard learned counsel for the parties and perused the record.

12. Issue No.1 is in respect of execution of the agreement to sell whereas issue No.3 is in respect of the fact whether such agreement was forged or fabricated.

13. Learned trial Court, on assessment of evidence available on record found the issue no.1 to be proved and issue No.3 as not proved. Perusal of agreement to sell would indicate that there appears to be signature of Rajendra Kumar though

the signature was denied by defendant No.1. Learned trial Court found that on the back side of the stamp purchased for executing the sale agreement, the purchaser's name was mentioned as Rajendra Kumar i.e. defendant No.1. The signature put forth by the person on the back portion of the agreement to sell and on agreement to sell appears to be of the same person. Proof of agreement was made by the plaintiff in his statement who has categorically deposed that the agreement was executed and Rs.1,80,000/- was paid to the defendant No.1. Two attesting witnesses were also examined by the plaintiff who also supports the case of the plaintiff. Apart from the plaintiff, Gotilal (PW3) is the important witness who has categorically deposed that the agreement was executed in his presence and Rs.1,80,000/- was paid in front of him to defendant No.1 and currency notes of Rs.100 denomination were given to him. The glaring evidence of defendant No.1 and also the testimony of the witnesses are putting questions to them with regard to execution of sale deed and as to whether they have received the amount or not and whether they have read over the recital of the agreement but on overall scrutiny of these witnesses makes it adamantly clear that the agreement to sell was executed and there was an exchange of Rs.1,80,000/- between the defendant No.1 and the plaintiff. The learned trial Court also placing reliance upon Ex.D/1 and photograph and signature of the plaintiff gave a categorical finding that even if the defendant No.1 denies signature on sale deed, it would not mean that there is no signature and it cannot be said that agreement to sell is not executed. From the evidence on record, the finding so recorded with regard to issue no.1 and 2 appears to be based on proper appreciation of evidence.

14. The issue no.4 with regard to readiness and willingness was found to be positive. As discussed herein above, out of Rs.1,83,400/-, Rs.1,80,000/- was paid by the plaintiff at the time execution of sale agreement. The time frame for execution of sale deed was 13/07/2010 and it appears that defendant No.1 did not execute the sale deed and notice dated 16/11/2010 was also issued.

15. From the evidence on record, it is quite vivid that as sufficient amount of sale consideration was already paid, thus the readiness and willingness of the plaintiff to perform his part of contract cannot be said to be not there. Apart from the evidence of the plaintiff, it is quite vivid that immediately after the date of execution of the sale deed, they sent a legal notice and made repeated efforts

requesting the defendant No.1 to execute the sale deed. The suit was filed in the year 2012. From the evidence, it is quite vivid that he was ready and willing to execute the sale deed, therefore, finding of the learned trial Court in respect of issue No.4 does not require any interference by this Court. Thus, this Court does not find that the learned trial Court has committed an error in deciding the aforestated issues against the defendant No.1.

16. The submission made by Shri C.K.Sahu that though the trial Court has given decree of specific performance and also decree of refund of the amount, however, the defendant is ready to refund the amount at this stage.

17. Shri Parth Shrivastava submits that the plaintiff has been waiting for utilising the fruits of the decree, therefore, the decree may not be disturbed.

18. Considered their rival submission on this point. According to the defendant No.1, another defence was taken by him that the suit property was sold by execution of agreement, however, no sale deed is part of the record. The agreement was executed on 02/07/2010. The decree was passed on 31/10/2014, the appeal was admitted and effect and operation of the impugned judgment and decree was stayed on 19/12/2014 and also looking to the fact that the learned trial Court has not granted decree of specific performance rather given an option to the defendant No.1 to refund back the amount, meaning thereby, if the defendant No.1 does not execute the sale deed, he had an option to refund the amount of Rs.1,80,000/- along with interest.

19. Taking into consideration the above facts, this Court is inclined to modify the decree. While setting aside the decree of specific performance, the decree of refund of amount of Rs.1,80,000/- is hereby affirmed as granted by the learned trial Court. The appeal thus allowed in part. No order as to cost. Decree be drawn accordingly.

Sd/-

(Sachin Singh Rajput)
JUDGE