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**(2005) 04 MP CK 0053**  
**In the Madhya Pradesh High Court**  
**Case No : First Appeal No. 6 of 1995**

Khanhiya alias Kaniram and Others

APPELLANT

Vs

Siddhnath and Others

RESPONDENT

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**Date of Decision :** 01-04-2005

**Acts Referred:**

Specific Relief Act, 1963 — Section 22

**Citation :** AIR 2005 MP 238 : (2005) ILR (MP) 736 : (2005) 3 MPHT 481 : (2005) 3 MPLJ 316

**Hon'ble Judges :** S.K. Gangele, J

**Bench :** Single Bench

**Advocate :** G.M. Chafekar, sisted by C.S. Ujjainiya, for the Appellant; R.C. Chhazed, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.K. Gangele, J.

This is defendants first appeal against the judgment and decree of specific performance for contract passed in C.S. No. 7-A/1978.

Plaintiff filed a suit for specific performance of contract and declaration, declaring the sale-deed dated 14-3-1978 null and void. He pleaded that defendant No. 1 Kanahiya entered into an oral agreement with him on 27-1-1978 to sell the land of Survey No. 154 area 6.627 hectares situated at Village Sangi Bad (hereafter called as "suit land") in a consideration of Rs. 17,000/-. He paid Rs. 10,000/- to the defendant No. 1 on the aforesaid date and it was agreed that balance amount he paid at the lime of registration of sale-deed, possession of the suit land was also delivered to him on the same day by the defendant No. 1. On 14-3-1978 the defendant No. 1 sold the suit land to defendant Nos. 2 and 3 through their father Bane Singh in spite of his objection before the sub-Registrar and notice to Bane Singh and the defendant No. 1 about the earlier agreement.

The defendant No. 1 denied the fact that there was any oral agreement to sale of

the suit land in favour of the plaintiff on 14-3-1978 or he received consideration of Rs. 10,000/- from the plaintiff or possession was delivered to him. He further submitted that he sold the land to the defendant Nos. 2 and 3 by a registered sale-deed and put them in possession of the suit land. The defendant Nos. 2 and 3 also denied that there was any agreement between plaintiff and defendant No. 1 to sale the suit land in his favour or they had any knowledge of such agreement. They further pleaded that they purchased the land in a valid consideration and are in possession over it.

The Trial Court after appreciation of oral and documentary evidence held that there was an oral agreement between the plaintiff and defendant No. 1 to sale the suit land and he received Rs. 10,000/- as consideration from the plaintiff on the date of agreement and delivered possession of the suit land to the plaintiff and defendant Nos. 2 and 3 had the knowledge about the aforesaid agreement. The defendants purchased the suit land subsequently. It having knowledge of the agreement hence the sale-deed executed in favour of the defendant Nos. 2 and 3 by the defendant No. 1 is void and plaintiff is entitled a decree of specific performance of contract about the suit land.

The learned Senior Counsel for the appellants submitted that findings of the Trial Court are perverse. There was no agreement between plaintiff and defendant No. 1 to sale the suit land neither the defendant received any consideration. The pleadings about oral agreement are vague and evidence of the witnesses are full of contradictions and unreliable hence a decree of specific performance can not be granted by the Court in such circumstances. He relied on judgment of the Hon'ble S.C. reported in 1998 (5) SCC 387, in support of his contention.

The learned Counsel for the respondents submitted that judgment of the Trial Court is as per law. It has properly appreciated the evidence. There was a concluded agreement of sale of the suit land in favour of the plaintiff and defendant Nos. 2 and 3. They had no knowledge of it, hence the impugned judgment and decree does not call for any interference.

It is clear from the facts that plaintiff prayed specific performance of the contract, which is oral one. As per the pleadings the defendant No. 1 agreed to sale the suit land on 27-1-1978 in a total consideration of Rs. 17,000/- and received Rs. 10,000/- as advance and agreed to receive remaining amount of Rs. 7000/- at the time of registration. Possession of the suit land was also said to be delivered to the plaintiff.

The plaintiff deposed before the Court that defendant No. 1 agreed to execute the sale deed within one month from the date of agreement and he contacted him after one month but he refused to do so then he came to know that he wanted to sell the land to the defendant Nos. 2 and 3 so he filed an objection before the Sub-Registrar about the registration and also served notices. He cultivated the land after the agreement. The second witness of the plaintiff P.W. 2 Hamid Khan deposed that he was present on the date when plaintiff and

defendant No. 1 entered into the oral agreement and a consideration of Rs. 10,000/- was paid to the plaintiff by the defendant No. 1 and he further agreed to execute the registree of the land within a period of one month. Since the agreement, plaintiff had been cultivating the suit land. The witness further stated that there was no need of written agreement because plaintiff and defendant No. 1 are family members. Another witness of the plaintiff Bhagirath (P.W. 3) stated that he had been watching the possession of the plaintiff over the suit land since last 17 years, his fields are adjacent to the suit land.

The defendant No. 1 Kaniram in his deposition specifically denied that there was any agreement with the plaintiff to sell the suit land or he received consideration of Rs. 10,000/- from him or delivered possession of suit land to him. He said that he sold the land to Banesingh, his sons and received the consideration which was deposited in the bank, employee of the Bank Mr. L.D. Fardosia (P.W. 1) proved the said fact that Rs. 15,000/- were deposited in the Bank Account of the defendant No. 1 on 13-3-1978. Bane Singh (D.W. 2) also deposed that his sons received the suit land by registered sale-deed after paying Rs. 16,000/- since then he had been in possession of the suit land. Other witnesses of the defendants Ramprasad (D.W. 3) and Ganpatsingh (D.W. 5) also supported the possession of the defendant Nos. 2 and 3 over the suit land.

If plaintiff's evidence is to be believed, his witness stated that at the time of oral agreement, i.e., 27-1-1978 it was agreed to complete registration within a period of one month. But no notice was served by the plaintiff to the defendant No. 1 within such period about the registration of the suit land. He first filed an objection before the Sub-Registrar on 6-3-1978 and served notices to the defendant No. 1 and Bane Singh, latter of the defendant Nos. 2 and 3. On 10-9-1978. There is a dispute with regard to delivery of possession. It can not be ascertained from the oral evidence. Before the Revenue Authorities both the parties filed litigation and finally the S.D.O. vide order dated 15-1-1986, Ex. P-9, cancelled the order of the Naib Tehsildar recording possession of plaintiff over the suit land. The name of defendant Nos. 2 and 3 got recorded over the suit land in mutation proceedings. Copy of the Rin Pustika has been filed by the defendants as Ex. D-6. In such circumstances, the findings of the Trial Court that possession was delivered to the plaintiff of the suit land can not be upheld.

Under such circumstances a decree of specific performance can be granted has to be ascertained carefully. The Trial Court does not consider the above aspect at all. The Hon'ble S.C. in *Madamsetty Satyanarayana Vs. G. Yellogi Rao and Others*, has held as under with regard to grant of relief of specific performance in view of Section 22 of Specific Relief Act :?

"Under Section 22 of the Specific Relief Act, relief of specific performance is discretionary but not arbitrary, discretion must be exercised in accordance with sound and reasonable and judicial principles. The cases providing for a guide to Courts to exercise discretion one way or other are only illustrative, they are not exhaustive."

In the above mentioned case the Hon"ble court quoted with approval of words of Lord Chelmsford in *Caesor Tamare v. Thorns Dixen*, reported in (1878) 6 H.L. 414:?

"The conduct of the party applying for relief is always an important element for consideration."

The Hon"ble S.C. in *Ganesh Shet Vs. Dr. C.S.G.K. Setty and Others*, held as under with regard to proof of agreement as under :?

"It is again well settled that in a suit for specific performance evidence and proof of agreement must be absolutely clear and certain."

In *Pomeroy on Specific Performance of Contracts* (3rd Edn.) (Para 159) it is stated clearly that a "grater amount or degree of certainty is required in the terms of an agreement, which is to be specifically executed in equity, than is necessary in a contract which is to be the basis of an action at law for damages. An action at law is founded upon the mere non-performance by the defendant, and this negative conclusion can often be established without determining all the terms of the agreement with exactness. The suit in equity is wholly an affirmative proceeding. The mere fact of non-performance is not enough; its object is to procure a performance by the defendant, and this demands a clear, definite, and precise understanding of all the terms, they must be exactly ascertained before their performance can be enforced. This quality of certainty can best be illustrated by examples selected from the decided cases."

On the basis of above principles of law and looking to the fact that the plaintiff sought an specific performance of the oral agreement, delivery of possession of the suit land to the plaintiff by the defendant No. 1 is doubtful, in plaint he does not specify the place of agreement and has not taken any steps within one month from the date of agreement for registration although as per his own evidence and evidence of his witness it was agreed to register the sale-deed within one month after payment of rest of the amount of Rs. 7000/-to the defendant No. 1. In such circumstances, it would not be appropriate to grant a decree of specific performance of contract in favour of the plaintiff. In above circums\\tances and on the basis of oral and documentary evidence it can also not be held that there was an oral agreement to sale the suit land.

Consequently, the appeal is hereby allowed the impugned judgment and decree of the Trial Court is hereby set aside, suit filed by the plaintiff before the Trial Court is hereby dismissed. Looking to the facts of the case parties are directed to bear their own cost before the Trial Court and before this Court also.