

(2022) 07 CHH CK 0042
In the Chhattisgarh High Court
Case No : First Appeal No. 19 Of 2015

Radhehari Pandey

APPELLANT

Vs

Sukhram

RESPONDENT

Date of Decision : 18-07-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 18 Rule 4
Specific Relief Act, 1963 — Section 22(2)

Citation : (2022) 07 CHH CK 0042

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Prakash Tiwari, Ravipal Maheshwari

Final Decision : Dismissed

Judgement

1. The instant appeal has been preferred by the plaintiff against the judgment dated 17.10.2014 passed by the Additional District Judge, Bhatapara, District Baloda Bazar in Civil Suit No.14A of 2011, whereby the Trial Court has refused to grant a decree for specific performance of the agreement.

2. Briefly stated the facts of the case are that the Appellant/plaintiff filed a suit, being Civil Suit No.14A of 2011 before the Court below inter alia on the grounds that by an agreement to sell dated 7.6.2005 (Ex.P1) Respondent 1/defendant 1 Sukhram agreed to sell the suit property situated at Ward No.8, adjacent to Karmchari Bhawan, Village Simga, bearing Khasra No.987/4 admeasuring area 0.13 acres and for execution of the sale-deed defendant 1 Sukhram received total value of the suit property, i.e., Rs.1,43,000 on the date of execution of the agreement itself. Possession of the suit property was also handed over to the plaintiff on the date of agreement itself. By virtue of the said agreement, the vendor contended that he has already received the total value of the suit property. Henceforth the plaintiff can get the sale-deed executed in his favour as and when he requires. After the agreement, though the plaintiff requested defendant 1 Sukhram many times for execution of the sale-deed, defendant 1

Sukhram continuously tried to get rid off his requests. Ultimately, the plaintiff sent a registered legal notice (Ex.P5) on 30.12.2005 to defendant 1 Sukhram. He refused to accept the notice. Then the plaintiff filed a civil suit for specific performance of the agreement dated 7.6.2005. The suit was registered as Civil Suit No.14A of 2011. Defendant 1 Sukhram appeared before the Court below and submitted his written statement. It was pleaded by him that as the suit property is his ancestral property, therefore, he has no right to sell the said property. Earlier one agreement to sell was executed between him and Shail Tiwari, a relative of the plaintiff, but, when it came to know that the suit property is his ancestral property then that transaction was cancelled. It was also pleaded by him that the plaintiff had fraudulently obtained his signatures on a blank stamp paper. He has not received any consideration amount from the plaintiff with regard to the agreement to sell the said property.

3. On the basis of the pleadings, the Trial Court framed 7 issues and after appreciation of the evidence led by the parties, the Trial Court passed the impugned judgment and decree, whereby the Trial Court has refused to grant a decree for specific performance of the agreement (Ex.P1) on the ground that in the said agreement it is not clear that for which land the agreement was executed. However, the Trial Court granted a decree in favour of the plaintiff for refund of the earnest money along with interest. Hence, this appeal.

4. Learned Counsel appearing for the Appellant/plaintiff submitted that the Appellant/plaintiff did not claim any relief in his suit for refund of the earnest money and by virtue of sub-section (2) of Section 22 of the Specific Relief Act, the relief for refund of earnest money cannot be granted unless specifically claimed in the suit. Therefore, the decree passed by the Trial Court is not sustainable. It was further argued that the Court below has committed a manifest error holding that the plaintiff has not given the detailed description of the property. However, the map annexed with the plaint, the registered notice (Ex.P5) and the revenue records (Ex.P3 and P4) clearly indicate the description of the land in question. Thus, on this ground also the finding of the Trial Court is not in accordance with the evidence available on record.

5. Learned Counsel appearing for the State/Respondent 2 supported the impugned judgment of the Trial Court.

6. I have heard Learned Counsel appearing for the parties and perused the record of the Trial Court including the evidence adduced by the parties with due care.

7. From perusal of the record of the Trial Court, it appears that after filing of his written statement, Respondent 1/defendant 1 Sukhram remained absent at the time of recording of his evidence before the Trial Court, therefore, vide order dated 17.9.2014 the opportunity of adducing evidence of Sukhram was closed.

8. From the evidence and the pleadings of the parties, it is not in dispute that the

agreement to sell (Ex.P1) was executed between the plaintiff and defendant 1. In the agreement, description of the suit property is mentioned as “नगर पंचायत सिमगा के वार्ड क्र. 8 में कर्मचारी भवन के बाजू स्थित है जिसके पूर्व में गोपाल का मकान पश्चिम में पुसऊ का मकान उत्तर में नहर नाली एवं दक्षिण में आम रास्ता है जो कि लगभग 13 डिसमिल खाली प्लॉट है”. The said agreement (Ex.P1) does not contain any detail of khasra number or survey number of the land in question. On this ground only, the Court below refused to grant the decree of specific performance of the agreement with regard to execution of the sale-deed. As contended by Learned Counsel appearing for the Appellant/plaintiff, from perusal of the plaint map, it appears that in the said map the land in question has been shown as Khasra No.987/4 area 0.053 hectares and in the north of which canal-drainage, in the south of which public road, in the east of which house of Gopal Dewangan and in the west of which house of Pusau are shown. In his written statement, defendant 1 Sukhram did not deny the above specific description mentioned in the plaint map. It was only pleaded by him that the suit land is his ancestral property in which his son also has a right. In his affidavit under Order 18 Rule 4 of the Code of Civil Procedure, against the plaintiff, in paragraph 2, described the suit land as Khasra No.987/4, area 0.053 hectares. During his cross-examination, this was not rebutted by defendant 1 Sukhram. Thus, from the evidence available on record itself, it is established that the suit land bears Khasra No.987/4 area 0.053 hectares and, therefore, if the agreement to sell (Ex.P1) does not contain detail of khasra number, it does not adversely affect the case of the Appellant/plaintiff. Therefore, the finding of the Court below in this regard is not in accordance with the evidence available on record.

9. According to the pleadings of the written statement of defendant 1 Sukhram, the suit land is his ancestral property in which his son also has a right. Though defendant 1 Sukhram did not examine himself before the Trial Court nor did he adduce any evidence, the plaintiff in his cross-examination in paragraph 8 categorically admitted the fact that the suit land is ancestral property of defendant 1 Sukhram. Thus, from the above admission made by the plaintiff himself, it is established that the suit land is the ancestral property of defendant 1 Sukhram. Therefore, Sukhram is not the absolute owner of the suit land and, therefore, he has no right to make any agreement to sell with regard to the entire suit property.

10. Hence, though from the evidence it is established that proper description of the suit property is available on record, from the admission made by the plaintiff himself it is also established that defendant 1 Sukhram is not the absolute owner of the suit property and it is his ancestral property in which his son also has a right. Therefore, defendant 1 Sukhram is not competent to make any agreement to sell the entire suit property. Therefore, the decree sought by the plaintiff for specific performance of the agreement to sell cannot be granted to him.

11. With regard to the argument raised by Learned Counsel for the Appellant/plaintiff that the earnest money could not be ordered to be refunded to the Appellant/plaintiff without there being any claim therefor by the plaintiff in his

suit, in Shankarlal Bijreja v. Ashok B. Ahuja, 2011 (1) CGLJ 498, a Division Bench of this Court has observed that in appropriate cases where specific performance is refused the Court may direct refund of amount to the plaintiff even though he has not specifically asked for it in the plaint. Looking to the above observation of this Court, in my considered view, the Court below has rightly granted the decree for refund of the earnest money in favour of the Appellant/plaintiff.

12. Consequently, I do not find any merit in the instant appeal. The appeal is, therefore, dismissed. The impugned judgment and decree dated 17.10.2014 is affirmed. No order as to costs.