

(2019) 08 CHH CK 0024

Chhattisgarh High Court

Case No: First Appeal No. 64 Of 2006

Kirtan Lal And Ors

APPELLANT

Vs

Dayalu Ram Uikey And Ors

RESPONDENT

Date of Decision: Aug. 2, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96
- Specific Relief Act, 1963 - Section 16 (1)(c)

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Prafull N. Bharat

Final Decision: Allowed

Judgement

Ram Prasanna Sharma, J

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 31-1-2006 passed by the First

Additional District Judge, Kanker (CG) in Civil Suit No. 5-A/2003 wherein the said court decreed the suit filed by the original respondent No.1 namely

Dayaluram Uikey for specific performance of contract regarding land bearing survey No. 287/2 and Survey No. 698/2 area 0.44 hectares situated at

village Antagarh, Tehsil and District Kanker.

2) Original respondent No.1 as mentioned above filed a suit for specific performance of contract regarding land as mentioned above on pleading that

Pran Singh is owner of the land in question and he entered into contract with respondent No.1 to sell the aforesaid land for cash consideration of

Rs.1,10,000/-. The sale consideration was received on various dates and last sale consideration was paid on 1-4-2002. When sale deed was not

executed, notice was sent to Pran Singh but same was not replied and he sold the land to other respondents that is why suit was filed. Pran Singh

denied all the contentions and after recording evidence and hearing the parties, the trial Court decreed the suit in favour of original respondent No.1

Dayaluram Uikey.

3) Learned counsel for the appellants would submit as under:

i) Respondent No.1/plaintiff has not pleaded that he is ready and willing to perform his part of contract, therefore, he is not entitled to decree of

specific performance of contract as per Section 16 (1)(c) of the Specific Relief Act, 1963.

ii) Witnesses of Dayaluram Uikey were not certain about description of the land for which Pran Singh entered into agreement. Iii) Dayaluram Uikey

admitted that the property in question is joint family property, therefore, Pran Singh had no right to alienate the property without consent of other co-

sharers.

iv) Though the documents Ex.P/2 to Ex.P/17 have been filed before the trial Court which are alleged to be receipts of payment of consideration

amount, but the witnesses have not confirmed regarding payment made as per receipts.

4) I have heard learned counsel for the appellants and perused the record in which judgment/decreed has been passed.

5) The first question for consideration of this court is whether property in question was joint family property. The documents Ex.P/2 to Ex.P/17 were

produced before the trial Court and it is deposed by witnesses that these are the documents regarding payment of consideration amount. In Ex.P/17

which is written on 3-3-2000 it is mentioned that Pran Singh has four brothers and 7 dismil of land is in the share of Pran Singh but from the document,

specific survey number is not mentioned in the said paper. It is mentioned that Rs.1200/- was paid towards consideration amount to Pran Singh. Again

in the document Ex.P/16, it is mentioned that it is a document regarding sale of 0.07 dismil of land and consideration amount was shown as Rs.14,000/-

. It is mentioned that Rs.6,400/- was paid. In Ex.P/15, P/14, P/13, P/12, P/11, P/10 no specific land was mentioned which is agreed to be sold though payment of amount to the tune of Rs.3600/-, Rs.2000/-, Rs.2000/-, Rs. 2000/- Rs.500/- is mentioned in those papers. In Ex.P/9 it is mentioned that it is an agreement for sale of 0.50 decimal of land but description of land an survey number is not clear. Ex.P/8 it is mentioned that it is an agreement for sale of 50 dismil of land. In Ex.P/6 it is mentioned that it is an agreement for sale of 75 dismil of land . In documents (Ex.P/6, P/5 and P/4) the amount which is paid is mentioned. In Ex.P/3 it is mentioned that it is a document regarding sale of 80 dismil of land. In Ex.P/2 it is mentioned that it is an agreement for sale of 1.10 dismil of land for consideration of Rs.1,10,000/- but no amount was paid on that day.

6) Looking to the entire documents (Ex.P/2 to P/17) description of land is not clear, but amount was paid, therefore, the amount which is paid is not for sale of land which is described in the plaint. In these documents it is mentioned that property is not solely owned by Pran Singh. When property is owned by other co- sharers, consent of other co-sharers is required for alienating the property. When others are shareholders, specific portion of land cannot be sold and therefore, looking to the entire evidence, Pran Singh was not entitled to alienate the property, but the trial Court passed the decree of specific performance of contract on the basis of document (Ex.P/1), but consideration amount was not paid on the date of disagreement on 28-2-2002. It is mentioned in the document that the amount was received earlier since 3-3-2000 but in earlier document there is no description of land, therefore, consideration which was paid was not for the land which is mentioned in Ex.P/1. The trial court has not evaluated the documents (Ex.P/2 to P/17), therefore, finding of the trial Court is not sustainable on this count. Agreement Ex.P/2 to P/17 is not specific, therefore, decree of specific performance could not have been passed but same is passed by the trial Court which is not sustainable.

7) As per evidence, it is established that original respondent No.1 Dayaluram paid Rs.1,00,000/- to Pran Singh on various dates. Both Dayaluram and Pran Singh died and there is no evidence that the successors of Pran Singh inherited any property from Pran Singh, therefore, in absence of evidence

liability of payment of earnest amount which was received by Pran Singh cannot be fastened on his successors.

8) On overall consideration of evidence, decree passed by the trial Court is not sustainable and same is hereby set aside. Accordingly the appeal is

allowed. Decree is passed against respondents No. 1 (a) to 1 (d) and in favour of appellants as under.

(i) The suit filed by the original respondent No.1 Dayaluram Uimkey is dismissed with cost.

(ii) Parties to bear their own costs.

(iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.

Â (iv) Â A decree be drawn up accordingly.