

**(2018) 09 CHH CK 0435**

**Chhattisgarh High Court**

**Case No:** FA No. 74 Of 2014

Ganesh Ram Sahu

APPELLANT

Vs

Kali Bai And Ors

RESPONDENT

**Date of Decision:** Sept. 27, 2018

**Acts Referred:**

- Code Of Civil Procedure 1908 - Order 41 Rule 27

**Hon'ble Judges:** Prashant Kumar Mishra, J; Vimla Singh Kapoor, J

**Bench:** Division Bench

**Advocate:** Indra Sen Sahu

**Final Decision:** Dismissed

### **Judgement**

Vimla Singh Kapoor, J

1. Plaintiff's suit for specific performance of the agreement dated 26.11.2012 or in the alternative for refund of the advance amount has been partly allowed by the trial Court to the extent of refund of the advance amount of Rs.7,42,000/-, however, the relief for specific performance has been rejected.

2. On 26.11.2012, the defendants executed an agreement vide Ex-P-1 for sale of 3920 sq. feet of land i.e. 0.09 Acre out of total area admeasuring 0.20 Acre of Khasra No.482 at Village Sendri, Tehsil and District Bilaspur at a rate of Rs.90,000/- per decimal. The defendants received advanced amount of Rs.7,20,000/- on 21.11.2012 itself and an additional amount of Rs.22,000/- was received on 26.11.2012, thus the total sum of Rs.7,42,000/- was received as advance but failed to executed the sale deed within the stipulated time i.e. 31.03.2003.

3. Before the trial Court, the defendants remained ex parte. The plaintiff examined himself as PW-1 and his witness Man Singh Sahu as PW-2 and has proved the agreement, legal notice and the objection before the Sub Registrar Office for selling the land to any third party. However, the plaintiff failed to submit any document proving the ownership of respondents/defendants in the suit property, therefore, the trial Court has refused to pass a decree for specific performance and instead allowed refund of the advance amount.

4. In this appeal, the plaintiff has filed an application under Order 41 Rule 27 of CPC for permission to adduce additional evidence. Along with the application, the appellant has produced the maintenance khasra and the record of rights in Form - B of the subject land bearing name of the respondents as owner of the suit property. In both the documents, the lands owned by the defendants are described as Khasra No.482/1, area 0.081 Hectare, however, the agreement (Ex-P-1) is in respect of Khasra No.482, area 0.20 Acre. Thus, khasra number of the agreemented property, for which the land records have been filed before this Court, appears different number.

5. There being no certainty of the defendants' ownership of the suit property, the trial Court has rightly refused the discretionary relief of specific performance of agreement to sale an immovable property, because allowing the same would create complication and if sale deed is executed through the process of Court for a land which may belong to a third party, the interest of the said third party would be adversely affected.

6. In the facts and circumstances of the case, no interference is called for with the impugned judgment and decree. The appeal deserves to be and is hereby dismissed.