

**HIGH COURT OF MADHYA PRADESH: JABALPUR**

**SB: HON'BLE SHRI JUSTICE M.K. Mudgal, Judge**

First Appeal No.267/2009

*Ashok Kumar Barman.....Plaintiff*

*Versus*

*Smt. Kanti Gupta.....Defendant*

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Appellant Ashok Barman along with his son Amit Barman are present in person.

Shri A. Choubey, Advocate for the respondents.

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**JUDGMENT**

**(09<sup>th</sup> December, 2014)**

The appellant/plaintiff has filed this appeal under Section 96 of the Code of Civil Procedure being aggrieved by the judgment and decree dated 31-07-06 passed by the Court of VI<sup>th</sup> Additional District Judge, Jabalpur in Civil Suit No. 161-A/14 filed by the appellant/plaintiff for specific performance of the contract dated 09-10-02 (Ex.P-1) and permanent injunction dismissed by the Court. In this appeal the appellant referred to as the plaintiff and respondent as the defendant.

2. Admitted facts of the case are that the plaintiff had contracted to purchase the disputed land from the defendant vide agreement to sale dated 09-10-02 (Ex.P-1) for consideration of Rs.77,500/- and possession of the land was given to him. The plaintiff got issued a notice dated 22-09-03 (Ex.P-3) by postal receipt (Ex.P-4) for performance of the contract. The said notice was received by the defendant through acknowledgment (Ex.P-5). The said notice was replied by the defendant on 13-10-03 vide Ex.P-6 in which the execution of an agreement dated 21-02-1994 as well as dated 09-10-02 (Ex.P-2) has been specifically denied by the defendant. The witness Parvati Bai (PW-2) is sister in law i.e. elder sister of the wife of the plaintiff.

3. Facts of the plaint in brief are that the plaintiff and defendant both jointly purchased a Survey No. 159/5 total area 1700 Square Feet from Hubbe Lal Kachi vide registered sale deed dated 09-1-1986 and the said land was mutated in the name of both the parties. Thereafter, the said

property was divided between them. The defendant contracted to sale the disputed land i.e. area 850 Square Feet vide agreement dated 09-10-2002 for consideration of Rs.77,500/- and a sum of Rs.1,000/- was paid by the plaintiff to the defendant when the said document was executed. As per agreement Rs.1,000/- was to be paid every month by the plaintiff to the defendant. In this regard Rs.2,000/- was paid by the plaintiff to Parvati Bai vide consent agreement dated 09-10-02 at the behest of the defendant as the defendant had contracted to sale the said land to Smt. Parvati Bai and received Rs.2,000/- on 21-02-1994, the said agreement was not performed between them. However, the amount of Rs.2,000/- was to be returned by the defendant to Smt. Parvati Bai. Apart from the said payment, the plaintiff paid the defendant Rs.1,000/- every month and in this regard the defendant made entry on the original document of agreement dated 09-10-2002 which was in possession of the defendant. The plaintiff had been ready and willing to perform the contract but the defendant did not do so as a result the plaintiff got issued the notice (Ex.P-3) to the defendant for getting the sale deed executed in favour of the plaintiff. However, the defendant did not execute the sale deed and falsely replied the notice vide Ex.P-6. Consequently, the suit was filed for the aforesaid relief as stated earlier.

4. The defendant except admitted facts has denied all the allegations and pleaded that the plaintiff did not pay any amount to him. The document (Ex.P-2) is a fake and forged document which has been prepared by the plaintiff with the connivance of his Sister-in-law Smt. Parvati Bai elder sister of his wife, the said document was not executed by the defendant. As per agreement the plaintiff had to pay Rs.1,000/- per month to the defendant nonetheless he did not comply the terms and conditions of the agreement (Ex.P-1) as the plaintiff had no money to get the sale deed executed in his favour. The defendant also denied the contents of the notice (Ex.P-3). The plaintiff had not been ready and willing to perform the contract on the basis of the aforesaid facts. The defendant submitting written statement has prayed for dismissing the suit.

5. Learned trial Court framing issues and after recording the evidence of both the parties has dismissed the suit as stated earlier.

6. The following questions arises for consideration in this appeal

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- (i) Whether the plaintiff had paid any amount to the defendant as pleaded by him in the plaint ?
- (ii) Whether the plaintiff had been ready and willing to perform the contract (Ex.P-1) as per Section 16 of the Specific Relief Act for getting the sale deed executed in his favour ?

### **Issue No. 1**

7. The appellant/plaintiff himself arguing his case has submitted that the learned trial Court has committed an error in disbelieving the evidence tendered by him as he paid Rs.2,000/- to Smt. Parvati Bai (PW-2) at the behest of the defendant vide Ex.P-2, which was proved by Smt. Parvati Bai (PW-2) deposing in her statement that she made a contract for purchasing the disputed land from the defendant on 21-02-1990 and gave him Rs.2,000/- as advance but the agreement was not performed and so the said earnest money Rs.2,000/- was returned by the plaintiff to her at the behest of the defendant and Ex.P-2 dated 09-10-02 was executed by her. However, the statement of Parvati Bai (PW-2) and the document Ex.P-2 were not properly considered by the trial Court. The appellant has further pleaded that he paid Rs.1,000/- every month to the defendant and in this regard an endorsement was made for ten months in the original document of Ex.P-1, which was in his possession and the said original document was not produced by him in spite of having been directed by the Court to do so. Thus, according to the appellant/plaintiff the Court has committed mistake in dismissing the suit.

8. Counsel for the respondent controverting the submissions made by the appellant has argued that the plaintiff had no money to perform the contract Ex.P-1 and he did not pay any amount to the defendant. The Ex.P-2 is a fake and forged document which was prepared by the plaintiff with the connivance of his relative Parvati Bai (PW-2). No document for the alleged payment of money to the defendant has been produced on record. The execution of Ex.P-2 has not been proved by any independent witness. The plaintiff had never been ready and willing to get

the sale deed executed in his favour owing to which the trial Court having considered the evidence on record meticulously has rightly dismissed the suit. The findings recorded by the trial Court are based on proper marshelling of the evidence and its proper appreciation and so no interference is required in them.

9. The Arguments were considered and the record was perused.

10. In order to prove his case, the plaintiff got examined himself as PW-1, Parvati Bai (PW-2) and his wife Smt. Uma (PW-3).

11. As per pleadings the plaintiff has deposed in his statement at great length. The execution of Ex.P-1 between the parties is not disputed. Though, the plaintiff has averred that he paid Rs.1,000/- to the defendant when the Ex.P-1 was executed but no endorsement to this effect has been made in the document. The said payment was not made by cheque and if it was made in cash, no receipt was obtained by the plaintiff that could have proved the alleged fact of payment. On the contrary, the defendant Smt. Kanti Gupta (DW-1) and her husband Hari Narayan Gupta (DW-2) both have specifically denied having received any payment. In view of the above, the trial Court has not made any mistake in disbelieving the averment of the plaintiff about the said payment.

12. The plaintiff's witness PW-1, PW-2 and PW-3 have tried to say in their statement that Rs.2,000/- was paid to Parvati Bai (PW-2) by the plaintiff at the behest of the defendant vide Ex.P-2 dated 09-10-02 which was earlier allegedly entered into on 21-02-1994 between the defendant and Parvati Bai (PW-2). However, there is no averment in the Ex.P-1 to the effect that a contract for the sale of land in question was made between the defendant and Parvati Bai (PW-2) on 20-02-1994 and the defendant would have to pay the said amount to the Parvati Bai (PW-2). The above circumstances indicate that the Ex.P-2 was not in existence when the Ex.P-1 was executed on 09-10-02.

13. The Ex.P-2 does not carry the name of typist, place of typing and the name and signature of witness and in order to prove it there is only one witness i.e. Parvati Bai (PW-2), who happens to be the Sister-in-law of the plaintiff. No other independent witness has produced to prove the veracity of the alleged document i.e. Ex.P-2, whereas Smt. Kanti Gupta (DW-1) and her husband Hari Narayan Gupta (DW-2) have empathetically

denied the signature as well as the contents of the document Ex.P-2. It is also a strange feature in this document that when the alleged document of Rs.2,000/- was made on 09-10-02 by the plaintiff to his Sister-in-law Parvati Bai (PW-2), the signature of the defendant was not obtained for giving her consent in this regard. This fact also leads to a conclusion that Ex.P-2 is a suspicious document and no payment was made by the plaintiff to his Sister-in-law as pleaded by him in the plaint. It appears that the said document has been forged by the plaintiff acting in collusion with her Sister-in-law to establish that the alleged fact of the payment of Rs.2,000/- having been made by the plaintiff to Parvati Bai (PW-2) on behalf of the defendant.

14. So far as the payment of Rs.10,000/- at the rate of Rs.1,000/- is concerned the plaintiff (PW-1) and his wife Smt. Uma (PW-3) have made statement in this regard saying that the defendant used to make entry of the monthly payment on the original document of Ex.P-1, which was in the possession of the defendant. It is made clear that the plaintiff does not have any receipt of any of the payment that he alleges to have made to the defendant. This story put forth by the plaintiff does not find any place in the notice Ex.P-3 dated 22-09-03. In view of the above, the said story of having paid Rs.10,000/- at the rate of Rs.1,000/- per month is concocted and is a product of an after thought. Moreover, it is quite unnatural that whenever a payment is made by a person to another he would not receive a receipt for the payment made and would be satisfied with an entry to the effect of having made payment being noted in a document, which is in the possession of the payee. Nonetheless, if original document is in the possession of the defendant how could that he has been able to produce a photocopy of Ex.P-1 of the original document as the Ex.P-1 was not certified by the defendant to a photocopy of the original agreement, the plaintiff alleges to have been in the possession of the defendant. In view of the above, it is obvious that the original of Ex.P-1 was in the plaintiff's possession owing to which he has been able to produce a photocopy of the same (Ex.P-1). The story of the original document of Ex.P-1 being in possession of the defendant has been concocted to bolster his claim of having paid Rs.10,000/- to the defendant. The learned trial Court having considered the evidence referred to Para-16 to 21 of its judgment has

rightly concluded that the plaintiff had failed to prove that any payment was made by him to the defendant as per agreement (Ex.P-1)

**Issue No. 2**

15. For seeking relief of specific performance of the contract it is mandatory for a plaintiff to plead and prove compliance of Sec. 16 (1)(c) of the Specific Relief Act otherwise the decree in order to specific performance cannot be granted to a plaintiff.

16. The provision of Section 16 (c) of the Specific Relief Act, 1963 (in short “the Act” ) are as follows:

“16 Personal bars to relief – Specific performance of a contract cannot be enforced in favour of a person –

(a)-(b)

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant”

The basic principle behind Section 16 (c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

Section 16 (c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract.

These aspect were highlighted in Sugani

Vs. Rameshwar Das 2 (2006)11 SCC 587.

17. See also on this point **Kamrun Nisha Vs. Pramod Kumar ILR 1996 MP 393.**

18. In the instant case the terms and conditions of the contract which were to be performed by the parties have been mentioned in Para-4 of Ex.P-1 which reads as follows :-

यह कि भूखण्ड की राशि में क्रेता घरेलू परिस्थिति में देने में असमर्थ हूँ। अतः उक्त राशि रू0 77,500/- अंकन सतत्तर हजार पांच सौ रूपया एक वर्ष के अन्दर चुकता कर दूंगा। तथा यह राशि आप क्रेता से प्राप्त करके आपके नाम पर विक्रय पत्र का निष्पादन कर कब्जा दखल मालिकाना अधिकार सौंप देगा। मैं क्रेता प्रतिमाह कम से कम रू0 1,000/- अंकन एक हजार रूपया मात्र देता जाउंगा। शेष राशि एक वर्ष की अवधि पूर्ण होने के पूर्व चुकता कर दूंगा। यह कि रजिस्ट्री का जो भी खर्चा है वह क्रेता पक्षकार को वहन करना होगा। साथ ही आप क्रेता को समचय के अन्दर रजिस्ट्री कराना अनिवार्य होगा।

19. As discussed earlier it has already concluded that the plaintiff has not made any payment according to Para-4 of the contract quoted above. Apart from this, the plaintiff does not have clean hands because he has sought the support of his fabricated document Ex.P-2 to prove his case. Moreover, when the notice (Ex.P-3) got issued by the plaintiff it was replied by the defendant vide Ex.P-6 stating that he was ready and willing to execute the sale deed as per terms and conditions of Ex.P-1, if the plaintiff was ready to pay the entire amount of consideration. The plaintiff did not reply of Ex.P-6 to show his willingness for getting sale deed executed after paying the consideration. The said circumstances also leads to the conclusion that the plaintiff himself was not willing to perform the contract as possibly he had no money for the same.

20. In view of the above circumstances, As per Sec. 16 of the Specific Relief Act, the plaintiff is not entitled to get the relief sought in the plaint. Therefore, the learned trial Court has not committed any error in dismissing the suit. Having taken into account the recorded evidence, this Court comes to the conclusion that findings given by the learned trial Court for rejection of the suit for relief of specific performance of the contract

being just and proper are hereby affirmed and no interference is required in them as a result the appeal is hereby dismissed. Cost of this appeal shall be borne by the appellant himself as well as respondent.

21. Decree be drawn accordingly.

**(M.K.Mudgal )**  
**Judge**

MOHSIN/-