

**IN THE HIGH COURT OF MADHYA
PRADESH**

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 15th OF JULY, 2024

FIRST APPEAL No. 310 of 2022

BHUPESH

Versus

ARVIND KUMAR SHAH AND OTHERS

Appearance:

(SHRI POURUSH RANKA, LEARNED COUNSEL FOR THE APPELLANT).

*(SHRI H.Y. MEHTA, LEARNED COUNSEL FOR THE RESPONDENTS NO.1
& 2).*

ORDER

The appellant/plaintiff has filed this appeal being aggrieved by the judgment and decree dated 01.11.2021 passed by the learned 5th District Judge Ujjain in civil suit no.169A/2021 by which the application filed by the defendants under Order 7 Rule 11 r/w section 151 CPC has been allowed and the plaint which was filed by

the plaintiff/appellant for specific performance of contract and permanent injunction has been rejected.

2. The brief facts of the case are that appellant/plaintiff has entered into an agreement to sell on 23.2.2021 for a sale consideration of Rs.1,03,00,000/- and has paid a sum of Rs.1,51,000/- as part payment of the sale consideration for the land bearing survey no.428/3, area 0.282 hectare of Patwari Halka no.26, village Panth Piplai, Tehsil and district Ujjain. The copy of the Sauda Chithi entered into between the appellant and the defendants is Annexure A/2.

3. As per the terms of the agreement between the parties, the seller was required to make a paper publication with regard to sale of the said land and in case of non receipt of any objection the purchaser will pay 25% of the agreed sale consideration. Accordingly paper publication was made in the daily newspaper Agniban on 27.3.2021 and no objection was received. Thereafter the plaintiff appellant requested the defendants to accept the sale consideration of 25% of the total sale consideration but the defendant was not responding to his request. Thereafter the appellant/plaintiff sent a legal notice through his counsel on 12.4.2021 requesting the defendants to accept the amount of 25% as agreed in the agreement dated 23.03.2021. The notice is Annexure A/3. The defendants on receipt of the notice from the appellant/plaintiff sent a reply dated 17.04.2021 through their counsel by accepting the agreement but has alleged that the terms of the agreement have not been complied with which has resulted into automatic cancelation of the agreement. The reply is Annexure A/4.

Thereafter the appellant/plaintiff filed a civil suit for specific performance. The copy of the plaint is Annexure A/5.

4. The defendants filed their written statement and accepted the part payment of Rs.1,51,000/- from the plaintiff but has alleged that plaintiff to take the said amount back but the plaintiff never received that amount from the defendants and further the plaintiff has not complied with the terms of making payment of 25% of the total sale consideration within 20 days from the date of execution of sauda chithi. The copy of the written statement is Annexure A/6. Thereafter the defendant/respondent filed an application under Order 7 Rule 11 r/w section 151 CPC on the ground that the sauda chithi does not disclose the survey no.248/3 of the property and also the name of village where the said land is located and the present suit is filed for land bearing survey no.428/3 of village Panchpiplai, tehsil and district Ujjain whereas no agreement with regard to purchase of said survey no.428/3 is filed with the plaint and also the sauda chithi filed is not duly stamped and hence in such circumstances the sauda chithi cannot be said to be an agreement and hence the suit filed by the plaintiff deserves to be dismissed. The application is Annexure A/7.

5. The plaintiff/appellant filed a detailed reply of the application and submitted that it is an agreement to sell which was accepted by the respondents in reply Annexure A/5.

6. After hearing counsel for both parties, the trial court vide order dated 01.11.2021 has allowed the application of the defendants and rejected the plaint filed by the plaintiff holding that the sauda chithi filed by the plaintiff is not an agreement to sell but a

document which is prepared prior to execution of agreement to sell. Being aggrieved by the impugned order this appeal has been by the appellant and submitted that the trial court order is completely illegal, arbitrary, perverse and against the settled principles of law. He submitted that the trial court has committed grave error of law and fact in deciding the application u/o 7 rule 11 r/w section 151 CPC as the issue with regard to the status of the document filed by the plaintiff cannot be adjudicated without evidence and more importantly when the defendant itself has admitted its execution and alleging its cancellation on account of non compliance of the terms mentioned in it. He further submitted that the respondents/defendants have admitted the sauda chithi as agreement to sell in their reply Annexure A/4 on 17.4.2021. He further submitted that in the plaint the plaintiff has pleaded in para-8 that due to absence of survey number it was wrongly mentioned in Annexure A/2 as survey no.248/3 instead of survey no.428/3 which was clearly mentioned in para 1 of the plaint.

7. Learned counsel for the appellant has relied upon the citation of this Court in the case of **Smt.Neena Tiwari vs. Shubham Gupta (CR No.99/2023 dated 08.02.2024)** and coordinate bench of this court in the case of **Smt.Neena Tiwari vs. Akhlesh Jain (CR No.98/2023 dated 11.04.2023)** in which the sauda chithi was treated as an agreement to sell and this court and coordinate bench have declined to allow the revision petitions challenging the order rejecting the application under Order 7 Rule 11 CPC. In support of his contention he has further relied upon the citation of Bombay

High Court in the case of **Sharad Sitaramji Shende vs. Nilesh Subhashandji Katariya (AIRONLINE 2022 BOM 6357)**.

8. On the other hand counsel for the respondent has submitted that in the sauda chithi, survey no.248/3 is mentioned but name of village and district was not mentioned. He further submitted that they are not title holder of survey no.248/3, hence defendant no.2 has not signed in the sauda chithi. He further submitted that plaintiff was not claiming the relief in regard to survey no.428/3 situated in village Panthpiplai instead of survey no.248/3.

9. Learned counsel for the respondent has relied upon citation in the case of **Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others – (2020) 7 SCC 366** in which the apex court has held that under order 7 rule 11 CPC trial court must enquire the matter and determine whether plaint prima facie discloses cause of action.. If any of the grounds specified in clause (a) to (e) are made out, court is bound to reject the plaint. He has further submitted that the cause of action means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. He has further submitted that it is the duty of the court to see whether by clever drafting of the plaint it has created the illusion of a cause of action. The court must be vigilant against camouflage or suppression and if suit found to be vexatious and an abuse of process of court.

10. Learned counsel for the respondent has further relied on the citation in the case of **M/s Mirahul Enterprises and others vs. Mrs. Vijaya Sirivastava – AIR 2003 Delhi 15** in which the division bench of the Delhi High Court has held that plaintiff must prove beyond doubt existence of valid and enforceable contract. Learned counsel for the respondent has further relied upon the decision in the case of **Mayawanti vs. Kaushalya Devi – 1990 (3) SCC 01** and submitted that it is the duty of the court to see whether there is a valid and enforceable contract between the parties. He has also relied upon the citation in the case of **Ganesh Shet vs. Dr.CSGK Setty and others – AIR 1998 SC 2216** on this point.

11. Learned counsel for the respondent has distinguished the case decided by this court and coordinate bench in CR No.98/23 & 99/23 (supra) and submitted that in those revision petitions objection was not raised before the trial court in an application under order 7 rule 11 CPC. He has further relied upon citation of the Rajasthan High Court in the case of **Narain Singh vs. Dalip Singh – AIR 1973 Rajasthan 45** in which the Rajasthan High Court has held that contract cannot be enforced against property other than the one contracted for. He has further relied upon citation of the division bench of the Allahabad High Court in the case of **Sri Satya prakash Goel vs. Ram Krishan Mission and others – AIR 1991 Allahabad 343** in which the Allahabad High Court has held that letter of acceptance referred to future negotiation for finalization of more terms of contract for sale is not a concluded contract between the parties.

12. Heard learned counsel for both parties and perused the record.

13. According to the plaint of the plaintiff Annexure A/5, plaintiff/appellant and defendants/respondent have entered into agreement to sell on 23.02.2021 for a sale consideration of Rs.1,03,00,000/- and paid Rs.1,51,000/- as part payment which is Annexure A/2 (sauda pavti). The plaintiff pleaded in para-8 of the plaint that in the sauda pavti the survey no.248/3 was wrongly mentioned. He has pleaded in para-1 of the plaint that sauda pavti is executed between the plaintiff and defendant regarding survey no.428/3.

14. Learned counsel for the respondent submitted that it is not an agreement to sell but only a suda pavti. But perusal of the reply of the notice given by the plaintiff to defendants (Annexure A/4), the defendants have accepted it as an agreement to sell. The relevant portion of the reply is reproduced as under:

1. यह कि, सूचना पत्र चरण एक में किया गया कथन हमारे पक्षकारगण के मालकी एवं भूमि स्वामी स्वत्व की भूमि ग्राम पंथ पिपलई तहसील व जिला उज्जैन के पटवारी हल्का नंबर 26 की कृषि भूमि सर्वे नंबर 428/3, रकबा 0.282 हेक्टेयर रूपये 1,03,00,000 /- अक्षरी एक करोड़ तीन लाख में विक्रय करने का सौदा दिनांक 23/02/2021 को किया और बयाने के रूपये 1,51,000/- अक्षरी एक लाख इक्कावन हजार रूपये किया गया था जो कि सत्य होने से स्वीकार है।

15. So it is clear that the defendants have accepted in their reply (Annexure A/4) that it is an agreement to sell in regard to

survey no.428/3, rakba 0.282 hectares, situated in village Panth Piplai, tehsil and district Ujjain.

16. In the case of **Saleem Bhai and others vs. State of Maharashtra & others – 2003 (1) SCC 557**, the apex Court has held that for deciding an application under order 7 rule 11 CPC averment in the plaint can be seen and not a plea taken in the written statement. In the present case, according to the plaint it is found that the plaintiff filed a suit for specific performance according to the souda pavti (Annexure A/2) which was accepted by the defendants in their reply to the notice given by the plaintiff Annexure A/4 that an agreement to sell has been executed between the parties in regard to survey no.428/3. So the defendants' argument that they denied the souda chithi as agreement to sell in the written statement has no substance. After perusal of the record and documents adduced by the plaintiff and according to the plaint averments the souda pavti must be treated as an agreement to sell.

17. In view of the aforesaid discussion, the finding of the trial court that the souda chithi is not an agreement to sell or not a concluded contract is not correct in the eye of law. In the considered opinion of this court, the trial court has committed error in allowing the application under order 7 rule 11 CPC filed by the defendants and rejecting the plaint. Hence, the impugned order passed by the trial court deserves to be and is hereby set aside and the matter is remanded back to the trial court to decide it afresh in accordance with law.

18. Both parties are directed to appear before the trial court on 14.08.2024. Registry is directed to send to the trial court record along with the copy of this order.

19. In view of the above, the appeal stands disposed of.

(HIRDESH)
JUDGE

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