



2026:CGHC:15014

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**First Appeal No. 60 of 2009****Judgment Reserved on 16/03/2026****Judgment delivered on 01/04/2026****Judgment (full) uploaded on 01/04/2026**

**1 - Awadh Ram Sahu (Died) Through Lrs As Per Hon'ble Court Oder Dated
15-01-2026**

**1.1 - Smt. Saraswati Bai Sahu W/o Late Awadh Ram Sahu Aged About 55
Years Resident Of Village Tarrighat P.S. Patan Tahsil Patan District- Durg
Chhattisgarh,**

**1.2 - Ajay Kumar Sahu S/o Late Awadh Ram Sahu (Son) Aged About 31
Years Resident Of Village Tarrighat P.S. Patan Tahsil Patan District- Durg
Chhattisgarh,**

**1.3 - Sanjay Sahu S/o Late Awadh Ram Sahu (Son) Aged About 29 Years
Resident Of Village Tarrighat P.S. Patan Tahsil Patan District- Durg
Chhattisgarh,**

... Appellant/Defendant**versus**

1 - Lakhan Lal Meshram S/o Jeevrakhan Meshram R/o Vill.Renga Kanthera, Tah. Patan, Durg

... Respondent/Plaintiff

For Appellant : Mr. B.P. Singh with Mr. Vidya Bhushan
Soni, Advocates

For Respondent : Mr. Uttam Pandey and Mr. Jitendra Gupta,
Advocates

SB- Hon'ble Shri Justice Sanjay K. Agrawal

CAV JUDGMENT

1. Appellant/defendant (now his LRs.) has preferred this first appeal under Section 96 of the CPC calling in question the legality, validity and correctness of impugned judgment and decree dated 27/11/2008 passed by learned IXth Additional District Judge (F.T.C.), Durg in Civil Suit No. 6-A/07 whereby plaintiff's suit for specific performance of contract has been decreed.

(For the sake of convenience, the parties will hereinafter be referred to as per their status and ranking given in the plaint before the trial Court.)

Facts of the Case :-

2. Plaintiff filed a civil suit stating inter alia that defendant, being the owner of agricultural land bearing Khasra Nos. 1151, 1152, and 1187, total area 0.80 hectare, situated at Village Tarrighat, P.H. No.

31, Tehsil Patan, District Durg, entered into agreement to sale on 28.01.2003 with him and agreed to sell the said suit land to the plaintiff for a sale consideration of Rs. 1,64,000/- out of which, Rs. 50,000/- was paid by the plaintiff as earnest money and the defendant delivered possession of the suit land to the plaintiff and agreed to execute the sale deed on or before 31.03.2003. Subsequently, on 08/03/2003, plaintiff paid Rs. 50,000/- to the defendant and then on 29/03/2003, the remaining amount of Rs. 64,000/- was also paid by the plaintiff to the defendant. Thereafter, despite making repeated requests, defendant failed to execute the sale deed in favour of the plaintiff and ultimately, on 23.02.2006, plaintiff served legal notice upon the defendant, however, the defendant, neither replied to the legal notice, nor executed the sale deed in favour of the plaintiff which led the plaintiff to file suit for specific performance of contract on 27/03/2006.

3. Defendant filed his written statement and denied the plaintiff's averments and contended that possession of the suit land was never handed over to the plaintiff rather defendant, himself, is in possession of the suit land. He has further contended that plaintiff has failed to perform his part of the contract within the stipulated time i.e. 31.03.2003 and as such, the agreement automatically stood cancelled due to lapse of time. He has also denied the fact

that plaintiff has paid the entire consideration amount and lastly contended that plaintiff's suit is barred by limitation.

4. Learned trial Court framed as many as 7 issues and answered them as stated below :-

<u>वादविषय</u>	<u>निष्कर्ष</u>
1 - क्या वादी ने विवादित भूमि स्थित - मौजा ग्राम तिरीघाट प0 ह0 नं0 31 रा0 नि0 मंडल पाटन तहसील पाटन जिला दुर्ग की कृषि भूमि खसरा नं 1151, 1125, 1187 रकबा क्रमशः 0.42, 0.29, 0.15 कुल 0.86 आरे में से 0.80 हेक्टे0 के सौदे के प्रतिफल की सम्पूर्ण राशि 1,64,000/- प्रतिवादी को अदा कर दिया है ?	हाँ
2 - क्या विवादित भूमि पर अनुबंध दि० - 28/01/03 से वादी का अधिपत्य है ?	हाँ
3 - क्या अनुबंध के अनुसार विवादित भूमि की रजिस्ट्री दि० 31/3/03 को करवाने हेतु वादी के तत्पर व तैयार होने के बावजूद भी प्रतिवादी के द्वारा भूमि की रजिस्ट्री नहीं करवाया गया है ?	हाँ
4 - क्या वादी प्रतिवादी से संविदा दि० 28/01/03 का यथोलिखित पालन करवाने का अधिकारी है ?	हाँ
5 - क्या वादी का वाद समयावधि बाधित है ?	नहीं, वादी का वाद समयावधि में है।

6 - क्या प्रतिवादी, वादी से प्रतिकर पाने का अधिकारी है ?	नहीं ।
7 - सहायता एवं व्यय ?	वादी का दावा प्रमाणित, निर्णय कं० 44 के अनुसार।

5. In sum and substance, the trial Court has held that plaintiff has fulfilled his terms of the agreement dated 28/01/03 and paid full sale consideration amount to the defendant and he was ready and willing to perform his part of the contract yet the defendant has failed to perform his part of the contract. It has further been held that plaintiff is in possession of the suit land and his suit is not barred by limitation, as such, plaintiff is entitled to specific performance of contract.

Submission of the Parties :-

6. 1. Mr. B.P. Singh, learned counsel for the appellant/LRs. of the defendant, would submit that the trial Court is absolutely unjustified in granting decree for specific performance of contract in favour of the plaintiff by recording a finding which is perverse and contrary to the record. He would further submit that the plaintiff has only paid Rs. 50,000/- as earnest money to the defendant and rest of the sale consideration amount being Rs. 1,14,000/- has not been paid by the plaintiff which shows that plaintiff was not ready and willing to perform his part of the contract.

6.2. Mr. Singh would also submit that the trial Court has also erred in holding that plaintiff is in possession of the suit land as the defendant has always been in possession of the suit land and it was never handed over to the plaintiff.

6.3. Lastly, Mr. Singh would submit that the suit filed by the plaintiff suffers from delay and laches and is therefore, barred by limitation as the agreement to sale was executed by the parties on 28/01/2003, legal notice was issued by the plaintiff on 23/02/2006 and the suit was instituted on 25/03/2006, therefore, plaintiff's suit could not have been entertained by the trial Court and it ought to have been dismissed on the ground of delay and laches itself.

6.4. Mr. Singh would strongly place his reliance upon the decision rendered by the Supreme Court in the matter of **Pydi Ramana Alias Ramulu v. Davarasety Manamadha Rao**¹, and also rely upon other decisions of the Supreme Court rendered in the matters of **Alagammal and Others v. Ganesan and Anr.**², **Rajesh Kumar v. Anand Kumar and Others**³, **U.N.Krishnamurthy v. A.M. Krishnamurthy**⁴, **Sardamani Kandappan v. S. Rajalakshmi and Others**⁵ to buttress his submission.

1 (2024) 7 SCC 515

2 (2024) 3 SCC 232

3 2024 SCC Online SC 981

4 (2023) 11 SCC 775

5 (2011) 12 SCC 18

7. Mr. Uttam Pandey, learned counsel for the respondent/plaintiff, would support the impugned judgment and decree passed by the trial Court and submit that the trial Court is absolutely justified in decreeing the suit of the plaintiff as plaintiff was always ready and willing to perform his part of the contract which is visible from the fact that Rs. 50,000/- was paid by him as earnest money on 28/01/2003 i.e. on the date of the agreement to sale and thereafter, Rs. 50,000/- was paid by him on 08/03/2003 and the remaining Rs. 64,000/- was paid by him on 29/03/2003 and it was also noted in the agreement (Ex. P/1) in which defendant has also put his signature, as such, total sale consideration amount of Rs. 1,64,000/- has been paid by the plaintiff to the defendant which has duly been proved by the plaintiff (P.W.-1) and his two witnesses namely Goukaran Prasad (P.W.-2) and Budharu Ram (P.W.-3). Furthermore, handwriting expert namely Dr. Kumari Sunanda Dhenge (P.W.-4) has also established that the signature on the agreement belongs to the defendant. As such, even though entire amount of sale consideration has already been paid by the plaintiff, the defendant still did not take any step to execute the sale deed in favour of the plaintiff even though the plaintiff has also been in possession of the suit land. He would lastly submit that the suit filed by the plaintiff is not barred by limitation and even otherwise, specific

plea of delay and laches has not been taken by the defendant in his written statement, as such, the instant appeal is liable to be dismissed.

8. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.

Points for determination :-

9. In order to decide the appeal, the following two points that arise for determination which need to be considered and answered are as follows :-

(i) Whether, pursuant to the agreement to sale dated 28/01/2003 (Ex. P/1), plaintiff has further paid Rs. 50,000/- and Rs. 64,000/- as sale consideration to the defendant by making note in the agreement (Ex. P/1) in which defendant has also put his signature ?

(ii) Whether, the plaintiff was ready and willing to perform his part of the contract ?

Answer to Question No. (i) :-

10. In this regard, the statements of plaintiff (P.W.-1) as well as his two witnesses namely Goukaran Prasad (P.W.-2) and Budharu Ram Nishad (P.W.-3) may be noticed herein profitably.

11. Plaintiff Lakhan Lal Meshram (P.W.-1), in his affidavit under Order 18 Rule 4 of CPC has clearly stated that pursuant to the agreement to

sale dated 28/01/2003 (Ex. P/1), he has paid Rs. 50,000/- as earnest money to the defendant which has also been admitted by the defendant Awadh Ram (D.W.-1) in paragraph 1 of his affidavit under Order 18 Rule 4 of CPC. Plaintiff has further stated that he has paid further amount of Rs. 50,000/- on 08/03/2003 and the remaining amount of Rs. 64,000/- on 29/03/2003 and has also made a note with that regard in the agreement (Ex. P/1) in which defendant has also put his signature.

12. Similarly, Budharu Ram Nishad (P.W.-2) has clearly stated in his affidavit under Order 18 Rule 4 of CPC that prior to the registry, defendant demanded money from the plaintiff on account of which plaintiff took defendant to the Bank along with him and withdrew Rs. 50,000/- and paid to the defendant on 08/03/2003 and made a note in the agreement (Ex. P/1) which was signed by the defendant. He has also admitted in his cross-examination that he was present when the plaintiff handed over the said amount to the defendant.

13. Likewise, Goukaran Prasad (P.W.-2) has stated in his affidavit under Order 18 Rule 4 of CPC that on 29/03/2003, plaintiff paid the remaining amount of Rs. 64,000/- to the defendant in his presence and after receiving the said amount, the defendant himself made a note in the agreement and put his signature therein. He has further stated that he was given the agreement to put his signature on stamp

as witness, however, when he read it, he found that defendant had mistakenly mentioned the amount as Rs. 10,64,000/- instead of Rs. 1,64,000/- and when he told about the same to the defendant, the defendant asked him to correct his mistake and write the amount in words over his signature and accordingly, he did the same as being told by the defendant.

14. Since the signature put by the defendant on the agreement to sale (Ex. P/1) was disputed, the matter was referred to the handwriting expert, Dr. Kumari Sunanda Dhenge (P.W.-4). She took sample handwriting of the defendant before the trial Court and marked it as S-1 to S-8 and further marked the disputed signature on the agreement as Q-1, A to S and after examination, she opined that both the sample handwriting as well as the disputed writing in the agreement are similar. Though she was subjected to some extent of cross-examination but nothing can be extracted to hold that the disputed signature (Q-1) in the agreement (Ex. P/1) does not belong to the defendant.

15. Thus, in view of the aforesaid evidence available on record, the trial Court has rightly recorded a finding that plaintiff had paid the entire sale consideration amount of Rs. 1,64,000/- to the defendant. I do not find any perversity or illegality in the said finding recorded by the trial Court, as such, the above-stated finding is hereby affirmed.

Answer to Question No. (ii) :-

16. Mr. B.P. Singh, learned counsel for the appellant/defendant, would strongly rely upon the decision rendered by the Supreme Court in the matter of **Pydi Ramana Alias Ramulu** (supra) and submit that plaintiff was not ready and willing to perform his part of the contract as the agreement to sale (Ex. P/1) is dated 28/01/2003 and legal notice was issued by the plaintiff to the defendant on 23/02/2006 and the suit was filed by the plaintiff on 27/03/2006 and though the suit was within the period of limitation, but it goes to show that plaintiff was not ready and willing to perform his part of the contract.

17. In this regard, paragraphs 15 and 19 of the decision rendered by the Supreme Court in the matter of **Pydi Ramana Alias Ramulu** (supra) may be noticed herein :-

“15. As per the recital in the agreements, the defendant was required to get the suit land surveyed and as such the total consideration was agreed to be settled after such survey. On the one hand, the plaintiff contends that the defendant never got surveyed the suit land. On the other hand, pleadings and evidence of the plaintiff is silent on steps taken by the plaintiff as expected of a reasonable person which has not been taken in the instant case, namely, the plaintiff has not produced any evidence either oral or documentary to establish that there was any demand made by him for the land being surveyed by the defendant. No witnesses have been examined on behalf of the plaintiff to establish that at any point of time there has been demand made by the plaintiff with the defendant by calling upon him to get the

suit land surveyed as agreed under the agreement of sale Ext. A-1.

19. The ratio of the above judgment in all force would be applicable to the facts on hand in the instant case. The agreement of sale (Ext. A-1) was executed on 7-6-1993 and the date fixed for execution of the sale deed was one year from the date of measurement of the suit scheduled property. Undisputedly no such measurement was carried out and the plaintiff has not raised his little finger in this regard from the date of execution of agreement till he got issued legal notice dated 30-5-1996 that it almost for a period of 3 years and the suit came to be filed only on 9-6-1997 at the fag end of the expiration of the limitation. The long unexplained delay in not taking any reasonable steps as is expected from a reasonable person is itself sufficient to disentitle the plaintiff to an equitable relief. It is no doubt true that suit for specific performance can be filed even on the last date of the limitation as prescribed under Article 54 of the Limitation Act. However, the steps taken by the plaintiff during this period, namely, from the date of agreement till date of filing of suit will have to be explained in the plaint and proved in the evidence which is lacking in the instant case.”

18. In the aforesaid case (supra), defendant was required to get the suit land surveyed and the total consideration was agreed to be settled after such survey and the date fixed for execution of sale deed was one year from the date of measurement of the suit land. No survey was apparently carried out by the defendant, however, the plaintiff also did not take any steps to get the suit land surveyed by the defendant and even legal notice was issued by the plaintiff after two years of expiry of the one year period as per the agreement. In that situation, their Lordships have held that long unexplained delay in taking reasonable steps, as is expected from a

reasonable person, is itself sufficient to disentitle the plaintiff to relief of specific performance of contract.

19. The aforesaid condition is not present in the instant case as plaintiff had already paid the entire sale consideration amount to the defendant prior to the end of one month period as per the agreement to sale (Ex. P/1) which shows that plaintiff was ready and willing to perform his part of the contract. Further there is oral and documentary evidence available on record in the shape of statements of plaintiff (P.W.-1) and his two witnesses namely Goukaran Prasad (P.W.-2) and Budharu Ram Nishad (P.W.-3) to establish that plaintiff was always ready and willing to perform his part of the contract as the agreement to sale was entered into between the parties on 28/01/2003 (Ex. P/1) and legal notice was issued by the plaintiff to the defendant on 23/02/2006 and the suit has been filed by the plaintiff on 27/03/2006 which is within the period of limitation of three years as enumerated under Article 54 of the Indian Limitation Act, 1963. As such, the decision relied upon by learned counsel for the appellant/defendant in the matter of **Pydi Ramana Alias Ramulu** (supra) is totally distinguishable and would not apply to the facts of the present case. Similarly, the other decisions relied upon by learned counsel for the appellant/defendant in the matters of **Alagammal** (supra), **Rajesh**

Kumar (supra), **U.N. Krishnamurthy** (supra), **Sardamani Kandappan** (supra) are also distinguishable and would not apply to the facts of the instant case.

20. Now, so far as the question of possession of the suit land is concerned, it has been stated by the plaintiff that he has been in possession of the suit land pursuant to having made total payment of sale consideration to the defendant, however, the defendant has disputed the said fact and has stated that he has not delivered possession of the suit land to the plaintiff and he himself is in possession of the suit land.

21. The Supreme Court, in the matter of **Babu Lal v. M/s Hazari Lal Kishore Lal and Others**⁶, has held that in an appropriate case of specific performance of contract of sale of immovable property, the Court is competent to order delivery of possession of the property, even if not specifically asked for, by allowing suitable amendment in the plaint and the order for delivery of possession without corresponding amendment in the plaint would be a mere omission and it would not be fatal to the relief of possession.

22. The principle of law laid down in **Babu Lal** (supra) came to be considered by the Supreme Court in the matter of

6 (1982) 1 SCC 525

Manickam @ Thandapani & Another v. Vasantha⁷, in which, the principle of law laid down in **Babu Lal** (supra) has been followed with approval after reviewing the earlier decisions on the point and it has been held that relief of possession is ancillary to the decree for specific performance and need not be specifically claimed. It has been further held by their Lordships that the expression “at any stage of proceeding” is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed and it has been held by their Lordships in para 25 & 26 as under :

25. A perusal of the aforesaid judgments would show that relief of possession is ancillary to the decree for specific performance and need not be specifically claimed. That was the position even under the Specific Relief Act, 1877. Section 22 of the Act was introduced in pursuance of the recommendation of the Law Commission to avoid multiplicity of proceedings and to cut down the delay. Therefore, though the preponderance of judicial opinions under the Specific Relief Act, 1877 was in favour of the fact that relief of possession is ancillary to the decree for specific performance, it was further clarified by introducing Section 22 of the Act.

26. The matter can be examined from another angle as well. Section 22(2) of the Act, though is worded in negative language, “no relief under clause (a) or clause (b) of sub- section (1) shall be granted by the court unless it has been specifically claimed”, but the proviso takes out the mandatory nature from the substantive

7 2022 Livelaw (SC) 395 {SLP (Civil) No.15653 of 2017 decided on 5.4.2022}

provision of sub-section (2) when the plaintiff is allowed to amend the plaint on such terms as may be just for including the plaint for such relief “at any stage of the proceeding”. “At any stage of the proceeding” would include the proceeding in suit or in appeal and also in execution. The proviso to sub-section (2) of Section 22 of the Act contemplates that the Court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including a claim for such relief. The said proviso makes the provision directory as no penal consequences follow under sub-section (2) of Section 22. Therefore, sub-section (2) of Section 22 is a rule of prudence to ask for possession “in an appropriate case”. The appropriate case would not include a suit for specific performance simpliciter but may include a suit for partition or a suit when the decree is to be executed against a transferee. Sub-section (2) cannot be said to be a mandatory provision as the power to claim relief at any stage of the proceeding makes sub-section (2) directory. Sub-section (2) is a matter of procedure to avoid multiplicity of proceedings. The procedural laws are handmaid of justice and cannot defeat the substantive rights. Reference may be made to **M/s. Ganesh Trading Co. v. Moji Ram**⁸ wherein it was held as under:

“2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.”

Their Lordships further held in para 30 as under :

8 (1978) 2 SCC 91

“30. The defendant in terms of the agreement is bound to handover possession of the land agreed to be sold. The expression “at any stage of proceeding” is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. This Court in **Babu Lal** has explained the circumstances where relief of possession may be necessary such as in a suit for partition or in a case of separate possession where the property conveyed is a joint property. In the suit for specific performance, the possession is inherent in such suit, therefore, we find that the decree-holders are in fact entitled to possession in pursuance of the sale deed executed in their favor.”

23. In view of the authoritative pronouncement by their Lordships of the Supreme Court in **Babu Lal** (Supra) and further followed in **Manickam @ Thandapani** (supra), it is quite vivid that in the suit for specific performance of a contract for transfer of immovable property, the possession is inherent in such decree and therefore, the decree holder is entitled to possession pursuant to the sale deed executed in his favour, though relief of possession was not claimed and granted in the suit so filed by decree holder and decree is silent, by virtue of Section 22 of the Specific Relief Act, 1963. As such, in the suit for specific performance of contract, decree for possession is inherent and it is held so accordingly.

Conclusion :-

24. In conclusion to the aforesaid legal discussion, it is hereby held that the trial Court has rightly held that since plaintiff had already paid the total sale consideration amount to the defendant, he was always ready and willing to perform his part of the contract and the suit filed by the plaintiff is not barred by limitation. I do not find any merit in this appeal warranting interference by this Court under Section 96 of CPC.

25. Accordingly, this first appeal stands dismissed leaving the parties to bear their own cost(s).

26. Decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
JUDGE

Harneet