



2026:CGHC:14172-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 676 of 2018

Reserved on 10/03/2026

Pronounced on 25/03/2026

Satyadeo Prasad Sinha S/o Shri Parmeshwar Prasad Sinha, Aged About 62 Years, Occupation Proprietor Swapnil Builders, R/o House No. B-44, Surya Apartment, Junvani, Tahsil And District Durg(CG)Defendant.

... Appellant

versus

1 - Prabhunath Singh S/o Ramnaresh Singh, Aged About 45 Years, R/o Plot No.4, Pushpknagar Junvani, Bhilai, Tahsil And District Durg, (CG)Plaintiff.

2 - State of Chhattisgarh, Through Collector, Durg, Tahsil And District Durg (CG)

... Respondents

For Appellant	: Mr. Rajeev Shrivastava, learned Senior Advocate appears along with Mr. Prateek Sinha, Ms. Kajal Chandra, Mr. Kaif Ali Rizvi, Advocates and the Appellant- Satyadeo Prasad Sinha.
For Respondent No.1	: Mr. B.P. Singh, Advocate appears along with Mr. Vidya Bhushan Soni, Advocate
For Respondent No.2	: Mr. Dilman Rati Minj, Dy. Advocate General appears along with Ms. K. Radhika, P.L.

**DB: Hon'ble Shri Justice Sanjay S. Agrawal &
Hon'ble Shri Justice Amitendra Kishore Prasad
C A V Judgment**

Per Sanjay S. Agrawal, J.

1) This appeal has been preferred by the appellant/defendant No.1- Satyadeo Prasad Sinha under Section 96 of the Code of Civil Procedure, 1908, questioning the legality and propriety of the judgment

and decree dated 24.10.2018 passed by the Sixth Additional District Judge, Durg, District Durg (C.G.) in Civil Suit No.95-A/2014, whereby, a decree for specific performance of contract based upon an oral agreement to sale was granted to the plaintiff- Prabhunath Singh, while declaring his interest over the land in question as well. The parties shall be referred hereinafter as per their description before the concerned trial Court.

- 2) The facts, which are essential for adjudication of this appeal are, that the plaintiff- Prabhunath Singh, instituted a suit claiming specific performance of contract based upon an oral agreement to sale and, also for the declaration to the effect that his interests are involved in the suit land, with a further relief of issuance of permanent injunction restraining the defendant No.1- Satyadeo Prasad Sinha from creating any 3rd party interest over the land in question.
- 3) According to the plaintiff, the land in question, bearing Khasra Nos. 86/2, 86/3, 86/4 and 86/5 admeasuring 0.280 hectare, 0.270 hectare, 0.270 hectare and 0.270 hectare, respectively, total admeasuring 1.090 hectare, situated at village Jamul, Tahsil and District Durg were purchased by him and defendant No.1 after collecting a sum of Rs.1,15,21,000/- (Rupees One Crore Fifteen Lacs Twenty One Thousand) from various persons and deposited the same in the Bank Account of defendant No.1, while assuring the said persons to provide them a constructed house over it. It is pleaded by the plaintiff that he was in close relations with defendant No.1 as they are involved in building construction work and since the Colonizer Licence was not available with him, therefore, after collecting the alleged amount from

different persons and that by depositing the same in the Bank Account of defendant No.1, the registered deed of sales for purchasing the alleged suit lands were got registered in his name though, he has equal interest over it. It is pleaded further by the plaintiff that since the defendant No.1 was busy with some other project, therefore, an oral agreement was executed between them on 01.09.2012 in presence of Rahul Siyal and Krishna Kumar Vanwey, according to which, the registered deed of sale was to be executed for a consideration of Rs.40,00,000/- (Rupees Forty Lacs) either in his name, or in the name of the person of his choice and, he paid a sum of Rs.16,00,000/- (Rupees Sixteen Lacs) to him in pursuance thereof, on different dates. Further of his claim is that while in possession over the alleged suit land, he incurred huge amount for the construction of officer staff quarters, servant quarters, boundary wall and gate etc., but owing to escalation in the price of the suit land, the defendant No.1 refused to execute the registered deed of sale in pursuance to the alleged oral agreement and instead, lodged a false report against him on 22.06.2014 before the Police Station, Jamul with an allegation that he has raised the alleged construction work while encroaching the same, which, therefore, compelled him to issue a legal notice on 19.08.2014 for execution of the registered deed of sales in his favour, but neither the reply was given by him, nor has obeyed the alleged oral agreement, leading to the institution of the suit in the instant nature, instituted on 17.11.2014 seeking the following reliefs :-

- (a) that the defendant No.1 be directed to execute a registered deed of sale pertaining to the land in question in his favour ;
- (b) that defendant No.1 be restrained from creating any 3rd party interest over the land in question and also for the interference of his peaceful possession over the land in question ; and
- (c) that his interest over the land in question be declared as well and any other relief which the Court may deem fit.
- 4) In reply, the defendant No.1 has denied specifically the execution of the alleged oral agreement to sale or has received any amount of Rs.16,00,000/- from the plaintiff in pursuance thereof. According to him, the revenue papers are recorded in his name after purchasing the alleged suit land under different registered deeds of sales and the plaintiff was neither in possession, nor has raised any construction over it. It is contested further on the ground that since the plaintiff has borrowed a sum of Rs.30,00,000/- (Rupees Thirty Lacs) from him for his business purpose, therefore, the alleged amount of Rs.16,00,000/-, out of it, was refunded on his demand on different dates and when he demanded rest of the loan amount in the month of July, 2014, the suit in the instant nature has been instituted in order to escape himself from the alleged liability. It is contested further on the ground that the claim as made seeking interest over the land in question is not maintainable

by virtue of Section 4 of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as 'the Act, 1988').

- 5) The trial Court, after considering the evidence led by the parties, particularly the statements of Krishna Kumar Vanwey (PW-2) and Rahul Siyal (PW-3), coupled with the fact that the defendant No.1 has failed to establish the fact that he received the alleged amount of Rs.16,00,000/- out of the alleged loan amount of Rs.30,00,000/- advanced by him to the plaintiff, held that an oral agreement to sale dated 01.09.2012 was executed between them for alienation of the alleged suit land for a consideration of Rs.40,00,000/- upon receiving an earnest amount of Rs.16,00,000/- by defendant No.1 and, held further that since the land in question was purchased by the plaintiff and defendant No.1 after collecting the amount from different persons and as the sale consideration was not paid by them, the suit, therefore, cannot be held to be barred under Section 4 of the Act, 1988. In consequence, the plaintiff has been held to be entitled for a decree for specific performance of contract based upon the alleged oral agreement to sale, dated 01.09.2012 while declaring his interest over the land in question as well and, that by restraining the defendant No.1 from interfering in his peaceful possession. Being aggrieved, the instant appeal has been preferred.
- 6) Learned counsel appearing for the appellant/defendant No.1 submits that the finding recorded by the trial Court holding that an oral agreement to sale was executed between the parties on 01.09.2012 and, thereby, granting a decree for specific performance of contract, is apparently contrary to the materials available on record. While inviting

attention towards the statements of Krishna Kumar Vanwey (PW-2) and Rahul Siyal (PW-3) submits that since both have failed to state that any oral agreement to sale was executed on the said date, the trial Court ought not to have held that any agreement to sale, as such, was ever made orally between them. It is contended further that in absence of any cogent and reliable evidence produced by the plaintiff for the establishment of the alleged oral agreement to sale, coupled with his failure to establish the terms and conditions for the execution of the sale in pursuance to the alleged oral agreement, a decree for specific performance of contract ought not to have been granted. In any case, while referring to the proceedings drawn against the plaintiff pertaining to dishonor of the cheques, issued by him, contended further that even he was not possessing the sufficient fund or could be held to be ready and willing to perform his part of the contract. While inviting attention towards the definition of "Benami Transaction" provided under Section 2(9) of the Act, 1988, it is contended further that since the sale consideration, according to the plaintiff, was paid by others, the claim as made by him with regard to the declaration of his interest over the alleged suit land ought to have been held to be barred by jurisdiction under Section 4 of the said Act, 1988. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of **V.R. Sudhakara Rao and Others Vs. T.V. Kameswari**, reported in **(2007) 6 SCC 650**.

- 7) On the other hand, learned counsel appearing for the respondent No.1/plaintiff submits that the trial Court, while placing reliance upon the testimonies of Krishna Kumar Vanwey (PW-2) and Rahul Siyal

(PW-3), has not committed any illegality in granting a decree for specific performance of contract upon holding that an oral agreement to sale was executed between the parties on 01.09.2012 for execution of the registered deed of sale after receiving an earnest amount of Rs.16,00,000/-. It is contended further that since the suit land was purchased in the name of defendant No.1 after collecting the amount of Rs.1,15,21,000/- from different persons and as the sale consideration was neither paid by the plaintiff, nor by the defendant No.1, the trial Court has, therefore, not erred in holding that the alleged transaction would not fall within the definition of "Benami Transaction" while refusing to hold the suit to be barred by jurisdiction under Section 4 of the Act, 1988 and, that by holding plaintiff's interest over the suit land. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of **K. Nanjappa (Dead) By Legal Representatives Vs. R.A. Hameed Alias Ameersab (Dead) By Legal Representatives And Another**, reported in (2016) 1 SCC 762, **A. Kanthamani Vs. Nasreen Ahmed**, (2017) 4 SCC 654, **Zarina Siddiqui Vs. A. Ramalingam Alias R. Amarnathan**, (2015) 1 SCC 705, **Silvey And Others Vs. Arun Varghese And Another**, (2008) 11 SCC 45, **Bhagchand Jain Vs. Parwati Sharma and Another**, 2022 SCC OnLine (Chh) 1693.

- 8) We have heard learned counsel appearing for the parties and perused the entire record.
- 9) The main questions, which arise for determination in this appeal are :-

(i) *Whether an oral agreement to sale was executed between the plaintiff and the defendant No.1 on 01.09.2012 for the execution of the land in question either in the name of the plaintiff or in the name of the persons of his choice and/or, whether the plaintiff has sufficient fund and was ready and willing to perform his part of the contract ?*

(ii) *Whether suit as framed and instituted claiming interest over the land in question is hit by the provision prescribed under Section 4 of the Prohibition of Benami Property Transactions Act, 1988 ?*

- 10) Before proceeding with the matter, it is necessary to consider the applications (I.A.No.8/2026 and I.A.No.9/2026), both made by the plaintiff on 13.02.2026, whereby, the plaintiff is seeking for the deletion of manipulation made at the fag end of plaint para 6, wherein, it has been mentioned that “plaintiff has prescribed his right by way of adverse possession”, and also for holding an enquiry in this regard under Section 340/195 of Cr.P.C.
- 11) According to the counsel appearing for the plaintiff, he came to know for the first time regarding the alleged manipulation during the pendency of this appeal, which compelled him for filing of an application, marked as I.A.No.4/2023 on 28.02.2023, seeking enquiry about the manipulation made at para 6 of the plaint. After considering the said application (I.A.No.4/2023), this Court vide order dated 18.03.2024 has observed and directed as under :-

"I.A.No.4 of 2023

This is an application filed by the respondent No.1 seeking enquiry about manipulation made in para 6 of the plaint.

The aforesaid application has been filed seeking suitable direction in the backdrop of the fact that at the end of para 6 of the plaint while the suit was being contested the words "वादी विरोधी आधिपत्य के आधार पर भूस्वामी हो गया" were not written and in this regard the affidavits of the plaintiff Shri Prabhunath Singh and his counsel before the trial Court namely; Shri B.L. Deshmukh, Advocate have also been filed. In the said affidavits, both the affidavees categorically stated that in the original plaint those lines were not written. It has been further stated that the issue was also not framed in this context and neither it was replied in the written statement, which would show that interpolation has been made.

Serious exception has been taken by the learned senior counsel for the appellant and would submit that the contents of the original plaint filed before the learned Sixth Additional District Judge, Durg, contains the aforesaid words at para 3 of the plaint.

Since the suit was decreed for specific performance and if certain averments have been made, as a pleading by the plaintiff it may have an effect on the merits.

As the serious allegation of interpolation has been made, it is directed that firstly the enquiry should be made by the Registrar (Judicial) of this Court and thereafter, the concerned trial Court. If need be, expert opinion may also be obtained".

- 12) In compliance of the aforesaid direction, the Registrar(Judicial) enquired into the matter and submitted the report. The relevant portion of it as reveals from the order sheet dated 07.05.2025, reads as under :-

“In view of above facts and circumstances of the case and perusing the material available on record, it is appropriate that to appoint a handwriting expert, who can find out that who wrote those words at the end of para 6 of the original plaint and also find out that whether the handwritten words ink & writing style is of plaintiff or his counsel or any other person. Therefore, it would be appropriate to send the matter with case files to the concerned trial Court directing to submit thorough report in the matter with exclusive findings.”

- 13) In view of the aforesaid report, the original record of the suit was directed to be sent to the concerned trial Court by this Court vide order dated 07.05.2025, with a direction for holding an enquiry and submit its report within a period of three months from the date of receipt of the records.
- 14) It appears that as per the request of the trial Court, time for holding an enquiry for the said purpose was extended from time to time and, it appears further that for holding an enquiry for the said purpose, the State Examiner, namely, N.K. Sikkewal was appointed, who vide his opinion dated 30.10.2025 has, however, failed to give any definite opinion to this effect. The opinion of him is in the verbatim reads as under :-

OPINION

No./QD/CX 172/25

Date 30/10/25

[विषय- माननीय उच्च न्यायालय छ.ग. बिलासपुर के आदेशानुसार FA NO. 676/2018, सत्यदेव प्रसाद सिन्हा विरुद्ध प्रभुनाथ सिंग तथा मूल प्रकरण व्यवहार वाद क. 95 अ/2014 प्रभुनाथ सिंग विरुद्ध सत्यदेव प्रसाद सिन्हा एवं अन्य एक, में मूल वाद कंडिका 6 में उल्लेखित "वादी विरोधी आधिपत्य के आधार पर भू -स्वामी हो गया" का जांच करने के पश्चात रिपोर्ट पेश करने के संबंध में।]

The documents of this case stamped and marked Q1,Q2 and S-1 to S-4, K-1 to K-3, A-1 to A-4, D-1 to D-4, M-1 to M-3, B-1 to B-4, P-1 to P-3, have been carefully and thoroughly examined in all aspect of handwriting identification and detection of forgery with the help of necessary scientific aids available in the state laboratory at Raipur C.G.

01. When the red enclosed questioned writings stamped and marked Q1 (On page number 3 serial number (कंडिका 6) and Q2 (On page number 3 serial number (कंडिका 6) have been carefully examined and compared thoroughly it is found that these writings are over written, as well as physical eraser have been applied over the writing portion, resulting the paper fibers are disturbed therefore line quality and execution of strokes can not be studied properly, after above observation it is clearly established that these writings stamped and marked Q1 and Q2 are not fit for comparison.

Sd/-
30/10/25
(N.K.SIKKEWAL)
State Examiner of QD
Govt. Of (C.G.) Raipur

- 15) Perusal of the record would reveal further that a “Joint committee” of two experts, viz, from Hyderabad Forensic Handwriting, as well as, Mumbai Institute of Forensic Science, was constituted in this aspect, when the said State Examiner has failed to give the opinion, but they have also failed to give its definite opinion. A “Confidential Inquiry Report” of the said Joint committee (un-dated) in its verbatim reads as under :-

Confidential Inquiry report

Report:- In FA/18 Satydeo Prasad sinha vs Prabhunath singh

Sir,

Regarding incorporation of Line वादी विरोधी आधिपत्य के आधार पर भूस्वामी हो गया।

A Joint committee of two expert viz from Hyderabad forensenic handwriting as well as Mumbai Institute of forensic science has given report as under

1. Affidavit writing of Counsel for plaintiff / respondent Counsel for appellant/ defendant affidavit writing as well as from the original plaint plaintiff writing and defendant written statement was compared report was as under :-

Reasons assigned

None of the writing of both the advocate's affidavit matched with the writing of Line written वादी विरोधी आधिपत्य के आधार पर भूस्वामी हो गया।

Scientific reason:-

All the words in the line वादी विरोधी आधिपत्य..... गया has been written twice or sometimes thrice due to interlineation and pressure of pen again and again, originality has been lost and it has been written by two three different persons at different times pen stroke is totally different.

Reference questioned documents Harrison

Dent mark appear behind the paper, originality of writer is lost due to multiple interlineation (अंतर्संबंध) so by no stretch of imagination it cannot that who has done it. time period dates to 2022.

So as per joint committee expert report it is impossible to say that who has incorporated said line.

- 16) The State Examiner and the Joint Committee of two experts have, thus, failed to give any definite opinion as to whether any manipulation as such was made at the fag end of the plaint para 6 or not. Be that as it may, it is to be seen from perusal of the averments made in the plaint as well as the written statement of defendant No.1/appellant, *vis-a-vis*, the issues framed by the trial Court, as also from the grounds taken in the memo of instant appeal, the alleged fact regarding accrual of plaintiff's title by way of adverse possession, was not taken. It, thus, *prima facie* appears that the alleged plea, shown to be at the fag end of plaint para 6, was not there, else, not only the same would have been controverted by the defendant No.1 in his written statement, the issues to this effect must have been framed by the trial Court and even at the time of preferring this appeal, a specific ground must have been taken.
- 17) In view of such circumstances, the application (I.A.No.9/2026) seeking deletion of the said para mentioned at the fag end of para 6 is allowed and, the plaintiff is permitted to delete the said portion, i.e. **“वादी विरोधी आधिपत्य के आधार पर भूस्वामी हो गया”**। However, considering the facts and circumstances of the case and that by considering the enquiry made to this effect, as observed herein-above, and in view of the language used in Section 340 Cr.P.C., we are, therefore, not inclined to make a complaint regarding commission of an offence as alleged by the plaintiff, in the light of the principles laid down by the Supreme Court in the matter of **Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another**, reported in **(2005) 4 SCC 370**, wherein, at para 23, it was held as under :-

“23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b)”.

- 18) In view of the aforesaid principles, no fruitful purpose would be served for making a complaint in this regard in view of the aforesaid reports, submitted by the State Examiner as well as by the Joint Committee report, coupled with the fact that neither the alleged portion was taken into consideration by the trial Court, nor the plaintiff has been non-suited for it. The said application (I.A.No.8/2026) is, thus, rejected.
- 19) Now, the matter is required to be considered on merits while ignoring the aforesaid plea made at the fag end of plaint para- 6.
- 20) From perusal of the record, it appears that the part of the land bearing Khasra No.86 admeasuring 0.280 hectare situated at village Jamul, Tahsil and District Durg, was purchased in the name of defendant No.1 under the registered deed of sale dated 18.08.2011 (Ex.P-101), said to have been executed by one Jagannath Yadav through his Power of Attorney Holder for a consideration of Rs.5,95,000/- (Rupees Five Lacs Ninety Five Thousand) and, likewise by virtue of three registered deed of sales (Ex.P-100, Ex.P-102 and Ex.P-104), all executed on 25.10.2011, said Jagannath Yadav has sold the part of the said Khasra

number, i.e. Khasra No.86, admeasuring 0.280 hectare, 0.270 hectare, 0.270 hectare and 0.270 hectare, respectively, in the name of defendant No.1, which were, thereupon, re-numbered as “Khasra Nos. 86/2, 86/3, 86/4 and 86/5” as described detailed in plaint para- 2.

- 21) According to the plaintiff, a total sum of Rs.1,15,21,000/- was collected from different persons in order to provide them a constructed house and, out of which, the sale consideration was paid to said Jagannath Yadav through his Power of Attorney Holders for purchasing the land in question, but, in order to establish the said fact, none of those persons have come forward in order to establish the said fact that the sale consideration was paid by them. Since all the said sale deeds were registered, therefore, a strong presumption would arise that it was purchased by defendant No.1, unless and until it is rebutted by the plaintiff by way of cogent and reliable evidence, who, however, failed to do so.

- 22) It is to be seen further that although, it was pleaded by the plaintiff that he was in possession over the suit land and has incurred huge amount for the construction of officer staff center, servant quarters, boundary wall etc., but the revenue papers, including its '*Kaifiyat* column', *vis-a-vis*, the recitals made in the alleged registered deed of sales would, however, showing the possession of defendant No.1 over the alleged suit land. Therefore, merely on his bald oral statement, it cannot be said that he was in possession over the suit land, or has incurred huge amount for raising certain constructions over it, as alleged by him.

- 23) Be that as it may, an oral agreement to sale was alleged to have been executed between the plaintiff and defendant No.1 on 01.09.2012, as revealed from the averments made in the plaint, in presence of two witnesses, namely, Krishna Kumar Vanwey and Rahul Siyal and, according to which, the registered deed of sale was to be executed for a consideration of Rs.40,00,000/- either in the name of the plaintiff, or in the name of the persons of his choice, upon receiving an earnest amount of Rs.16,00,000/- by defendant No.1 on different dates commencing with effect from 14.08.2013 upto 27.11.2013, as revealed from plaint para- 7.
- 24) What is, therefore, revealed from the plaint that an oral agreement to sale was alleged to have been made on 01.09.2012 and based upon which, the plaintiff is seeking a decree for specific performance of contract of sale of the immovable property. It is true that a decree for specific performance of contract could be granted on the basis of an oral agreement to sale as held in the matter of **K. Nanjappa (Dead) by Leal Representatives** (supra), as relied upon by Mr. B.P. Singh, learned counsel appearing for the respondent No.1/plaintiff, but it has been held in the said matter that if the plaintiff is seeking a decree for specific performance of contract based upon an oral agreement to sale, then a heavy burden would lie upon him to establish the said fact, including the vital terms and conditions of it. The relevant observations made to this effect at paragraphs 21 and 22 read as under :-

“21. There is no dispute that even a decree for specific performance can be granted on the basis of oral contract. Lord Du Parcq in a case observed, while deciding a suit for specific performance, that an oral contract is valid, binding

and enforceable. A decree for specific performance could be passed on the basis of oral agreement. This view of a Privy Council was followed by this Court in *Kollipara Sriramulu v. T. Aswatha Narayana* (AIR 1968 SC 1028) and held that an oral agreement with a reference to a future formal contract will not prevent a binding bargain between the parties.

22. However, in a case where the plaintiff comes forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement or a written contract, heavy burden lies on the plaintiff to prove that there was consensus ad idem between the parties for the concluded agreement for sale of immovable property. Whether there was such a concluded contract or not would be a question of fact to be determined in the facts and circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties”.

- 25) In view of the aforesaid principles laid down by the Supreme Court, it is, thus, to be seen whether the plaintiff has succeeded to prove the alleged oral agreement to sale, made on 01.09.2012, and also of its vital terms and conditions, so as to hold that the plaintiff would be entitled to get a decree for specific performance of contract based upon such an oral agreement.
- 26) However, a bare perusal of the averments made in the plaint, it appears that no amount towards earnest money was paid to the defendant No.1 on the said day and instead, a sum of Rs.2,00,000/- (Rupees Two Lacs) was paid for the first time only on 14.08.2013, i.e. some part only and, that too much after passing of the considerable period of more than 11 months from the date of the alleged oral

agreement to sale. That apart, the alleged oral agreement to sale was alleged to have been made in presence of said Krishna Kumar Vanwey (PW-2) and Rahul Siyal (PW-3), but a bare perusal of their testimonies, it is difficult to hold that it was made orally on 01.09.2012, as none of them have deposed that the alleged agreement was made orally on 01.09.2012. Contrarily, as revealed from the averments made in the plaint by way of amendment, it was a written agreement made in this regard on 01.09.2012. In view of such contradictory pleas taken by the plaintiff, it cannot be said that any oral agreement to sale as such was made on 01.09.2012. Moreover, it has not been stated even in a legal notice (Ex.P-1) dated 19.08.2014, issued by the plaintiff that any oral agreement as such was made on 01.09.2012.

- 27) What is, therefore, reflected from the averments made in the plaint that though, the agreement to sale was alleged to have been made orally on 01.09.2012 in presence of two witnesses, namely, Krishna Kumar Vanwey (PW-2) and Rahul Siyal (PW-3), but, as observed herein-above, none of them have, however, stated that it was made orally in their presence. Moreover, the plaintiff has failed further to prove its terms and conditions, nor the said fact was even found to be established from the alleged notice (Ex.P-1) issued by him on 19.08.2014, so as to hold that any oral agreement to sale as such was made on 01.09.2012, in the light of the principles laid down in the above-referred matter.
- 28) Besides, it is the settled principle of law that in a suit for specific performance of contract, the evidence and proof of the terms and conditions of the alleged agreement must be absolutely clear and

certain, as held by the Supreme Court in the matter of **V.R. Sudhakara Rao And Others Vs. T.V. Kameswari**, reported in **(2007) 6 SCC 650**, as relied upon by learned counsel appearing for the appellant/defendant No.1, where at paragraph 16, it was held as under :-

“16. The High Court has rightly concluded that there is no clear proof relating to the other terms of condition. The relief of specific performance is discretionary relief and except the oral evidence, there is no clear evidence to prove several of the essential terms which have been taken note of by the High Court. The High Court, on analysing the evidence, has come to hold that except Exhibit B-1 and the oral evidence of DW 1 and DW 2, there is no other clear proof relating to the other terms and conditions of the contract which can be termed as essential conditions like delivery of possession and also the obtaining of permission from the Urban Land Ceiling Authorities and therefore, it cannot be said that all the essential terms and conditions of a well-concluded contract had been established in the case at hand”.

- 29) Applying the aforesaid principles to the case in hand, it cannot be held that any oral agreement as such was ever made between them on 01.09.2012, merely based upon his bald statement or the plaintiff could be held to be entitled for a decree for specific performance of contract based upon such an agreement.
- 30) Now, insofar as the principles laid down by the Supreme Court in the matter of **A. Kanthamani** (supra), as relied upon by the counsel appearing for the respondent No.1/plaintiff, is concerned, the same is, however, noted to be of no use as in the said matter, readiness and willingness of the plaintiff was considered, whereas, in the instant

matter, as found herein-above, the plaintiff has even failed to prove the existence of an oral agreement to sale, based upon which, his claim was made. Therefore, in absence of the proof of the alleged oral agreement, no fruitful purpose would be served to examine his readiness and willingness.

- 31) Insofar as the principles laid down by the Supreme Court in the matter of **Zarina Siddiqui** (supra), as relied upon by the counsel appearing for the respondent No.1/plaintiff, is concerned, the same is also noted to be distinguishable from the facts involved herein as in the said matter, an agreement to sale executed by the Power of Attorney Holder of defendant No.1 in favour of the plaintiff, was found to be proved, but the defendants in their written statement had taken a false plea saying that the alleged Power of Attorney Holder was authorized only for looking after and managing the suit property. Since, a false plea was taken, therefore, in that factual scenario, it was held and declined the defendants for exercising the discretionary power in their favour by refusing to grant a decree for specific performance of contract in favour of the plaintiff. The said principle has, thus, been laid down entirely on different footings and no reliance, therefore, could be placed upon it. Likewise, the principles laid down in the matter of **Silvey And Others** (supra), is also of no use being laid down on different footings and, the principles laid down by this Court in the matter of **Bhagchand Jain** (supra) while placing reliance upon the said decision, i.e. **Silvey And Others Vs. Arun Varghese And Another** [(2008) 11 SCC 45], is also of no use.

- 32) It is to be seen further that the alleged registered deed of sales (Ex.P-101, Ex. P-100, Ex. P-102 and Ex.P-104) were executed in the name of defendant No.1 and according to the plaintiff, the entire sale consideration was paid after collecting the same from different persons. It, thus, appears that the alleged sale deeds were executed "Benami" in the name of defendant No.1, however, such a plea, though not found to be established, as observed herein-above, cannot even be taken by the plaintiff in order to establish his interest over the land in question in the light of the provisions prescribed under Section 4 of the Act, 1988. Yet the trial Court has held his interest over it, which is unknown to the law and such a decree, thus, liable to be quashed.
- 33) Consequently, the appeal is allowed and the impugned judgment and decree, dated 24.10.2018 passed by the Sixth Additional District Judge, Durg, District Durg (C.G.) in Civil Suit No.95-A/2014 is hereby set-aside.

No order as to cost(s).

A decree be drawn accordingly.

Sd/-
(Sanjay S. Agrawal)
Judge

Sd/-
(Amitendra Kishore Prasad)
Judge