

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**SA No. 465 of 2013**

1. Chhotku Ram (Died) Through Lrs-

1. (i) Smt. Noni Bai, Aged about 60 Years Wd/o Late Chhotku Ram, R/o Chantipali, P. S. Dabhra, Tahsil Malkharoda, District Janjgir-Champa (Chhattisgarh)
1. (ii) Ramnarayan, Aged about 35 Years S/o Late Chhotku Ram, R/o Chantipali, P. S. Dabhra, Tahsil Malkharoda, District Janjgir-Champa (Chhattisgarh)
1. (iii) Fanindra, Aged about 20 Years S/o Late Chhotku Ram, R/o Chantipali, P. S. Dabhra, Tahsil Malkharoda, District Janjgir-Champa (Chhattisgarh)
1. (iv) Riddhi Bai, Aged about 40 Years D/o Late Chhotku Ram, W/o Uttarakumar Sahu, R/o Village Mudpar, P. S. & Tahsil - Malkharoda, District Janjgir Champa (Chhattisgarh)
1. (v) Gokul Bai, Aged about 25 Years D/o Late Chhotku Ram, W/o Heeralal Sahu, R/o Singhra, P. S. Dabhra, Tahsil Malkharoda, District Janjgir Champa (Chhattisgarh)

**---- Appellants**

**Versus**

1. Manglu Ram, S/o Ganga Ram Sahu Aged About 57 Years , Occupation: Agriculture, R/o Village- Chantipali, P.S. Malkharoda, Tah. Malkharoda, Distt. Janjgir-Champa Chhattisgarh (Plaintiff)
2. Prushottam, S/o Abhe Ram Sahu Aged About 52 Years, Occupation- Agriculture, R/o Village Chantipali, P.S. Malkharoda, Tah. Malkharoda, Distt. Janjgir-Champa Chhattisgarh.....(Defendant No. 01)
3. State Of Chhattisgarh Through- Collector, Janjgir-Champa, Distt. Janjgir-Champa Chhattisgarh.....(Defendant No. 02)

**---- Respondents**

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For Appellants : Smt. Mala Dubey, Advocate  
For Respondent/State : Smt. M. Asha, Panel Lawyer

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**S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**04/12/2015**

Heard.

1. This appeal is directed against the impugned judgment and decree dated 22<sup>nd</sup>

August, 2013 passed in Civil Appeal No. 40- A/2012 by which learned lower appellate Court has dismissed the appeal affirming the judgment and decree passed by the trial Court.

2. Learned counsel for the appellants argues that the Courts below committed gross illegality and perversity in granting decree in favour of respondents- plaintiff even though the appellant proved that Purshottam had executed an agreement to sell the land in dispute in his favour on 5.2.2010 (EX.D-1) prior to execution of agreement to sell in favour of plaintiff on 12.3.2010. It is submitted that Purshottam has admitted his signature in agreement dated 5.2.2010 (Ex.D-1). Therefore, even if there is no other evidence of execution of this document, in view of admission of signature by Purshottam, the Court below ought to have recorded finding that the agreement between the appellant & Purshottam for sale of the land in dispute was executed on 5.2.2010 and for that reason, no decree could be granted for specific performance of contract in favour of plaintiff on the basis of agreement to sale dated 12.3.2010 (Ex.P-1).
3. The other submission of learned counsel for the appellant is that even though plaintiff failed to prove that there was validly executed agreement to sell between plaintiff and Purshottam on 12.3.2010 and despite evidence of Purshottam that he was coerced to sign the agreement and without proof of plaintiff's readiness and willingness to perform his part of contract, decree has been granted.
4. Though a plea was set up by defendants including the appellant that prior to plaintiff's agreement dated 12.3.2010 (Ex.P-1), an agreement to sell the disputed land was executed between the appellant and Purshottam (the owner), none of the defendants' witnesses has whispered about execution of agreement dated 5.2.2010 in their affidavit under Order 18 Rule 4 CPC. Even the appellant himself has not stated anything regarding so called agreement dated 5.2.2010. The Courts below have minutely examined and analyzed the evidence on record and have disbelieved agreement dated 5.2.2010. The finding in this regard are essentially concurrent finding of fact which requires no interference in the absence of any perversity.
5. The Courts below have recorded concurrent finding of fact both with regard to readiness and willingness on the part of plaintiff to execute the sale deed by performing his part of contract. The Courts below have also recorded concurrent

finding of fact that agreement (Ex.P-1) dated 12.3.2010 was executed by Purshottam and he admitted his signature. Further, the plea set up by Purshottam that he was coerced to put his signature in the agreement has not been found proved upon appreciation of oral evidence on record. Therefore, this appeal does not involve any substantial question of law.

6. In the result, the appeal fails and is hereby dismissed.

Sd/-  
**(Manindra Mohan Shrivastava)**  
Judge