

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 588 of 2004**

Manmohan Singh, S/o. Sardar Amolak Singh, aged about 28 years,
Occupation-Business, R/o. Nayaganj, Raigarh, Tahsil and District –
Raigarh (C.G.)

----Appellant**Versus**

1. Pancham Singh, S/o. Jagmohan Singh, aged about 35 years, Dead
: Legal representative.

- (a) Munu Singh, S/o. Jamohan Singh, aged about 60 years

- (b) Chhotelal Singh, S/o. Jagmohan Singh, aged about 58 years

- (c) Bahadur Singh, S/o. Jagmohan, Singh, aged about 56 years

- (d) Sunder Singh, S/o. Jagmohan Singh, aged about 53 years

All Resident of Village-Chhote Atarmuda, Tahsil and District –
Raigarh (C.G.)

2. Jeevanram, S/o. Mangatram, aged about 48 years, Occupation-
Business, R/o. Near Govt. - Hospital, Raigarh

3. State of Chhattisgarh, Through: Collector, Raigarh (C.G.)

----Respondents.

For Appellant : Mr. N.K. Malviya, Advocate.

For Respondent No.3/State : Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****08/02/2016**

Heard on admission.

1. This is an appeal against the judgment and decree dated 25.08.2004, passed by 1st Additional District Judge, Raigarh, District -Raigarh, in Civil Appeal No.40-A/2002, whereby the judgment and decree dated 26.02.2002, passed in Civil Suit No.51A/1999, passed by Second Civil Judge, Class-II, Raigarh, is affirmed.
2. The appeal is by the appellant/plaintiff against the concurrent finding of facts.
3. Briefly stated facts was that the deceased/defendant No.1, Pancham Singh, was the owner of the land, situated at Village Chhoteatarmuda, Tahsil and District – Raigarh bearing Kh. No. 82/11, admeasuring area 0.25 acres. It was averred that in respect of the said land, an agreement was executed on 03.04.1994 in favour of the plaintiff, Manmohan Singh for sale for a sale consideration of Rs.5000/-. Out of such sale consideration of Rs.5,000/-, an amount of earnest money for Rs.300/- was paid and rest of the amount i.e. Rs.4700/- was to be paid at the time of the registration of the sale deed. It is the case of the plaintiff that sale deed was not executed in favour of plaintiff and instead of that sale deed was executed on 27.10.1994 in favour of defendant No.2, Jeevan Ram, therefore, the suit for specific performance of contract was filed.
4. Learned counsel for the appellant would submit that both the Courts below have come to a perverse finding of fact by holding that the sale deed dated 27.10.1994 was rightly executed and failed to see the fact that sale deed dated 27.10.1994 was

executed after execution of the sale agreement in favour of the plaintiff dated 03.04.1994 (Ex.P/1). He further submits that having executed the agreement in favour of the plaintiff/appellant without any rhyme or reason, the defendant No.1 could not have been sold the subject land in favour of the other respondent/defendant. He further submits that both the Courts below have failed to appreciate the fact that there has been a breach of agreement, consequently suit for specific performance of contract should have been decreed.

5. Perused the documents and the order and the evidence. It was the case of the defendant No.2, the purchaser of the land, that by an agreement dated 21.09.1993, the said land was agreed to be sold by the deceased/defendant No.1, Pancham Singh in favour of the defendant No.2, Jivanram. The said agreement is marked as Ex.D-1. The said document i.e. Ex.D-1 was perused, wherein the sale consideration in respect of the said land is shown for Rs.31,000/- and it is stated that out of the such sale consideration, an amount of Rs.3,000/- was paid as an earnest money. Whereas, the plaintiff has stated that on 03.04.1994, the agreement of sale was executed in his favour in respect of the said land for sale consideration of Rs.5,000/- and out of that Rs.300/- was paid. The evidence and the statement would show that in lieu of agreement, Ex.D-1, the sale deed dated 27.10.1994 was executed by the deceased-defendant, Pancham Singh in favour of defendant No.2, Jivan Ram, which is marked as Ex.P-12.
6. Oral evidence in both the cases were adduced. Perusal of the documents would show that sale deed dated 27.10.1994 was

executed in favour of the defendant No.2, after execution of agreement Ex.D-1, dated 21.09.1993, therefore, the claim of the plaintiff that sale deed dated 27.10.1994 was executed after execution of the agreement Ex.P-1 dated 03.04.1994 can not be appreciated as the nucleus of the said sale deed dated 27.10.1994 arises out of the agreement dated 21.09.1993, which was prior to the agreement dated 03.04.1994. There is no evidence on record to hold that the agreement was out come of fraud. Consequently, the finding of both the Courts below that the sale deed dated 27.10.1994 was out come of valid transaction can not be disturbed. Further more this logic can not be appreciated that after having agreed to sale the land for Rs.31,000/- in the year 1993, the same land would be subject of sale for lesser sale consideration of Rs.5,000/-. The registration of sale deed culminated on 27.10.1994, affirms the sale consideration and price of the land, which are shown in sale deed and presumption of correctness follows.

7. The finding, which was arrived at by both the Courts below are finding of fact and after perusal of evidence in my considered opinion it do not call for any interference. In a result no substantial question of law arises for consideration in this second appeal.
8. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE