

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 132 of 2016**

Sudama Sonkar S/o Sri Shambhu Sonkar, Aged About 27 Years R/o Village Datrega, Post Office Sezbahar, Tahsil & District Raipur, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Smt. Bishahin Bai Wd/o Tulsi Ram Dhruv, Aged About 67 Years R/o Village Datrega Post Office Sezbahar, Tahsil & District Raipur, Chhattisgarh
2. Shri Chinta Ram S/o Late Tulsiram, Aged About 48 Years R/o Village Datrega Post Office Sezbahar, Tahsil & District Raipur, Chhattisgarh
3. Smt. Hemin Bai Dhruv D/o Late Shri Tulshi Ram Dhruv, R/o Village Datrega Post Office Sezbahar, Tahsil & District Raipur, Chhattisgarh
4. Shri Shyam Lal Dhruv S/o Late Tulsi Ram Dhruv, Aged About 46 Years R/o Village Datrega Post Office Sezbahar, Tahsil & District Raipur, Chhattisgarh
5. Shri Jain Lal Dhruv S/o Late Tulsi Ram Dhruv, Aged About 44 Years R/o Village Datrega Post Office Sezbahar, Tahsil & District Raipur, Chhattisgarh
6. Shri Sevakram Dhruv S/o Late Tulsi Ram Dhruv, Aged About 37 Years R/o Village Datrega Post Office Sezbahar, Tahsil & District Raipur, Chhattisgarh
7. State Of Chhattisgarh, Through: Collector, Raipur, Address: Collector Office Collectorate Raipur, Chhattisgarh(Defendants)

-----Respondents

For Appellant:	Shri SK. Dadsena, Advocate.
For Respondent No.7/State:	Shri Sangarsh Pandey, Deputy Government Advocate.

Single Bench: Hon'ble Shri P. Sam Koshy, J
Order On Board

10.3.2016

1. The present Second Appeal has been preferred challenging the judgment and decree dated 8.12.2015 passed in Civil Appeal No.4-A/2013. By the said judgment and decree, the 1st Appellate Court has affirmed and confirmed the judgment and decree passed by the 4th Civil Judge, Class-1,

Raipur in Civil Suit No.19-A/2008 whereby the suit preferred by the present Appellant also was dismissed.

2. The facts in brief necessary for adjudication of the present appeal are that the Appellant/Plaintiff had filed a suit for specific performance seeking execution of the agreement to sale dated 27.12.2000 before the 4th Civil Judge, Class-1, Raipur which was registered as Civil Suit No.19-A/2008. The Respondents/Defendants having entered appearance submitted their written statement, thereafter issues were framed and evidences were recorded and finally the Trial Court, vide its judgment and decree dated 20.11.2012, dismissed the suit of the Appellant amongst others on the following grounds. Firstly the Appellant/Plaintiff has failed to establish his case by cogent and satisfactory evidence regarding the agreement to sale being entered into between the Appellant/Plaintiff with that of the Defendants. Secondly, the Trial Court was of the view that the agreement to sale was in fact entered into between the uncle of the Appellant/Plaintiff namely Nammu, PW-2 (बड़े पापा) on 27.12.2000 in respect of purchase of suit property but the Plaintiff failed to establish his case. However, in spite of best efforts, the agreement to sale could not be executed and for which the suit for specific performance of contract was filed.

3. The finding of the Court below further was that the agreement to sale was entered into between Nammu, PW-2-the father of Defendant Tulsi Ram and that at the time of filing of the suit, this Nammu was also alive and his legal heirs were also alive but the suit was filed neither by the executor of the agreement to sale i.e. Nammu nor his legal heirs but was preferred by some other family members whose names did not reflect in the agreement to sale and who was not a party to the agreement.

4. The Trial Court was also of the view that the wife of the executor of the agreement to sale namely Tulsi Ram, S/o Punu Bai was also the joint owner of the said property and that Punu Bai was also a necessary party and the suit was suffered by non-joinder of necessary parties as well. Accordingly, the Trial Court vide its judgment and decree dated 27.12.2000 dismissed the suit of the Plaintiff. The said judgment and decree dated 27.12.2000 was put to challenge by way of a First Appeal before the Court of the 3rd Additional District Judge, Raipur which was registered as Civil Appeal No.4-A/2013.

5. After considering the entire contentions put forth by the Appellant/Plaintiff in the First Appeal and the submissions put forth so far as this case is concerned, the 1st Appellate Court also reached to the same conclusion that the suit of the Appellant/Plaintiff was not maintainable on the ground that there was no contract entered into between the Appellant/Plaintiff and the Respondents/Defendants in as much as there is no averment in the pleading by the Appellant/Plaintiff that the agreement to sale was being executed by Nammu, PW-2 for and on behalf of the Appellant/Plaintiff neither was there any such evidence adduced by Nammu, PW-2, the person with whom the agreement to sale was entered into. Accordingly, the 1st Appellate Court also has dismissed the appeal vide the impugned judgment and decree dated 8.12.2015.

6. Learned Counsel for the Appellant further taking the Court through the pleadings made by the Plaintiff as also the evidence of the Defendants which the Plaintiff had led, has tried to convince this Court from the evidence of the witness of patwari Niranjan Sahu, DW-4 and wanted this Court to admit the appeal on the basis of the evidence which has been adduced by the Defendants. On specific query being made to Learned Counsel for the

Appellant, he has admitted the fact that in so far as the agreement to sale is concerned, it was not entered into between the Plaintiff as well as the Defendants but since the Plaintiff was residing in the joint family, he had all the right and power to institute and pursue the suit for specific performance of contract. However, from the perusal of the record as well as the two judgments, it is evidently clear that the Plaintiff has not stated in his pleading that the suit property was being purchased by Nammu, PW-2 on behalf of the joint family nor has he in his evidence stated that he has authorized the Plaintiff to institute the suit for and on his behalf. In the absence of such averments and evidence, the finding of the two Courts below cannot be faulted with.

7. It is settled position of law that concurrent finding of fact cannot be easily interfered unless there is an error apparent on the face of the record or that the finding arrived at was erroneous or perverse or the findings arrived at are not in accordance with the settled legal position. The Appellant has not been able to establish that the findings recorded by the two courts below are not based on the evidence or is contrary to the evidence that has come on record. The Second Appellate court cannot and should not interfere with the findings of fact arrived at by the two courts below without there being any substantial question of law. The Appellant in this case has failed to establish any factual position which has not been considered by the two Courts below or has wrongly been considered. Neither has the Appellant been able to show any perversity in the finding of the two Courts below. Moreover, the findings of the two Courts below are in fact all findings of facts and the concurrent findings of facts cannot be interfered in a Second Appeal with no substantial question of law. In view of the same, since there is concurrent finding of fact

by the two Courts below and the fact that there is no substantial question of law, the instant Second Appeal fails and is accordingly dismissed. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE