

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No.123 of 2002

Kejau Prasad, son of Late Takhatram Tiwari, aged 74 years, resident of Gram Sarkada, Tahsil Brindanavagarh, District Raipur

----- Appellant

versus

Kejoram Chandrakar, son of Badri Prasad Chandrakar, aged 67 years, resident of Gram Dahdaha, Tahsil Kurud, District Raipur

----- Respondent

For Appellant	:	Shri B.P. Sharma, Advocate
For Respondent	:	None

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

9.12.2016

1. This appeal by the original plaintiff is directed against the judgment and decree dated 18.7.2002 passed by the 4th Additional District Judge, Raipur in Civil Suit No.150-A/2001, whereby the learned Trial Court while granting a decree for specific relief in favour of the plaintiff has held that the plaintiff is only entitled to get the sale-deed executed for the house and not for the land on which the house is situated.
2. Briefly stated the facts of the case are that an agreement dated 21/22.4.1998 was entered into between the parties. This agreement was duly notarised on 22.4.1998. As per this agreement, Kejoram, son of Badri Prasad (defendant) agreed to sell the property for a sum of Rs.1,25,000/-. It is also not disputed that the entire amount was paid at the time of execution of the agreement to sell. The property has been described in the opening part of the agreement and it says the description of the property sold, i.e., house on Abadi land. In the description, Khasra No.860 has been mentioned and the area of Khasra is 57 Feet x 55 Feet, i.e., total 3135 Square Feet. Separately, a plan has been made showing that the house is also 57 Feet x 55

Feet. It is bounded on one side by the street, on one side by the house of Mohan and on third side by the building of Sinha Society and lastly by the Gariyaband to Sadauli Road. It would also be appropriate to mention that where the plan is made, it is also mentioned therein मकान एवं प्लॉट, meaning thereby house and plot.

3. The plaintiff filed the suit that despite the agreement though he had been in possession of the property, the defendant was not executing a registered sale-deed in his favour. The suit was contested. The Learned Trial Court held all other issues in favour of the plaintiff. It came to the conclusion that the agreement was entered into between the parties and that the plaintiff was entitled to a decree for specific performance. However, the Trial Court held that what was agreed to be sold by the agreement was only the super-structure and not the land beneath it. Therefore, the Trial Court passed a decree for specific performance only with regard to the house and not the land beneath.
4. I have gone through the agreement. If one reads the agreement as a whole, it is more than obvious that the seller had agreed to part with all his rights in the property in question. We must remember that this land is an Abadi land, which actually means that it is a Government land and whoever is in possession thereof gets a right on the land. Therefore, in that sense, the land could not have been sold because the primary owner remains the State Government. But, as long as there is a super-structure, the owner of the super-structure enjoys all rights in the land. The description of the land along with Khasra has been given in the agreement to sell. Not only that, in the plan, the property which is described is house and plot. Therefore, it is obvious that the intention of the parties was to sell the house along with all rights in the land beneath. Therefore, I am of the considered view that

the Learned Trial Court erred in holding that the plaintiff was only entitled to get a decree for the super-structure and not for the land beneath.

5. In view of the above discussion, the judgment and decree of the Learned Trial Court is modified and it is held that the plaintiff is entitled to get the sale-deed executed for the house situated on Khasra No.860 measuring 57 Feet x 55 Feet and all rights in the land beneath as are enjoyed in the Abadi land.
6. The appeal is allowed in the aforesaid terms.
7. A decree-sheet be prepared accordingly.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE