

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 6 of 2016

- Samuel Ekka S/o Pandru, Aged About 60 Years Caste Uraon, Occupation Shiksha Karmi (Service) R/o Village Ganpatpur, Tahsil Dharamjaigarh, District Raigarh (Chhattisgarh)
(Plaintiff) --- **Appellants**

Versus

1. Mohitram S/o Late Ramsai Basod, Aged About 40 Years Caste Basod, Occupation Agriculture, R/o Village Munund, Tahsil Dharamjaigarh, District Raigarh (Chhattisgarh)
2. Shobitram S/o Late Ramsai Basod, Aged About 35 Years Caste Basod, Occupation Agriculture, R/o Village Munund, Tahsil Dharamjaigarh, District Raigarh (Chhattisgarh)
3. Shobawati D/o Late Ramsai Basod, Aged About 25 Years Caste Basod, Occupation Agriculture, R/o Village Munund, Tahsil Dharamjaigarh, District Raigarh (Chhattisgarh)
4. Khulasai Bai W/o Late Ramsai Basod, Aged About 55 Years Caste Basod, Occupation Agriculture, R/o Village Munund, Tahsil Dharamjaigarh, District Raigarh (Chhattisgarh)
5. State of Chhattisgarh Through Collector, Raigarh (Chhattisgarh).....(Defendants) **Respondents**

For the appellant : Mr. Ajeet Kumar Yadav, Advocate

Hon'ble Shri Justice Goutam Bhaduri

JUDGMENT ON BOARD

08.03.2016

1. The instant appeal is against the judgment and decree dated 30.09.2015 passed in Civil Appeal No.13-A/2013 by the III Additional District Judge, Raigarh (C.G) whereby the judgment and decree dated 26.03.2013 passed by the Second Civil Judge, Class-II, Dharamjaigarh in Civil Suit No.8-A/2011 has been affirmed.
2. The suit was filed by plaintiff Samuel Ekka for declaration, confirmation of possession and permanent injunction. As per the plaintiff, one Ram Sai Bansod executed a sale on

12.12.2004 in respect of lands bearing Khasra No.692 admeasuring 1.750 hectares and Kh. No. 703 admeasuring 0.250 hectares and paid an amount of Rs.20,000/- wherein the original defendants Mohit Ram and Shobit Ram appended their signatures. Thereafter, it was stated that the plaintiff was placed in peaceful possession of the said land. It was further stated that after taking over the possession, the plaintiff has spent an amount of Rs.2 lakhs over such land for improvement and raised construction over such land. It was further stated that the name of plaintiff was also recorded in the revenue records, However, defendants 1 & 2 have tried to disturb the possession of plaintiff but they did not stop to do it, consequently the cause of action arose.

3. The original defendants 1 & 2 Mohit Ram and Shobhit Ram filed their reply and denied the averments of the plaint allegations. It was stated that they have never received Rs.20,000/- from the plaintiff and it was further stated that the plaintiff is not in possession of the suit land at any point of time. The defendant further contended that the plaintiff with the connivance of Patwari has got his name recorded in the revenue records. However, the sale having not been made, the plaintiff do not get any title or right over said property. Therefore, the suit was prayed to be dismissed.
4. The trial Court as also the appellate Court after evaluating the facts and evidence held that the agreement purports that the same is not a sale deed but an agreement to sell and the same having not been registered, it will not confer any proprietary right over the plaintiff. The learned courts below further held that the sale deed is not duly proved consequently dismissed the suit. Against the said judgment and decree, the instant appeal has been preferred.

5. Mr. Ajit Kumar Yadav appearing on behalf of the plaintiff would submit that the concurrent findings of both the courts below are perverse. It is submitted that the that the agreement was executed and Rs.20,000/- was paid by the plaintiff as sale consideration and as such the findings are completely perverse and therefore, both the judgment and decree of the courts below be set aside.
6. Perused the judgment and decree of the courts below. The suit has been filed on the basis of Ex.P-4 which purports that an amount of Rs.20,000/- was received by Ram Sai Bansod and the sale was executed by such document. This document if is read along with the plaint averments it shows that the said land i.e., Khasra Nos.692 and 703 was sold to plaintiff by virtue of said document. Admittedly, the said document is not a registered one and the value of property is more than Rs.100/-. Therefore, the said document having not been registered it would certainly be hit by section 17 of the Indian Registration Act for want of registration. The suit is not filed for specific performance but instead it was for declaration, confirmation of possession and permanent injunction. Therefore, on the basis of such document when the suit for specific performance has not been filed but the suit was only for possession and declaration, the said document cannot be relied upon especially in view of the evidence that the plaintiff has not been found to be in possession of the suit land. The document Ex.P-4 also do not show that the possession of the said property has been handed over to the plaintiff. Further on perusal of oral evidence along-with such document, it do not go to prove that the plaintiff was found to be in possession of the land.
7. Taking into totality of such facts and circumstances and after

evaluating the facts and pleadings, the findings arrived at by both the courts below appears to be correct.

8. In the result, no substantial question of law arises for consideration in this appeal. The appeal is dismissed at the motion stage.

Sd/-

**GOUTAM BHADURI
JUDGE**

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