

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 267 OF 2016**

1. Mu. Uma Bai W/o Late Bhiyalal Sahu, Aged About 54 Years R/o Village Kharsia Sanjay Nagar, Tahsil & P. S. Kharsia, District Raigarh, Civil And Revenue District Raigarh (Chhattisgarh)
2. Shyam Manohar, S/o Late Bhiyalal Sahu, Aged About 30 Years R/o Village Kharsia Sanjay Nagar, Tahsil & P. S. Kharsia, District Raigarh, Civil And Revenue District Raigarh (Chhattisgarh)

---- Appellants**Versus**

1. Jagdish Prasad S/o Tarachand Agrawal, Aged About 60 Years R/o Village Kharsia, Behind Kanya Bhavan, Tahsil & P. S. Kharsia, District Raigarh (Chhattisgarh)
2. Sarita Devi, W/o Jagdish Prasad, Aged About 55 Years R/o Village Kharsia, Behind Kanya Bhavan, Tahsil & P. S. Kharsia, District Raigarh (Chhattisgarh)
3. State Of Chhattisgarh Through Collector, Raigarh District Raigarh (Chhattisgarh)

---- Respondents

For Appellants	:	Mr. Manoj Kumar Sinha, Advocate
For Respondents No. 1 & 2	:	Mr. Vipin Punjabi, Advocate
For Respondent No. 3	:	Mr. V.B. Singh, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Judgment On Board****06/04/2017**

Heard on admission.

1. This is plaintiffs' second appeal filed under Section 100 of the CPC against the judgment and decree dated 31/03/2016 passed by the 5th Additional District Judge, Raigarh District Raigarh in CIS No. 202800000902015 by which, the appellate Court while affirming the judgment and decree dated 31/11/2009

passed by the Civil Judge Class-2, Kharsiam District Raigarh in Civil Suit No. 77-A/2009, has dismissed the appeal.

2. Undisputed facts of the case are that the plaintiffs Uma Bai and Shyam Manohar have instituted a suit for specific performance of contract on the basis of an agreement to sale (titled as Receipt) dated 21/03/1994 purported to have been executed by defendant No. 1 Jagdish Prasad in their favour. It is pleaded further that when the defendants have not executed the registered deed of sale in pursuance of the alleged document (Exhibit P-1) despite the issuance of notice in this regard, the plaintiffs have been constrained to file the suit in the instant nature instituted on 08/10/2007.

3. The defendants have contested the aforesaid claim by submitting *inter alia* that they have never executed any agreement to sale for alienating the property in question in favour of the plaintiffs as alleged by them. It is contested further on the ground that defendant No. 2 Smt. Sarita Devi was the owner of the property in question and admittedly, she has not put her signature on the said document, therefore, no claim as such could be granted in their favour on the basis of said document. They contested further on the ground that the suit as framed and instituted is apparently barred by time.

4. The trial Court by its judgment and decree dated 31/11/2009 has come to the conclusion that though the alleged document (Exhibit P-1) was executed on 21/03/1994 but the said document cannot be held to be an agreement to sell. While entertaining the issue No. 5, which was framed with regard to the point of limitation, it was held by the trial Court that the suit is apparently barred by time, consequently, the trial court has dismissed the suit for specific performance of the contract.

5. The aforesaid finding of the trial court is affirmed further by the appellate Court by its impugned judgment and decree dated 31/03/2016 in an appeal preferred by the plaintiffs under Section 96 of the CPC.

6. Being aggrieved with the aforesaid finding of both the Courts below, the plaintiffs has preferred this appeal.

7. Mr. Manoj Kumar Sinha, Advocate for the appellants submits that the finding as recorded by both the Courts below are apparently contrary to the law. He submits further that a mere perusal of the said document would reveal that defendant No. 1 being the husband of defendant No. 2 has agreed to execute the sale in favour of the plaintiffs, and therefore, the finding deserves to be set aside.

8. I have heard the learned counsel for the appellants and perused the entire record carefully.

9. The plaintiffs have instituted a suit on the basis of an agreement to sell dated 21/03/1994. A bare perusal of the said document would reveal very specifically that the alleged document, titled as Receipt, was not executed by defendant No. 2 namely Sarita Devi. The said document would reveal further that she was the owner of the property in question. The said document unequivocally states that no agreement as such was made the defendant No. 2 namely Sarita Devi in favour of the plaintiffs. Since no agreement as such was made by the owner of the property in question therefore, the plaintiffs under such circumstances cannot claim the decree for specific performance of the contract on the basis of the alleged deed of document (Exhibit P-1). Besides, a suit was instituted on 08/10/2007 by submitting at para-10 in the plaint that the cause of action arose on 21/03/1994. If the said averment is taken into consideration, then certainly the suit could be held to be hopelessly barred by time. The trial Court

as well as lower appellate Court both have also examined this fact and came to the conclusion that the suit is apparently barred by time. I do not find any perversity in the said findings and therefore, the findings of both the Courts below deserves to be and are hereby affirmed.

10. In view of the foregoing discussions, no question of law much less the substantial question of law involved in this appeal. Consequently, this second appeal being devoid of merits, is hereby dismissed at admission stage itself.

There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge