

HIGH COURT OF CHHATTISGARH, BILASPURFA No. 222 of 1997

Lav Kumar Singh S/o Shri Nand Kumar Singh Kshatriya Aged About
36 Years R/o Village Budena, Tahsil Janjgir, District- Bilaspur, M.P.,
Madhya Pradesh **--- Appellant**

Versus

1. Ashok Singh (Died) Through Legal Heirs. As Per Honble Court Order
Date- 26.11.2018.
1.1 - (A) Smt. Anjusha Singh W/o Late Ashok Singh Aged About 53
Years R/o Ward No. 16, Near The House Of Shri Ajay Kesharwani,
Advocate, Chandaniyapara, Janjgir, District- Janjgir-Champa,
Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
1.2 - (B) Anant @ Shantanu S/o Late Ashok Singh Aged About 23
Years R/o Ward No. 16, Near The House Of Shri Ajay Kesharwani,
Advocate, Chandaniyapara, Janjgir, District- Janjgir-Champa,
Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
1.3 - (C) Smt. Anushri D/o Late Ashok Singh Aged About 29 Years
R/o Ward No. 16, Near The House Of Shri Ajay Kesharwani,
Advocate, Chandaniyapara, Janjgir, District- Janjgir-Champa,
Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
1.4 - (D) Ku. Pritha D/o Late Ashok Singh Aged About 26 Years R/o
Ward No. 16, Near The House Of Shri Ajay Kesharwani, Advocate,
Chandaniyapara, Janjgir, District- Janjgir-Champa, Chhattisgarh.,
District : Janjgir-Champa, Chhattisgarh
2. State of M.P (Now Chhattisgarh) through Collector Bilaspur Claim In
Appeal For Specific Performance of Contract Valued At Rs. 75000/-
Court Fee Affixed Rs. 6305.00 (As In The Trial Court).....(Defendant
No. 2) **---- Respondents**

For the appellant	:	Mr. Ravindra Agrawal, Advocate.
For the Respondent	:	Mr. Ashok Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

12.12.2018

1. The present appeal by defendant is against the judgment
and decree dated 15.04.1997 passed by the learned
Additional District Judge, Janjgir in Civil Suit No. 20-A/1994
whereby the suit for specific performance has been decreed.
2. The suit was filed by one Ashok Singh (since deceased) that

the plaintiff and the respondents appellants are cousin brothers, they were carrying on partnership business which specifically was dissolved and few of the partners came to the share of Lav Kumar Singh. It was case of the plaintiff that on 18.02.21993 he entered into an agreement for purchase of few lands situated at village Mouja Pendrih bearing Khasra No.530/2010 admeasuring 0.08 acres; at Akaltara, Kh.No.350/15 admeasuring 0.03 acres, at village Arjuni Kh.No.727/3 admeasuring 0.10 acres, at Janjgir Kh.No.3978/1 admeasuring 0.05 acres (20 ft x 112 ft) for a total consideration of Rs.75000/-. It is stated that at the time of agreement, an amount of Rs.70,000/- was paid as a sale consideration and as per the agreement, the possession of land was also handed over and the sale was to be completed by 10.01.1994 after payment of balance amount of Rs.5000/-. Subsequently on 10.01.1994, the defendant refused to execute the sale deed despite request was made and eventually the suit was filed.

3. The defendant appellant denied the averments of plaint allegations. It is stated that he had not entered into any agreement and the averments of agreement would show that the entire sale consideration was paid except Rs.5000/- which is unbelievable. The defendant further stated that they were carrying partnership business as being related to each other and in course of such business, certain stamp papers were got signed by the plaintiff which was used to show the agreement. It was stated that since the plaintiffs and defendants were carrying on partnership, after dissolution of Firm, certain amounts was also paid by the

defendant to liquidate the outstanding loan which was owed to the plaintiff. Under the circumstances, it would show that the agreement dated 18.02.1993 was completely bogus. The defendant further stated that since the signatures were obtained on the blank stamp paper as such the agreement cannot be acted upon for specific performance of the same.

4. On the basis of the pleading of the parties, the learned court below framed 4 issues and decreed the suit in favour of the plaintiff for specific performance. The trial Court further held that the plaintiff was able to prove since the defendant admitted the signature on Ex.P-1, the document agreement of sale the burden was on him to prove that the signatures were out come of fraud u/s 102 of the Evidence Act which the defendant failed to discharge. The court below relied on the statements of P.W.1 & P.W. 2 who were attesting witnesses to the agreement and found that the agreement existed and was executed and without any reason, the defendant refused to accept the same, as such, decreed the suit.
5. Leaned counsel for the appellant would submit that even if the agreement as a whole is accepted, the recitals of the deed shows that the possession was handed over. Consequently the same was inadmissible in evidence. It is further submitted that the circumstances and the back ground of the case also show the way in which the facts came up the discretionary power to grant decree of specific performance may not be given in favour of the plaintiff. He placed reliance in *Omprakash versus Laxminarayan and others (2014) 1 SCC 618* and submits that the ratio

laid down in the said case squarely applies to the facts of the present case and the decree cannot be sustained.

6. Per contra, learned counsel for the respondent submits that the order is well merited and except that, no submission has been made.
7. Perused the documents and records of the court below.
8. Learned court below believed the existence of agreement Ex.P-1. As per the statement of P.W.1 & P.W.2 who were attesting witness to the agreement and the plaintiff himself. The agreement is styled as *Mahadanama*. The recitals of the agreement shows that the sale consideration was fixed at Rs.75,000/- and out of that Rs.70,000/- was paid. Importantly it also contained the fact that the possession was also given to the plaintiff thereby. It is assumed that by such agreement the plaintiff came into possession of land. The question therefore arises that whether it would come under the definition of conveyance in terms of section 2(10) of the India Stamp Act. Section 2(10) of the Act reads as under :

“2. Definitions.- In this Act unless there is something repugnant in subject or context -

(10) **Conveyance.** - 'Conveyance' includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter-vivos and which is not otherwise specifically provided for by Schedule I;”

9. The then State of M.P., by Second Amendment Act 1990 (22 of 1990) has substituted Article 23 of Schedule 1(A) and Explanation has been added. The explanation appended to Article 23 of Schedule 1(a) of the Stamp Act as substituted

by section 6 of the Act (22 of 1990) which reads as follows.

Explanation.- For the purpose of this article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution or after execution of, such agreement without executing the conveyance in respect thereof then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:

Provided that, the provisions of Section 47-A shall apply *mutatis mutandis* to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section :

Provided further that where subsequently a conveyance is effected in pursuance of such agreement of sale the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance, subject to a minimum of Rs.10.”

10. The aforesaid Explanation has come into force with effect from 26.09.1990. The ratio laid down in **(2014) 1 SCC 618** emphasizes that the explanation creates a legal fiction. The agreement to sell shall be deemed to be a conveyance and stamp duty is leviable on an instrument whereby the possession has been transferred. Therefore a perusal of the agreement Ex.P-1 shows that it would amount to conveyance within the meaning of section 2(10) of the Stamp Act and necessarily should have been stamped according to Schedule 1-A of Rule 23 which requires 7 1/2% stamp duty would be payable on the market value. Here the stamp duty Ex.P-1 is on Rs.10/- stamp paper.
11. Likewise Section 35 of the Stamp Act provides that

instruments not duly stamped is inadmissible in evidence and cannot be acted upon. Section 35 of the Act would be relevant in the facts and circumstances of the case which is quoted hereunder :

Section 35 of the Stamp Act

"35. Instruments not duly stamped inadmissible in evidence, etc. -- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that--

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion."

12. Likewise section 17 of the Registration Act, 1908 and Section 49 of the Registration Act 1908 would also be relevant here and quoted below.

"Section 17 of the Registration Act, 1908 is reproduced hereunder :-

(I) Documents of which registration is compulsory.— (I) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the

Registration Act, 1866, or the Registration Act, 1871, or the Registration Act, 1877, or this Act came or comes into force, namely:—

- (a) Instruments of gift of immovable property;
 - (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
 - (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- (d) leases of immovable property;
 - (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
 - (f) any decree or order or award or a copy thereof passed by a Civil Court on consent of the defendants or on circumstantial evidence but not on the basis of any instrument which is admissible in evidence under section 35 of the Indian Stamp Act, 1899 (2 of 1899), such as registered title deed produced by the plaintiff, where such decree or order or award purports or operate to create, declare, assign, limit, extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property; and
 - (g) agreement of sale of immovable property of the value of one hundred rupee and upwards”, Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(II) Section 49 of the Registration Act, 1908

Effect of non-registration of documents required to

be registered.— No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt; or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument”.

13. Thus, Section 17(1)(b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents which are required to be registered u/s 17 of the Act. The said proposition is laid down in ***Yellapu Uma Maheshwari and others Vs. Buddha Jagadheeswara Rao and others (2015) 16 SCC 787.***
14. In the instant case since Ex.P.1 has been held to be a conveyance, therefore, applying the aforesaid law, the legal friction as also the principal laid down in ***(2009) 2 SCC 532 – Avinash Kumar Chauhan v. Vijay Krishna Mishra*** wherein it has been held that if the conveyance is not duly stamped, it would not be admissible in evidence.

Consequently, the judgment and decree court below cannot be sustained and is set aside.

15. In the result, the appeal is allowed.

Sd/-

**GOUTAM BHADURI
JUDGE**

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