

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 154 of 2009****Reserved on 13-8-2018****Decided on 27-8-2018**

1. Rajesh Kumar Daga And Another S/o Shri Murari Daga, caste- Maheshwari, occupation-Business, r/o Ganj Line City, tah. And Distt.-Rajnandgaon
2. Ramesh Kumar Daga S/o Shri Murari Daga, caste- Maheshwari, occupation-Business, r/o Ganj Line City, tah. And Distt.-Rajnandgaon

---- Appellants.**Versus**

1. M/s Dear Farms Rajnandgaon , Lakholi Road Rajnandgaon
2. Purushottam Khandelwal S/o Rikhiram Khandelwal ,r/o Lakholi Road Rajnandgaon
3. Smt.Rabiya Kosar Wd/o Late Yunus,r/o Bharka Para Rajnandgaon
4. Akhraj Jain S/o Poonamchand Jain r/o Ramadhin Marg Rajnandgaon
5. Smt.Subhadra Maheshwari W/o Vallabhadas Maheshwari, r/o Old Civil Lines Hanuman Mandir Near Railway Crossing Rajnandgaon
6. Smt.Kiran Devi W/o Omprakash Somani,c/o Shri Kshanlal Mundra,r/o Jaistambh Chowk,near Bus Stop, Gondia
7. State of Chhattisgarh through Collector, Rajnandgaon.

---- Respondents

For appellants	:	Mr. P.K. Verma, Sr. Advocate qwith Mr. Virendra Verma, Advocate.
For respondents No. 1 to 4	:	Mr. Rajiv Shrivastava, Advocate.
For respondent No.7/State	:	Mr. Vivek Singhal, PL.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

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CAV JUDGMENT

1. The appellants have preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 26-8-2009 passed by the District Judge, Rajnandgon (CG) in Civil Suit No.2-A/2002 wherein the said court decreed the suit for specific performance for agricultural land bearing survey No.115/1 area 3.52 acres and survey No.147/1 area 0.09 acres total 3.61 acres situated at village Lakholi, Patwari Halka No.0.34, Tehsil and District Rajnandgaon (CG).
2. As per the suit filed by the respondents No. 1 to 4 , the land in question was owned by one Bhikham Chandra and he entered into agreement with the said respondents for sale of the same @ Rs.93,000/- per acre on 3-9-1999 and earnest money of Rs.11,000/- was paid by the respondents No. 1 to 4 to the said Bhikham Chandra. The said Bhikham Chandra died issue-less. After death of said Bhikham Chandra, one Radha Bai was substituted and thereafter appellants Rajesh Kumar Daga and Ramesh Kumar Daga were substituted who are present appellants. Respondent No.5 Smt. Subhadra Maheshwari and respondent No.6 Smt. Kiran Devi are daughters of real sister of Bhikham Chandra namely Smt. Dhela Bai.
3. To deal with the issue, the first question for consideration of this court is as to who is the recorded owner of the land in question.

No record of right was produced before the trial Court regarding ownership of Bhikham Chandra. Again, no record of right is filed whether the present two appellants or respondent No.5 Smt. Subhadra Maheshwari and respondent No.6 Smt. Kiran Devi are recorded owners of the land in question. In absence of record of right, no decree for specific performance could be passed. For registration of any sale deed, record of right is basic document which is not available on record. It is also not on record as to who is in possession of the land in question and what is the nature of possession as to which type of crop is sown in the said land. As per Section 54 of the Transfer of the Property act, 1882, after registration of the sale deed, it is required that the possession should be delivered to purchaser or any person as per direction of the purchaser, therefore, for executing any decree of specific performance of the contract, it is essential that seller should be recorded owner and he should be in possession of the land. Both records are missing in the file of the trial Court. In absence of record, the decree of the trial Court is not executable. It is settled law that the judgment and decree should not be passed which is unexecutable,

4. Since all the above aspects of the matter have not been considered by the trial court, I am of opinion that this matter requires re-consideration for adjudication afresh from the end of the trial Court.

5. Accordingly, the appeal is allowed and set aside the judgment and decree passed by the trial Court. Now the matter is remitted back to the trial Court for reconsideration afresh in the light of observations made in this order.
6. Needless to mention here that the parties shall be provided opportunity to amend the pleadings, adduce further evidence, file documents or get the documents verified etc., on the basis of the pleadings already on record and thereafter the matter be adjudicated afresh.
7. The parties shall appear before the Trial Court for further orders on 24-9-2018.
8. The records of the trial Court shall be sent back forthwith.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju