

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.183 of 2003****Judgment reserved on 03.8.2018****Judgment delivered on .8.2018**

- Shrimati Radhikabai, W/o. Lakhanlal Gupta, aged about 38 years, R/o. Priydarshani Nagar Behind Talapara, Tahsil & Distt. Bilaspur (CG)

---- Appellant**Versus**

1. Janab Abdul Phateh, S/o. Abdul Jabbar, Aged about 31 years, R/o. Diprapara, Tahsil & Distt. Bilaspur (CG)
2. State of MP (Now State of CG), through the Collector, Bilaspur (CG)

---- Respondents

For Appellant	: Shri Vikas Pandey, Advocate
For respondent No.1	: None present
For respondent No.2/State	: Shri Sameer Behar, Panel Lawyer

SB: Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against judgment dated 02.8.2003 passed by the First Additional District Judge, Bilaspur (CG) in Civil Suit No.13-A/2002, wherein the said Court decreed the suit of respondent No.1 for specific performance of the contract regarding sale of land situated at Village Mouza Tifra, Talapara, Patwari Halka No.23, Tahsil & Distt. Bialspur Khasra No.658/2002 area 50x31.7 ½ feet.

2. As per the appellant, identity and description of the suit property was not established before the trial Court even then trial Court ordered for specific performance. It is further case of the

appellant that averments made in two lines in the second para of the agreement (Ex-P/1) were not typed and it was pen down after the agreement which is not part of the agreement and therefore, it is not proved that Rs.2,000/- was paid extra regarding agreement. It is further submitted that respondent No.1 has failed to prove the readiness and willingness on his part of the contract, therefore, decree cannot be passed in favour of respondent No.1 and the same is liable to be reversed.

3. The first point for consideration before this Court is whether the parties have entered into a contract to sell the property in question. Documents Ex-P/1 to P/6 were filed by respondent No.1 Janab Abdul Phateh. Fahimun Kalam (PW-2), Faizal Ahmed (PW-3) and Abdul Jabbar (PW-4) were examined to establish the case of respondent No.1. All the witnesses have supported the case of respondent No.1 regarding agreement dated 16.7.1992 and it is established that total cost for consideration was settled to Rs.30,000/- out of which Rs.12,000/- was paid to the appellant. True it is that the averments made in Ex-P/1 regarding the payment of Rs.2,000/- was hand written and it was not typed but it does not make any difference since the signatures of the seller, the purchaser and the witnesses were also written by ink pen and again the averments in the back side of Ex-P/1 is also hand written by pen.

4. It is also contended on behalf of the appellant that identity of the property is not established. Smt. Radhika Bai (DW-1) was examined before the trial court and she plainly denied the execution of any agreement. She has not raised any objection regarding

identify of the land in question. Her case is simply denial which is merit less looking to the documents and evidence adduced by respondent No.1.

5. The agreement was entered into by the parties on 16.7.1992 and notice was served on 13.11.1992. As per Ex-P/2, regarding payment for execution of sale deed, respondent No.1 was always ready and was willing to perform his part of the contract. Again Paper publication was made in Daily Newspaper (Ex-P/5) regarding agreement between the parties. All these documents establish the facts that respondent No.1 was always willing to perform his part of the contract. In this view of the matter, arguments advanced on behalf of the appellant is not sustainable. The appeal is without substance.

6. Accordingly, the decree is passed against the appellant and in favour of respondent No.1 as under:

- (1) The appeal is dismissed with cost.
- (2) The appellant shall pay the cost to respondent No.1.
- (3) Pleaders' fee, if certified be calculated as per certificate or as per Schedule whichever is less.
- (4) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE