

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 195 of 2011**

Sushila Tripathi (Appellant now died and deleted)

- 1A. Vikash Tripathi (Legal heirs of Appellant now died and deleted)
- 1B. Ku. Seema Tripathi D/o Bhola Shankar Tripathi, Aged About 28 Years
- 1C. Bhola Shankar Tripathi S/o Late Phool Prasad Tripathi Aged About 64 Years

All are R/o Champa Road, Near Canal Bridge, Janjgir, Tahsil Janjgir, District : Janjgir-Champa, Chhattisgarh

---- Appellants

Versus

- 1. Anurag Singh S/o Late Yogeshwar Singh Aged About 23 Years
- 2. Smt. Karuna Singh W/o Late Yogeshwar Singh aged about 62 years
- 3. Savitri Singh, aged about 45 years
- 4. Damyanti Singh, aged about 43 years
- 5. Rameti Singh aged about 41 years
- 6. Kamini Singh aged about 38 years
- 7. Santwana Singh aged about 35 years
- 8. Malini Singh aged about 35 years
- 9. Chandni Singh aged about 32 years

Respondents No.3 to 9 are D/o Late Yogeshwar Singh

Respondents No.1 to 9 are Caste Kshtriya, R/o village Kasondi, Tehsil Janjgir, District Janjgir-Champa.

- 10. Central Bank, Champa, through Bank Manager, Central Bank, Champa, Tehsil Janjgir, District Janjgir-Champa (CG).
- 11. State of C.G., through Collector, Janjgir, Dist. Janjgir-Champa (CG).

---- Respondent

For Appellants	Shri Ravindra Agrawal, Advocate
For Respondent No.1 to 9	Shri Somnath Verma, Advocate
For Respondent/State	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra, J.

Hon'ble Smt. Justice Vimla Singh Kapoor, J.

Judgment on Board

By

Prashant Kumar Mishra, J.

12/10/2018

1. Trial Court has decreed the plaintiffs' suit for specific performance of agreement dated 22-9-2005 (Ex.P/1) and in the alternative for refund of the advance amount of Rs.5.00 lacs.
2. Defendant Smt. Sushila executed an agreement in favour of the original plaintiff namely; Yogeshwar Singh on 22-9-2005 for sale of land bearing khasra No.4130/2 area 0.05 acre situated at Patwari Halka No.41, Moiza Janjgir, District Janjgir-Champa together with six shops and received advance amount of Rs.5.00 lacs and agreed to execute the sale deed after receiving the balance sale consideration of Rs.1.00 lac. It was also mentioned in the agreement that the possession of the land and the shops have also been handed over to the purchaser after receiving the advance amount of Rs.5.00 lacs. When the defendant did not execute the sale deed despite service of legal notice, the present suit for specific performance or for refund of advance amount has been filed wherein the defendant denied to have executed the

agreement; received advance amount of Rs.5.00 lacs; or handing over of possession of the land with shops built thereon.

3. On the basis of evidence on record, the trial Court has found that the defendant executed the agreement but failed to execute the sale deed despite request by the plaintiff, therefore, the plaintiff being ready and willing to perform his part of contract, he is entitled for decree for specific performance or refund of the advance amount.
4. Shri Ravindra Agrawal, learned counsel appearing for the appellants would assail the impugned judgment on merits as well as on the question of law that the document Ex.P/1 having referred to delivery of possession in *praesenti*, but the same having not been sufficiently and adequately stamped nor the document being registered the same was inadmissible in evidence and no decree based on such document could be passed in favour of the plaintiffs.
5. We do not propose to discuss the evidence adduced by the parties on the issue of readiness and willingness or on the issue of defendants denial to have executed the deed of agreement for the reason we propose to pass the order on the basis of law laid down by the Supreme Court in **Omprakash v Laxminarayan and Others¹** and **Avinash Kumar Chauhan v Vijay Krishna Mishra²**.

1 (2014) 1 SCC 618

2 (2009) 2 SCC 532

6. Shri Somnath Verma, learned counsel appearing for the respondents No.1 to 9, would submit that the law laid down by the Supreme Court in **Omprakash** (supra) would not apply in the facts of the present case because the plaintiffs have asserted that possession was not delivered to them on the date of agreement, however, we fail to persuade ourselves to the submission because before the Supreme Court also the parties have denied delivery of possession, but there was recital in the agreement that possession has been delivered and in the said facts of the case the Supreme Court proceeded to consider the definition of the term 'conveyance' in Section 2 (10) of the Indian Stamp Act, 1899 (for short 'the Act') along with Article 23 of Schedule 1-A as amended in the State of Madhya Pradesh which is also applicable to the State of Chhattisgarh that an agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable on an instrument whereby possession has been transferred. The agreement to sell in question clearly recites that possession has been handed over to plaintiff, therefore, the same is a conveyance within the meaning of Section 2 (10) of the Act and is required to be duly stamped and when it is not stamped in the manner required in law the document would be inadmissible in evidence by virtue of Section 35 of the Act.
7. In **Omprakash** (supra) the Supreme Court would refer to its earlier decision in **Avinash Kumar Chauhan** (supra) wherein it

is held that if a document required to be registered, but it is not so registered then it is not admissible in evidence even for collateral purpose.

8. In **Omprakash** (supra) the Supreme Court has referred to the decision rendered by the High Court of Madhya Pradesh in **Mansingh (deceased) through legal representatives Smt. Sumranbai and Others v Ramewshwar and another**³ and quoted with approval part of paras 8 & 9 of the said judgment of the High Court of Madhya Pradesh in the following manner :

8. A document would be admissible on basis of the recitals made in the document and not on basis of the pleadings raised by the parties. In the matter of Laxminarayan (supra), the learned Single Judge with due respect to his authority we don't think that he did look into the legal position but it appears that he was simply swayed away by the argument that as the defendant was denying the delivery of possession, the endorsement/recital in the document lost all its effect and efficacy.

9. It would be trite to say that if in a document certain recitals are made then the Court would decide the admissibility of the document on the strength of such recitals and not otherwise. In a given case, if there is an absolute unregistered sale deed and the parties say that the same is not required to be registered then we don't think that the Court would be entitled to admit the document because simply the parties say so. The jurisdiction of the Court flows from Sections 33, 35 and 38 of the Stamp Act and the Court has to decide the question of admissibility. With all humility at our command we overrule the judgment in the matter of Laxminarayan (supra)."

We respectfully agree with the conclusion of the High Court in this regard.

3 (2010) 2 MPLJ 140

9. In the matter at hand, the subject agreement was neither duly stamped nor was registered, therefore, it cannot be read in evidence for any purposes. The trial Court has wrongly concluded that since the plaintiff himself says that possession has not been transferred to him, the document would be admissible in evidence. The trial Court is not entitled to consider any pleading which runs contrary to the recital in the document.
10. At this stage, Shri Somnath Verma, learned counsel appearing for the respondents No.1 to 9, would argue that the plaintiff is at least entitled to refund of the amount as relief to the said effect was prayed in the plaint itself as is required under Section 22 of the Specific Relief Act, however, yet again, we fail to persuade ourselves for the same reason that once the document evidencing and reciting delivery of possession is held to be inadmissible, the entire recital including the recital of payment of advance money cannot be read in evidence. In such eventuality, we are left with the pleadings and evidence of the parties, which is in the nature of oath against oath. When the defendant has denied to have received any such amount of advance of Rs.5.00 lacs and there is no documentary proof otherwise than the recital in the agreement regarding payment of such amount in cash, it is not proved that any such advance amount was paid to the defendant by the plaintiff at the time of agreement.

11. As an upshot of the above discussion, the appeal is allowed. The impugned judgment and decree passed by the trial Court is set aside. Parties shall bear their own cost(s).
12. A decree be drawn accordingly.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor

Gowri