

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 30-7-2018

Judgment delivered on 27-8-2018

FA No. 310 of 2018

- Dhansai S/o Tikaram Patel, Aged About 66 Years Caste Aghariya, Occupation- Agriculture R/o Village Tenduwa, Tahsil Sarangarh, District- Raigarh, Chhattisgarh.Defendant No. 01., District : Raigarh, Chhattisgarh

---- Appellant

Versus

1. Ransai S/o Tikaram Patel, Aged About 62 Years Caste Aghariya, Occupation Agriculture, R/o Village Tenduwa, Tahsil Sarangarh, District- Raigarh, Chhattisgarh.Plaintiffs., District : Raigarh, Chhattisgarh
2. State of Chhattisgarh, Through The Collector, Raigarh, District- Raigarh, Chhattisgarh.Defendant No.2., District : Raigarh, Chhattisgarh

---- Respondents

For appellant	:	Mr. R.P. Tripathi, Advocate.
For respondent No.1	:	Mr. H.S. Patel, Advocate.
For respondent No.2/ State.	:	Mr. Sameer Behar, P.L.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. Appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 30-4-2018 passed by the Additional District Judge, Sarangarh, Civil District Raigarh (CG) in Civil Suit No. 12-A/2015 wherein the said court decreed the suit filed by respondent No.1 for specific performance of land situated at village Tendua, Patwari Halka

No.54/17, Revenue Circle and Tahsil Sarangarh, District Raigarh (CG) fbearing Survey No. 33/2B area 0.243 hectares.

2. Admittedly, the appellant is the owner of the land in question.

The decree is assailed on the ground that the suit is filed on the basis of unregistered document and the respondent No.1 has not examined the witness of the said deed.

3. Learned counsel for the appellant submits that the suit is passed on unregistered sale deed and, therefore, decree of specific performance cannot be passed. He placed reliance in the matter of **Madan Mohan vs. Gauri Shankar and another, reported in AIR 1988 Madhya Pradesh 152** and **Habeeb Bhai vs. K.K. Choudhari, reported in 2007(1) CGLJ 86**.

4. In the present case, respondent No.1 entered into witness box and deposed that there was a contract of sale of land in question for consideration of Rs.4,11,000/- and consideration amount was paid to the appellant. Since it was a contract of execution of sale deed, the contract satisfied only when sale deed is executed. Version of respondent No.1 is supported by PW/2 Janduram and PW/3 Nityaprasad. The appellant has not denied the agreement. He appeared as DW/1 before the trial Court and as per his statement agreement was entered into for land bearing Khasra No.65/2B area 0.093 hectare (23 decimal), but from his evidence it is not clear as to what was the rate fixed

for that land by the parties per decimal and how the consideration amount is calculated to Rs.4,11,000/-, therefore, version of the appellant was vague regarding land bearing Khasra No. 65/2B and the trial Court is right in not accepting the same. Terms of contract is established through evidence of respondent No.1 side and the case is not based on treating any unregistered document as agreement to sell. Terms of the contract is established by oral evidence. It is also not a case where respondent No.1 is basing its claim on weakness of appellant.

5. From the over-all assessment of the case, it is established that the parties entered into contract to sell the land in question and consideration amount was paid for the same. Considering all the facts and circumstances of the case, this court is of the view that the case laws cited by learned counsel for the appellants are distinguishable from the facts of the present case. The trial Court has elaborately discussed all the issues and adjudicated the matter in favour of respondent No.1 and this court has no reason to interfere with the same and the same is hereby affirmed.
6. Accordingly, the decree is passed in favour of respondent No.1 and against the appellant as under:
 - (I) The appeal is dismissed with cost.

- (ii) Appellant to bear the cost of respondent No.1 through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma
Judge

Raju