

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 45 of 2014**

- Shyam Kumar S/o Narayan Prasad Aged About 40 Years R/o Dabhra, P.O. And P.S. Dabhra, Distt. Janjgir-Champa C.G.,

---- Appellant**Versus**

1. Bhagat Ram S/o Brijbhushan Aged About 48 Years R/o Dabhra, P.O. Dabhra, P.S. And Tah. Dabhra, Distt. Janjgir-Champa C.G.,
2. State Of Chhattisgarh Thru- The Collector, Janjgir, Distt. Janjgir-Champa C.G.

---- Respondent

For Appellant
For Respondent

Mr. Ashish Surana, Advocate
Mr. Harshwardhan Jaiswal, Advocate

**DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Order On Board By**Prashant Kumar Mishra, J.****30/8/2018**

1. Heard.
2. The trial Court has dismissed the plaintiff's suit for specific performance of the agreement dated 29.6.2010 (Ex.P/4), when the defendant agreed to sell an area admeasuring 0.15 acre out of the total area of 0.59 acres bearing Khasra No.657/7 at Village Dabhra, PS and Tehsil Dabhra, District Janjgir-Champa (CG) for a sum of Rs.5,22,000/-.

3. According to the plaintiff, the entire amount was paid to the defendant in a private negotiation prior to execution of the agreement. On 29.6.2010, the agreement was reduced to writing in presence of witnesses. However, when the defendant avoided executing the sale-deed by the stipulated date i.e. 31.3.2011, a legal notice was served on the defendant on 20.4.2011, which is evident from the acknowledgment vide Ex. P/5 and thereafter, on 1.8.2012 vide Ex.P/7, the second legal notice was served because there was some mistake of description of suit land in the first notice.
4. The defendant raised a plea that there was no agreement between the parties to sell the land. The plaintiff got his signature over blank stamp paper and has later on, written the agreement without informing or taking the defendant into confidence.
5. While the plaintiff examined himself as PW-2 and two of the witnesses to the agreement -Ex.P/4 namely Sanatan and Chhotelal as PW-2 and PW-3 respectively, the defendant examined himself as DW-1, the Scribe Peellal as DW-2 and Hingleshwar as DW-3. Based on the evidence on record, the trial Court has concluded that the agreement- Anenxure P/4 does not inspire confidence as the same was written on 29.6.2010 over a stamp, which was purchased on 29.1.2008 in the name of one Mishrilal. The trial Court has also concluded that payment of the sale-consideration of Rs.5,22,000/- has not been witnessed by any of the witnesses to the agreement and

that as per the statement of the Scribe Peellal (DW-2), when the stamp was brought to him for writing the agreement, it was blank, however, it already contained the signature of defendant Bhagat Ram and only the witnesses put their signatures in his presence.

6. We have carefully studied the pleadings and the evidence adduced by the parties.
7. While the plaintiff/appellant Shyamkumar has deposed that the sale agreement was executed vide Ex.P/4 and the amount was paid to him in presence of witnesses but his witnesses Sanatan (PW-2) and Chhotelal (PW-3) would admit that the plaintiff has not paid the amount of Rs.5,22,000/- to defendant Bhagat Ram in their presence nor any separate agreement has been written between the parties in their presence stating that Bhagat Ram has paid the amount in their presence. Both the above witnesses would also admit that they were not present at the time of negotiation between the plaintiff and the defendant, wherein, they agree to sale/purchase the property. While cross-examining the plaintiff's witnesses, the defendant has suggested that there used to be loan transaction between the parties meaning thereby that the agreement might have been written by way of security for repayment of loan.
8. The defendant's witness Scribe Peellal (DW-2) has clearly stated that neither the agreement was entered between the parties in his presence nor they were present at the time when the agreement was written by him. This witness would state that

after he wrote the agreement only the witnesses signed in his presence . He has not been cross-examined by questioning that the defendant has otherwise admitted before him that he has agreed to sell the property to the plaintiff. Therefore, the Scribe had no occasion to interact with the defendant to ascertain as to whether or not he has agreed to sell the land. This witness would also state that when the agreement was brought to him, it was blank but it contained the signature of defendant Bhagat Ram.

9. In view of the above state of evidence on record, when the person who has written the document has himself deposed that the stamp, on which, the agreement Ex.P/4 was written was blank but it contained signature of defendant Bhagat Ram, there is serious doubt as to whether or not a duly executed agreement between the parties ever existed for sale of the suit land.

10. In our considered opinion, the trial Court has not committed any error while dismissing the plaintiff's suit.

11. The appeal sans substance deserves to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Vimla Singh Kapoor)

Judge