

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 30.01.2019****Judgment delivered on 14.02.2019****First Appeal No.66 of 2005**

Smt. Mehatrin Bai, W/o. Beer Singh Sahu, aged about 50 years,
R/o. Village Sarora, Tahsil Dharsiva, Distt. Raipur (CG)

---- Appellant**Versus**

1. Madhusudhan Mishra, S/o. Shri Rambharosa Mishra, aged about 40 years, R/o. Prayag Kunj, Boriya Road, Bajrang Chowk, Santosh Nagar Raipur (CG)
2. Lal Singh, S/o. Late Tulasa Singh, aged about 58 years, R/o. Moulipara, Telibandha, Raipur (CG)
3. State of Chhattisgarh, Through Collector, District Raipur, Raipur (CG)

---Respondents

For appellant	: Shri VG Tamaskar, Advocate
For respondent No.1	: Shri YC Sharma and Ms. Lata Nayak, Advocates
For respondent No.2	: Smt. Hamida Siddique and Shri Sumit Singh Rathore, Advocates
For respondent No.3/State	: Shri Raghavendra Verma, Govt. Advocate

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

1. This appeal is preferred against judgment and decree dated 16.01.2004 passed by Ninth Additional District Judge (FTC), Raipur (CG) in a Civil Suit No.23A/2002 wherein the said Court decreed the suit filed by respondent No.1/plaintiff for specific performance of contract for the land bearing Survey No.217/21 area 2.023 hectare at village Sarora Patwari Halka No.101, Revenue Circle Dharsiwa, Tahsil and Distt. Raipur.

2. As per the version of respondent No.1/plaintiff one Iqbal Singh was the owner of the property in question and he agreed to sell the same for a case consideration of Rs.1,50,000/- and a written agreement was signed between the parties as per Ex-P/1 dated 12.9.1995. It is alleged that the whole amount of case consideration was paid to Iqbal Singh. As per the appellant, owner of the property in question namely said Iqbal Singh sold the property to Smt. Mehtarin Bai vide registered sale deed for case consideration of Rs.1,22,000/-. After purchasing the property, her name was mutated in the record of rights and she is in possession of land and doing agricultural work since the date of mutation.

3. Learned counsel for the appellant submits as under:

(i) Respondent No.1 Madhusudhan Mishra knew the facts that the land in question was sold by Late Iqbal Singh to the appellant, therefore, his entering into the contract for sale with the same with Iqbal Singh is malafide.

(ii) Iqbal Singh died on 03.01.1998 and his adopted son namely Shankar Singh was substituted in place of Iqbal Singh in the present suit and after death of Shankar Singh one Lal Singh was made party in the present suit. But they are not the legal representatives of Iqbal Singh, therefore, no decree can be passed in favour of respondent No.1 for execution of sale deed by respondent No.2 Lal Singh as Lal Singh is not the legal representatives of Iqbal Singh. He should not have been made party in the present suit but the trial Court by allowing the

amendment for bringing Lal Singh as party changed the nature of the suit.

(iii) As the sale deed is duly executed in favour of the appellant and the appellant is the owner of the property, same cannot be transferred by Lal Singh to respondent No.1.

(iv) Agreement to sale the property does not confer the title on the basis of said agreement, therefore, respondent No.1 has no right to get it registered in his name. When respondent No.1 is not the owner of the property, he has no right to go for mutation of the land in his name which is overlooked by the trial Court, therefore, decree passed by the trial Court is not sustainable.

4. The first question for consideration before this Court is whether the sale agreement dated 12.9.1995 (Ex-P/1) is a document of transfer of property. As per the law laid down in the matter of **Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & anr.** reported in **AIR 2012 SC 206**, it is held by Hon'ble the Apex Court that immovable property can be legally and lawfully transferred only by a registered deed of conveyance. Transactions of the nature of sale agreement do not convey title and do not amount to transfer, nor can they be recognised as valid mode of transfer of immovable property. Therefore, the court will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title. In the present case admittedly, Iqbal

Singh was the owner of the property in question and he transferred the property vide registered sale deed dated 04.5.1996 in favour of the appellant and no suit for cancellation of sale deed or for declaring it void is brought before any Court of law and unless the sale deed executed in favour of the appellant is cancelled or declared void, same is effective and is a deed of transfer. When sale deed is validly executed by Iqbal Singh in favour of the appellant, the appellant is now the perfect owner of the property in question.

5. Now the point for consideration is whether second sale deed of the same property by the same owner is permissible. Once Iqbal Singh has transferred the rights to the appellant, he was not the owner after 04.5.1996. When Iqbal Singh was not the owner of the property after 04.5.1996, no right was left to be transferred on behalf of Iqbal Singh. When Iqbal Singh transferred the property during his lifetime and did not challenge the sale deed executed by him in favour of the appellant, present respondent No.2 is not competent to execute any deed on behalf of Late Iqbal Singh. Therefore, decree could not have been passed in favour of respondent No.1 by the trial Court.

6. Second question for consideration is as to who will return the advance money received by Iqbal Singh during his lifetime from respondent No.1. There is nothing on record that respondent No.2 Lal Singh who is alleged to be the brother of Late Iqbal Singh inherited any property from Iqbal Singh. For recovery of amount, if any, received by Late Iqbal Singh during his

lifetime, he or his property is only liable for refund of advanced money. In the preset case no one pleaded that Iqbal was having any property or Lal Singh inherited his property. If respondent No.2 Lal Singh has no property of Iqbal Singh, he is under no obligation to refund the earnest money received by Iqbal Singh. Therefore, decree for refund against Lal Singh to respondent No.1 cannot be passed. Decree can be passed only against living person and as Iqbal Singh has died no decree can be passed against him and no other person has inherited his property as per the record of the trial Court, the liability cannot be fastened to some other person. Therefore, decree against respondent No.2 for recovery of advance amount cannot be passed. The trial Court has ignored all the material aspects of the matter, therefore, finding of the trial Court is not liable to be sustained.

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

- (1) The appeal is allowed.
- (2) Suit filed by respondent No.1 is dismissed with cost.
- (3) The parties to bear cost of litigation of their own.
- (4) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (5) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)

JUDGE