

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 01.05.2019****Judgment delivered on 21.6.2019****First Appeal No.28 of 2006**

1. Shri Goru Ram Yadav S/o. Shri Baalu Ram Yadav
2. Shri Ram Karan Yadav, S/o. Shri Baalu Ram Yadav
3. Shri Fulchand Yadav, S/o. Shri Teekuram Yadav
4. Smt. Santoshi Devi Yadav, W/o. Harinarayan Yadav
5. Harinarayan Yadav, S/o. Shri Baaluram Yadav

All are R/o. Netaji Chowk, New Shanti Nagar, Raipur (CG)

---- Appellants**Versus**

Kailash Sharma, S/o. Shri Gulab Sharma, aged about 43 years,
R/o. Geetanjali Nagar, Raipur City, Tahsil and District Raipur
(CG)

---Respondent

For the appellants	: Shri Sanjay Patel, Advocate
For the respondent	: Shri Sunny Agrawal, Advocate

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

1. This appeal is preferred against judgment and decree dated 15.12.2005 passed by Third Additional District Judge, Raipur (CG) in a Civil Suit No.13A/2005 wherein the said Court dismissed the suit for specific performance of contract regarding house situated at village Khamhardih/Shankar Nagar, Survey No.28/1 area 400 sq. ft. in which two storeyed building is constructed.

2. Respondent/plaintiff filed a suit against the appellants stating that appellants 1 to 3/defendants are brothers, appellant

No.4/defendant No.4 is their sister-in-law and appellant No.5/defendant No.5 Harinarayan Yadav is Power of Attorney of appellants 1 to 4. Appellants 1 to 4 owned a land which is situated at village Khamhardih/Shankar Nagar, PH NO.10, Raipur measuring Khasra No.28/1 total area 2000 sq.ft in which in the ground floor a house has been built in 400 sq.ft. and in the first floor a house has been built in 300 sq.ft. This house is the suit property which is shown in read ink and annexed with Schedule B of the plaint. Appellants 1 to 4 have given Power of Attorney to appellant No.5 who in turn made agreement to sell the suit property to the respondent/plaintiff on 27.10.2001. The house was handed over to the respondent. After obtaining the possession of the suit house, the respondent had given the suit house to his brother namely Vinod Kumar Sharma for his residential purpose. It is alleged by the respondent that appellants 1 to 4 moved a legal notice on 15.9.2004 to Vinod Kumar Sharma who is the brother of the respondent alleging that he has not paid the arrears of rent of Rs.20,000/- and in case of failure of paying the rent, the suit land would be vacated. The appellants denied all the allegations levelled in the plaint and stated that appellant No.5 never made any agreement of sale with the respondent. In fact the suit land in question was given in rent to Vinod Kumar Sharma and when Vinod Kumar Sharma did not pay the rent from May 2004 to October 2004, legal notice was sent to him and civil suit has already been filed which is registered as Civil Suit No.39A/2004. The trial Court recorded finding that

the agreement was entered into by appellant No.5 regarding suit land with the respondent and vacant possession of the property was handed over to him after receiving full sale consideration i.e. Rs.2,50,000/-. The trial Court decreed the suit that is why the appeal is filed by the appellants.

3. Learned counsel for the appellants submits as under:

(i) It is not proved by the statement of Harinarayan that he entered into any agreement with respondent/plaintiff for sale of house in question and received Rs.2,50,000/- as cash consideration for the suit property.

(ii) Receiving of the amount by Harinarayan is not established, therefore, finding of the trial Court is not liable to be sustained.

4. On the other hand, learned counsel for the respondent submits as under:

(i) Agreement of sale is proved by the evidence of the respondent and it is also proved that Harinarayan received Rs.2,50,000/- as Power of Attorney of appellants 1 to 4 and on the basis of said agreement though sale deed was not executed but full consideration of the amount was paid.

(ii) The agreement (Ex-P/1) was executed on 27.10.01 but possession of the house in question was not delivered on the said date. Therefore, registration of Ex.P/1 is not required as per the Act 41 of 2001 vide enforced on 24.9.2001 and its registration is not required as per Section 17 of the Registration Act 1908. The appellants are under obligation to perform specific

performance of contract, therefore, finding of the trial Court is not liable to be disturbed while invoking the jurisdiction of the appeal.

5. Mukesh Kumar Sahu (PW-1), Kailash Sharma (PW-2), Shankar Lal Sharma (PW-3) were examined on behalf of the respondent/plaintiff and Dr. Sunanda Denge (DW-1) was examined on behalf of the defendants. From the evidence of the respondents' witnesses, it is established that appellant No.5 Harinarayan is the Power of Attorney of appellants 1 to 4 and he entered into an agreement on behalf of appellants 1 to 4 to sell the house in question for cash consideration of Rs.2,50,000/-. From their evidence, it is clear that possession of the house was handed over to Kailash Sharma and he handed over the house to Vinod Kumar Sharma for residential purpose. Admittedly, Vinod Kumar Sharma is residing in the house in question, therefore, the appellants were under obligation to clarify as to how Vinod Kumar Sharma came into possession of the house in question. But that is not clarified by the evidence of the appellants, therefore, version of the respondent is established that possession of the house is handed over to Kailash Sharma on the basis of agreement entered into by appellant No.5 as Power of Attorney on behalf of appellants 1 to 4. In absence of rebuttal, it is established that appellant No.5 received Rs.2,50,000/- as consideration for selling the house in question and finding of the trial Court on this regard is not liable to be interfered with looking to the documents (Ex-P/1 to Ex-P/7). Arguments advanced on behalf of the appellants is not sustainable and appeal filed by them is liable to be dismissed.

6. Accordingly, decree is passed against the appellants and in favour of the respondent as under:

- (i) The appeal is dismissed with cost.
- (ii) The parties to bear their own cost.
- (iii) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE