

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 623 of 2003

1. Tulsi Ram S/o Ram Prasad Mochi, Aged About 49 Years Occupation Teacher. R/o Gram Dhara P.H. No. 2, Block And Tehsil Dongargarh, District Rajnandgaon (Chhattisgarh)
2. Smt. Fulu Bai (Died) Through Legal Heir-
2. (a) Sati Bai D/o Late Ram Prasad, W/o Munna Lal, Aged About 55 Years R/o Village Dhara, P.H. No. 2 Block And Tahsil Dongargarh District Rajnandgaon Chhattisgarh
3. Shiv Ram S/o Ram Prasad Mochi, Aged About 40 Years Occupaton-Teacher, Subhash Ward, Dongargarh, District Rajnandgaon Chhattisgarh

---- Appellants

Versus

1. Narottam S/o Gambhir, Caste Mochi, Aged About 62 Years Farmer, R/o Gram Dhara, P.H.No. 2 Block And Tehsil Dongargarh, District Rajnandgaon Chhattisgarh
2. State Of Chhattisgarh Through The Collector, Rajnandgaon, District Rajnandgaon Chhattisgarh

---- Respondents

For Appellants	:	Mr. Bharat Rajput, Advocate
For Respondent No. 1	:	Mr. Shalvik Tiwari, Advocate
For State/Respondent No. 2	:	Mr. Anmol Sharma, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

17/07/2019

Heard on admission.

1. Learned counsel for the appellants would argue that the learned trial Court committed gross illegality in rejecting defendant's application under Order 26 Rule 10 CPC for examination of document (Ex.D-3) dated 03.06.1995 by handwriting expert, as this material document, on which, the plaintiff- Narottam disputed his signature, proved that plaintiff had agreed to make payment and get the sale deed registered within the stipulated period, which he failed to do and, therefore, the suit was liable to be dismissed. The next submission is that the learned trial Court erred in law in relying upon unregistered sale deed (Ex.- P-2), which, on account of being unregistered, was not admissible in evidence.

It is next submitted that the findings of the Courts below that there were mutual understanding between the parties for transferring the land mutually is also illegal. Lastly, it is submitted that the finding with regard to there being a consent letter executed vide Ex. P-3 is also perverse.

2. True it is that the learned trial Court had rejected defendant's application under Order 26 Rule 10 CPC which was filed at the stage when Narottam in his evidence denied his signature, however, even if that document dated 03.06.1995 is accepted to the effect that the plaintiff had agreed to pay the balance amount within stipulated period and to get the sale deed registered, the finding of the learned trial Court regarding plaintiff having performed his part of contract by making payment of sale consideration is based on other evidence including consent letter (Ex. P-3) which contains stipulation that the defendants have received the sale consideration. Therefore, on this aspect, no substantial question of law arises for consideration as, even if that document is admitted in the evidence, it will not alter the result of the case.
3. The findings with regard to there being mutual understanding between the parties and that there was an agreement to sell the disputed property by defendant in favour of plaintiff, are based on oral evidence on record and learned counsel for the appellants has argued only on factual aspect that the evidence in this regard is liable to be disbelieved. However, no perversity or illegality in the finding could be established. The defendant's case is not that there was no agreement, but that the plaintiff failed to perform his part of agreement. In fact, defendant's own document (Ex.D-3) only advances plaintiff's case that between the parties, there was an agreement to sell the property in dispute.
4. In view of the above, no substantial question of law arises for consideration. The appeal fails and is hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge