

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.122 of 2005**

- Tularam S/o Chamar Singh, Aged About 45 Years Caste Aghariya, Occupation Farmer, R/o Village P. O. Kumhari, Tahsil Sarangarh, District Raigarh Chhattisgarh.....Plaintiff

---- Appellant

Versus**1. Lochan Prasad Died Through Lrs.**

1(A) Smt. Resham Bai W/o Lochan Prasad, Aged About 70 Years R/o Village Chhote Saraipali, Tahsil Saraipali, District Mahasamund Chhattisgarh

1(B) Uddhav S/o Lochan Prasad, Aged About 26 Years R/o Village Chhote Saraipali, Tahsil Saraipali, District Mahasamund Chhattisgarh

1(C) Rambai D/o Lochan Prasad, Aged About 21 Years R/o Village Chhote Saraipali, Tahsil Saraipali, District Mahasamund Chhattisgarh

1(D) Madhav S/o Lochan Prasad, Aged About 18 Years R/o Village Chhote Saraipali, Tahsil Saraipali, District Mahasamund Chhattisgarh

2. Mukut Ram Died Through Lrs.

2(a) Kanhaiya Chaudhary S/o Late Mukutram Chaudhary, Aged About 45 Years, R/o. Village Sajapli, Post Jamhari, Tahsil Saraipalim District Mahasamund (CG)

2(b) Smt. Rajkumari @ Kiran, D/o Late Mukutram Chaudhary, W/o Shri Nakul, Aged About 40 Years, Village Barihapli, Post Singhanpur, Tahsil Saraipali, Distt. Mahasamund (CG)

2(c) Smt. Bodhkunwar @ Basanti D/o Late Mukutram Chaudhary, W/o Shri Baratram, Aged About 37 Years, village Gourtek (Gautek), Tahsil Basna, Distt. Mahasamund (CG)

2(d) Smt. Bindu D/o Late Mukutram Chaudhary, W/o Surya Kumar Patel Aged About 34 Years, Village Kandur Pali, Post Salar, Tahsil Sarangarh, Distt. Raigarh (CG)

3. State Of Chhattisgarh Through District Collector, Raigarh Chhattisgarh

---- Respondents

For the Appellants : Shri Sanjay Patel, Advocate

For Respondents 1 & 2 : Shri RS Patel, Advocate

For Respondent No.3/State: Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

26.3.2019.

1. This appeal is directed against judgment/decreed dated 10.5.2005 passed by First Additional District Judge, Raigarh (CG) in Civil Suit No.12A/2005 wherein the said Court dismissed the suit filed by the appellant/plaintiff for specific performance of contract for land bearing 24 Survey No. area 2.699 hectare mentioned in Schedule A of the plaint situated at village Kumhari Patwari Halka No.44, Rajaswa nirikshan Baramkela, Tahsil Sarangarh, Distt. Raigarh (CG).

2. The appellant/plaintiff filed suit for specific performance submitting in it that original respondents Lochan Prasad and Mukut Ram entered into an agreement of sale of land in question in the year 1980-81 for case consideration of Rs.1,50,000/-. The entire amount was paid and possession was delivered but no sale deed was executed till 12.5.1998. On 12.5.1998 an agreement was executed by the said respondents with a promise that they will execute sale deed on 03.7.1998. The trial Court after hearing the parties dismissed the suit as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) The appellant was in possession of the suit land from 1981 since the possession was delivered to him in the year 1981 after receipt of the payment of Rs.1,50,000/- by the said respondents therefore, finding of the trial Court that the consideration was not paid to the said respondents is not proper.

(ii) The trial Court erred in law in holding that the property was a joint property and necessary parties have not been joined in the suit.

(iii) The trial Court further committed error in recording finding that the suit is barred by limitation. Therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is based on oral and documentary evidence adduced before it and therefore, the same is not liable to be interfered with.

5. To substantiate the pleadings, the appellant examined himself as PW-1, Purnachandra (PW-2) and Devi Singh (PW-3). From the evidence of the appellant it is established that he entered into agreement in the year 1980-81 for the sale of land in question and amount of Rs.1,50,000/- was paid to the original respondents 1 & 2 namely Lochan Prasad and Mukut Ram. Thereafter one written agreement was signed between the parties on 12.5.1998.

6. The first question for consideration before this Court is whether original respondents 1 & 2 Lochan Prasad and Mukut Ram were recorded owner of the land in question in the year 1980? From the documents Ex-D/26 & D/27 it is clear that both Lochan Prasad and Mukut Ram were not recorded owners of the land in question, but their father namely Purushottam was the recorded owner of the land in question. Therefore, Lochan Prasad and Mukut Ram were not authorised to enter into contract of sale of land in question. Purushottam and other recorded owners have not entered into any agreement with the appellant for the sale of the land in the year 1980-81 who were recorded owners, therefore, any agreement in which Purushottam and other

recorded owners were not parties was not valid because a person cannot transfer any right which is not perfected to him. If any contract was entered in the year 1981 the same should have been executed within three years as per the provisions of Limitation Act, but no sale deed was executed within the stipulated period and therefore, any suit brought in the year 1999 (date of filing the suit 07.7.1999) is barred by limitation.

7. No khasra entry was produced before the trial Court by the appellant that he was in the actual possession of the land in question and also nature of the possession is not clear as to what was the use of the land in question and whether it was used for agricultural purpose and what kind of crop was sown in the said land. There is no document to prove that land revenue was paid by the present appellant for the land in question. Therefore, in absence of any evidence, it is not proved that the appellant was in possession of the land in question since 1980-81.

8. Decree for specific performance can be granted only when proposed seller is independent owner of the property for which he entered into an agreement. Admittedly, original respondents 1 & 2 were not the owners of the land in question in the year 1981 independently, therefore, decree cannot be passed in favour of the appellant on the basis of any agreement by original respondents 1 & 2. As the original owner namely Purushottam and other recorded owners have not entered into any agreement with the appellant, decree for specific performance could not be passed.

9. From the record of the trial Court it is not clear that any receipt was given for payment of Rs.1,50,000/- or anything is recorded in writing for transaction of that much of amount. The trial Court has elaborately discussed the entire evidence and recorded finding that payment of case consideration is also not established in the present case. The trial Court has elaborately discussed the issues and recorded a finding that relief cannot be granted in favour of the present appellant. After reassessing the entire evidence, this Court has no reason to substitute a contrary finding. It is not a case where the decree for specific performance can be granted in favour of the appellant. The appeal is liable to be dismissed.

10. Accordingly, decree is passed in favour of the respondents/representatives and against the appellant 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
Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE