

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.161 of 2003**

Gurumukh Das Advani (dead) through LRs.:

1. Smt. Kanta Devi, Wd/o. Late Gurmukh Das Advai, aged about 49 years, R/o. Kumhari, Tahsil Patan, Distt. Durg (CG)
2. Smt. Geeta Sawni, wife of Shri Hamant Kumar Sawni, aged about 30 years, R/o. Sakri, District Bilaspur (CG)
3. Ghanshyam Advani, son of Late Gurmukh Das Advani, aged about 33 years,
4. Dhanraj Advani, son of Late Gurmukh Das Advani, aged about 28 years,

No.3 & 4 are residents of Kumhari, Tahsil Pata, District Durg (CG)

---- Appellants**Versus**

1. Dr. Harishankar Pandey, S/o. Ramakant Pandey, aged about 31 years, R/o. In front of Sheetla Mandir, Gali mey, Kankalipara, Raipur, Tahsil & District Raipur (CG)
2. Smt. Belbai, Wd/o. Rajaram Jaiswal, aged about 55 years, Bedisde Thadi Shop, Azad Chowk, In front of Thana, Khaprabhathi, Riapur Tahsil and Distt. Raipur (CG)
3. Ganesh Jaiswal, S/o. Late Shri Rajaram Jaiswal, R/o. Azad Chowk, In front of Thanka, Khaprabhathi, Amanaka, Raipur, Tahsil & Distt. Raipur (CG)

---- Respondents

 For the appellants : Shri BP Sharma, Advocate
 For the respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****01.3.2019.**

1. This appeal is preferred against judgment and decree dated 08.5.2003 passed by Fourth Additional District Judge, Raipur in Civil Suit No.49A/2001 wherein the said Court dismissed the suit filed by the appellant for declaration, injunction and possession of land bearing Survey No.1005 area 364 sq. ft. with makeshift over the said land.

2. In the said case, the appellant is claiming right over the property based on the sale deed executed in his favour on 20.7.1993. Though the suit is filed for a piece of land area 364 sq. ft. but no map was filed with the plaint and no map is annexed in the sale deed itself. From the evidence, it is clear that possession was not delivered after the sale deed and it was a mere paper transaction. In absence of identity of the land, the trial Court opined that no executable order can be passed in favour of the appellant. It is settled law that no order should be passed by the court which is un- executable.

3. Finding of the trial Court is based on oral and documentary evidence adduced before the said Court and after reassessing the evidence this Court has no reason to substitute a contrary finding. Accordingly, the appeal is liable to be dismissed and the decree is passed in favour of the respondents and against the appellant as under:

- (1) The appeal is dismissed with cost.
- (2) The parties to bear cost of litigation of their own.
- (3) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (4) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE