

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FA No. 225 of 1998****Reserved on : 08.01.2019****Delivered on : 30.01.2019**

Manoharlal, aged 28 years, S/o Sadhuram Sindhi, R/o Ravidas Nagar (Karbala Talab Mohalla), Juna Bilaspur, Tahsil and District- Bilaspur (M.P.) (Now Chhattisgarh) **---- Appellant**

**Versus**

1. Mithailal, aged 57 years, S/o Kunjbihari Gwal.
2. Bharatlal Gwal, aged 35 years.
3. Sunil Kumar Gwal, aged 26 years.

Both S/o Mithailal

All R/o Behind City Dispensary, Gandhi Putla Ward, Juna Bilaspur, Tahsil and District- Bilaspur (M.P.) (Now Chhattisgarh) **---- Respondents**

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For Appellant : Mr. Rahul Kumar, Advocate.

For respondents : Mr. Varun Sharma, Advocate.

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

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 16.02.1998 passed by Second Additional Sessions Judge, Bilaspur (C.G.) in Civil Suit No. 19-A/1992, wherein the said court dismissed the suit filed by the appellant for specific performance of contract related to the house situated at Karbala Road, Juna Bilaspur.
2. Respondent No. 1- Mithailal entered into an agreement to sell house in question for a cash consideration of Rs. 1,00,000/-. Rs. 40,000/- was paid by the appellant to respondent No. 1 on 6<sup>th</sup> September, 1989 and rest of the amount was to be paid within two months and thereafter, the sale deed was to be executed. As respondent No. 1 did

not execute the sale deed, a notice was served to him, but the sale deed was not executed.

3. As per version of respondent No. 1, Rs. 40,000/- was not received as earnest money of the said contract, but on saying of the appellant, he liquidated cheque issued by respondent No. 1 and amount was handed over to respondent No. 1, therefore, any such agreement was never entered into by the parties and no relief can be granted to the present appellant.
4. The first question for consideration of this Court is whether respondent No.1 is sole owner of the property in question and he can legally alienate the same. There is no document on record that the appellant is sole owner of the house in question. From the evidence, it is clear that the property in question is ancestral property. Though, it is deposed by respondent No. 1 (Defendant No. 1) that he acquired the property in his share after partition, but there is nothing on record to show that any partition took place and property in question was allotted in share of respondent No. 1-Mithailal. As respondent No. 1- Mithailal is not the sole owner of the property, the contract cannot be specifically enforced, therefore, decree of specific performance cannot be awarded in favour of the appellant.
5. The another thing for consideration of this Court is whether the earnest money was received by respondent No. 1- Mithailal. As per version of Sadharam (AW-1), Goverdhan Das (AW-2), Rajendra (AW-3), it is established that respondent No. 1- Mithailal received Rs. 40,000/- as advance money for the said agreement to sell the property

in question.

6. Version of all the witnesses is un rebutted and the same is un rebutted by respondent No. 1- Mithailal. Version of respondent side is mere denial which is meritless, therefore, the same is not acceptable. From evidence of the appellant side, it is established that the appellant has paid Rs. 40,000/- as advance and the amount is received long back on 6<sup>th</sup> September, 1989. It would be appropriate to award twice the amount of earnest money in favour of the appellant and against the respondent No. 1- Mithailal i.e. Rs. 80,000/-. In view of this Court, finding of the trial court is not sustainable and the same is hereby modified.
7. Accordingly, the judgment and decree passed by the trial court is modified allowing the appeal partly. The decree is passed in favour of the appellant and against respondent No. 1 on the following terms and conditions:-
  - (i) The appeal is partly allowed. Respondent No.1- Mithailal will pay Rs. 80,000/- (Rs. Eighty Thousand) to the appellant within a period of one month.
  - (ii) Parties to bear their own costs.
  - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
  - (v) A decree be drawn accordingly.

**Sd/-**  
**(Ram Prasanna Sharma)**  
**Judge**