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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 09.05.2019****Judgment delivered on 21.6.2019****First Appeal No.62 of 2008****1. Kakiya (dead) through LR.**

Lakhi Bai W/o. Sahani Lal, aged about 29 years, R/o. Gaurhenu, Post Singhanpur, Tahsil Basna, Distt. Mahasamund (CG)

2. Hemo, aged about 45 years D/o Shri Viro, R/o Village - Ichhapur, P.C. No. 20, R.I. Circle - Khamharpali, Tehsil - Saraipali, District - Mahasamund (C.G.)**3. Arkhit, Aged about 48 years, S/o Shri Kuldhar, R/o Village - Ichhapur, P.C. No. 20, R.I. Circle - Khamharpali, Tehsil - Saraipali, District - Mahasamund (C.G.)****---- Appellants****Versus****1. Vijay, aged about 35 years, S/o Shri Jagmohan, Occuapation - Agriculture And Labourer, R/o Village Ichhapur, P.C. No. 20, R.I. Circle Khamharpali, Tehsil - Saraipali, District - Mahasamund (C.G.)****2. Ajay, aged about 32 years, S/o Shri Jagmohan, Occuapation - Agriculture And Labourer, R/o Village Ichhapur, P.C. No. 20, R.I. Circle Khamharpali, Tehsil - Saraipali, District - Mahasamund (C.G.)****3. Damyanti, aged about 30 years, D/o Shri Jagmohan, Occuapation - Agriculture And Labourer, R/o Village Ichhapur, P.C. No. 20, R.I. Circle Khamharpali, Tehsil - Saraipali, District - Mahasamund (C.G.)****4. Pushpa, aged about 28 years, D/o Shri Jagmohan, Occuapation - Agriculture And Labourer, R/o Village Ichhapur, P.C. No. 20, R.I. Circle, Khamharpali, Tehsil - Saraipali, District - Mahasamund (C.G.)****5. Janki, aged about 25 years, D/o Shri Jagmohan, Occuapation - Agriculture And Labourer, R/o Village Ichhapur, P.C. No. 20, R.I. Circle Khamharpali, Tehsil - Saraipali, District - Mahasamund (C.G.)****6. Mst. Laxmi Bai, aged about 65 years, Wd/o Late Shri Jagmohan, R/o Village Ichhapur, P.C. No. 20, R.I. Circle Khamharpali, Tehsil - Saraipali, District - Mahasamund (C.G.)**

7. The State Of Chhattisgarh Through The Collector, District - Bilaspur (C.G.)

---Respondents

For the appellants : Shri Raghavendra Pradhan and Shri Shikhar Sharma, Advocates
 For respondents 1 to 6 : Shri Rakesh Thakur, Advocate
 For respondent No.7/State : Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against judgment and decree dated 09.01.2008 passed by First Additional District Judge Mahasamund (CG) in a Civil Suit No.2A/2007 wherein the said Court dismissed the suit filed by the appellants/plaintiffs for specific performance of contract regarding land bearing Survey No.112 area 0.35 hectare situated at village Ichchhapur, Tah. & Distt. Mahasamund (CG).

2. As per the appellants, on 13.5.2005, respondents 1 to 6 have executed an agreement and agreed to sell the land in question @ Rs.80,000/- per acre. Rs. 25,000/- was paid as earnest money and one document Ex-P/1 was executed. The trial Court after hearing both sides, dismissed the suit.

3. Learned counsel for the appellants submits as under:

(i) The trial Court ought to have considered that Ex-P/1 was executed by the respondents and a sum of Rs.25,000/- was paid to them.

(ii) The appellants have proved the case regarding payment of Rs.25,000/- as advance and execution of the document Ex-P/1 which is proved by the statement of Arkhit and Antram, therefore, finding recorded by the trial Court is liable to be reversed.

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 the documentary evidence adduced by both sides and the same is not liable to be interfered with.

5. The suit is filed for land bearing Survey No.112 area 0.35 hectares situated at village Ichchhapur PH No.20 Revenue Circle Khamharpali Tahsil Saraipali, District Mahasamund. This survey number is not mentioned in the document (Ex-P/1) which is an alleged agreement between the parties and in the said document (Ex-P/1) survey number and area of the land is not mentioned. Another document (Ex-P/2) is also produced before the trial Court but the same is not an agreement of sale but it is an unregistered sale deed in which no witness has signed but thumb impressions of three persons namely Viajy, Kakiya and Hemo is appearing. There is no record of rights to show as to how many are the share holders in the land question. In absence of record of rights, the trial Court was not in a position to grant any relief in favour of the appellants because it is not clear from the record of the trial Court as to whether the respondents are the only share holders of the property. Unless it is proved that the respondents are the share holders of the property, they cannot alienate property.

6. It is alleged by the appellants that an advance of Rs.25,000/- was paid as earnest money. In the document Ex-P/1, Bodharam Nayak, Antram are the witnesses. Though Arkhit (PW-1) and Antram (PW-3) deposed before the trial Court that Rs.25,000/- was given by Arkhit as earnest money but Vijay (DW-1) and witness of agreement (Ex-P/1) Bodhram (DW-2) denied that any payment was made as earnest money. Versions of Vijay Kumar and Bodhram is rebutting the version of Arkhit and Antram, therefore, the trial Court opined that the payment of earnest money is not proved looking to the contrary statement of the witnesses of the document. After reassessing the evidence, this Court has no reason to record a contrary finding.

7. Decree of specific performance can be granted only when the proposed sellers are the owners of the property, but in absence of record of rights it is not proved that the proposed sellers are the owners of the property. Therefore, decree of specific performance cannot be granted. Again payment of earnest money is not proved before the trial Court, therefore, the trial Court was not in a position to grant relief in favour of the appellants. Arguments advanced on behalf of the appellants is not sustainable. Accordingly, the appeal is liable to be dismissed.

8. The decree is passed against the appellants and in favour the respondents as under:

- (i) The appeal is dismissed with cost.
- (ii) The appellants to bear the cost of respondents 1 to 6 throughout.

- (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

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