

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 9 of 2010**

- Rakesh Sethiya, aged about 38 years, S/o Jasraj Sethiya, R/o Balgovind Chowk, Rajnandgaon.

---- Appellant**Versus**

1. Shobhitram, aged about 47 years, S/o Firdas By Caste Satnami, By Occupation, Agriculturist, R/o Village Gopalpur, Khurd, Tahsil Khairagarh, District Rajnandgaon.
2. State of Chhattisgarh, Through Collector, District Rajnandgaon.

---- Respondents

For Appellant	:	Shri Shalvik Tiwari, Advocate appears on behalf of Shri Parag Kotecha, Advocate.
For Respondent No.2/State:		Shri Rahul Jha, Government Advocate and Shri Gagan Tiwari, Deputy Government Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****28/01/2019**

1. The Appellant has challenged the legality and propriety of the judgment and decree dated 19.11.2009 passed by the learned Additional District Judge, Khairagarh in Civil Suit No.7A/2008 thereby dismissing the suit of the Appellant/Plaintiff holding that by virtue of the sale agreement, no declaration of title can be made in favour of the appellant/plaintiff because the document agreement to sale does not confer any title in favour of the purchaser of the property.
2. Brief facts relevant for disposal of this appeal are that the Appellant/Plaintiff filed a suit for declaration of title and further for possession of the suit property on the ground that he entered into an agreement for purchase of the immovable property bearing Khasra No.241/01, measuring 1.97 acres situated at village Gopalpur, Tahsil Khairagarh, District Rajnandgaon. It has been pleaded that the

agreement of sale was prepared on non-judicial stamp of Rs.50/- and executed between the parties on 08.05.2007. It was further pleaded that on the date of execution of the sale agreement, appellant/plaintiff paid the total sum of Rs.2 lacs out of Rs.2,25,000/- i.e. total sale consideration of the property with a condition that sale deed be executed upto 31.12.2007. During this period the appellant/plaintiff has made several requests for getting sale deed registered, but the defendant/respondent for one or other reasons have avoided for the sale and therefore, the appellant/plaintiff has filed the suit.

3. Learned trial Court after getting the suit registered issued notice to the Respondent/Defendant No.1. The learned trial Court issued notices by ordinary post as well as registered post to be served on the defendant/respondent. But the notice sent by registered post has been received with an endorsement for refusing to accept and therefore, learned trial Court proceeded ex-parte against the defendant/respondent.
4. The learned trial Court while appreciating the documentary evidence as well as the oral evidence placed on record by the appellant/plaintiff though has arrived at the conclusion that the appellant/plaintiff has proved the execution of the sale agreement Ex.P/1, but dismissed the suit on the ground that the sale agreement did not confer any title on the appellant/plaintiff and therefore, the decree of declaration of title and possession sought by the appellant/plaintiff could not be granted.
5. Learned counsel for the Appellant submits that the plaintiff has proved the execution of the document as well as the payment of Rs.2 lacs as mentioned in Ex.P/1 and therefore, he was entitled for the relief as sought

by him in the plaint. He further argued that as the major amount towards the land in dispute has been paid to the seller and therefore, he is entitled for possession of the suit property in alternative he also submitted that if the decree of declaration of title in possession could not be granted to the plaintiff at least he is entitled for refund of advanced amount paid by him to the defendant.

6. Learned Deputy Government Advocate appearing on behalf of the Respondent No.2/State supported the impugned judgment and decree and argued that the plaintiff in view of the document Ex.P/1 can very well file the suit of specific performance of contract. But as such no suit seeking the relief of specific performance of contract against the defendant is filed, the plaintiff is not entitled for any relief and the learned trial Court has rightly dismissed the claim/suit.
7. I have heard the learned counsel for the parties and perused the records.
8. The plaintiff filed Ex.P/1 which is an unregistered sale agreement dated 08.05.2007 between the Shobhitram and the plaintiff Rakesh Sethiya. Ex.P/2 is an envelope sent by the counsel for the plaintiff, in which, as per their claim the legal notice has been sent to the defendant for getting the sale deed executed. Ex.P/4 is the postal receipt and Ex.P/5 is the copy of the notice dated 05.07.2008 sent by Shri V.P. Soni, Advocate on behalf of the plaintiff to Collector, Rajnandgaon. The plaintiff examined himself as PW-1. In his evidence PW-1 proved the sale agreement Ex.P/1 and also proved his thumb impression over the said agreement. He proved the existence of the other documents which were exhibited and marked as Ex.P/2 to Ex.P/7. The other witness PW-2 Jasraj Sethiya

also made supporting evidence to prove the execution of Ex.P/1 and stated that at the time of execution of the said document he was present at Khairagarh and further stated that the defendant received Rs.2 lacs at the time of entering into the agreement. One Sourabh Jain was also examined as PW-3 who prove the execution of the document Ex.P/1 who in his evidence before the Court categorically stated that the document Ex.P/1 has been executed in his presence and also that the plaintiff has handed over an amount of Rs.2 lacs to the defendant.

9. From the aforementioned evidence which was placed on record by the plaintiff it can be gathered, there was an agreement to sale between the plaintiff and defendant No.1, some amount has been paid to the defendant as an advanced at the time of execution of the agreement to sale. But, by mere proof of the execution of the agreement to sale Ex.P/1 no title of immovable property can be passed in favour of the plaintiff. The title/ownership of the immovable property can only be transferred by virtue of registered sale deed to be executed in favour of the purchaser as defined under Section 54 of the Transfer of Property Act, 1882.

“54. “Sale” defined. - “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as

he directs, in possession of the property.

Contract for sale.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

10. The issue with regard to the grant of relief of declaration of title on the basis of sale agreement and having possession over the property was considered by the Hon'ble Supreme Court in the matter of **Ranjeet Singh (Dead) by Lrs & Others vs. Jaimal Singh & Others** reported in **2001 (10) SCC 474** wherein Hon'ble Supreme Court held as under:

“3. Learned counsel for the plaintiff-respondents then urged that since the agreement for sale is in favour of the respondents who are in possession over the land since 20-6-1965 and they have also paid the entire consideration money, therefore, they may be granted relief of declaration as regards their possession by virtue of Section 53-A of the Transfer of Property Act. According to us, this plea is not available to the plaintiff-respondents in this proceeding.”

In the case in hand the plaintiff was only having the agreement of sale with him which he also proved but as held the document agreement to sale even if proved in its entirety it does not confer any title on the purchaser but some other remedy is provided under law.

11. The other alternative argument raised by the appellant with respect to the refund of the advance amount under the discretionary relief is as provided under Section 21 of the Specific Relief Act, 1963 raised by the counsel is misplaced, because the plaintiff has filed the suit for declaration of title and possession only wherein neither he has sought any relief for refund of an advance amount paid by him and neither the suit seeking relief of specific performance of the contract has been filed.

12. Undisputedly, the document relied upon the plaintiff Ex.P/1 is not the sale deed and even the contents thereof it is ample clear that it is a mere contract entered between the parties for getting the sale deed executed on subsequent date on further action of both the parties. Reading of the contents of Ex.P/1 would show that Ex.P/1 is only an agreement to sale and further action is to be performed by both the sides like payment of balance amount, registering document and handing over the possession of the property in dispute.
13. The suit for declaration of title and possession as filed by the plaintiff in form is not maintainable. The plaintiff could have sought relief for specific performance of contract on the basis of Ex.P/1 agreement to sale and further in alternative could have also sought refund of the advance amount. However, for the best of his reasons plaintiff has not filed suit for specific performance of the agreement or refund of advance amount. On the basis of agreement to sale plaintiff is not entitled for the relief as sought by him for declaration and possession.
14. In view of the above discussion, I do not find any infirmity in the impugned judgment and decree passed by learned Court below. The appeal is devoid of merits and substance which is liable to be and is hereby dismissed. No order as to cost. Decree be framed accordingly.

Sd/-
(Parth Prateem Sahu)
Judge