

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 566 of 2003

1. Alkhu Ram, aged about 40 years, S/o Puniti Ram Sahu
2. Manohar, aged about 36 years, S/o Punit Ram Sahu
3. Doulat, aged about 30 years, S/o Punit Ram Sahu,

All R/o Village Bhaismundi, Tahsil Dhamtari, District- Dhamtari

---- Appellants

Versus

1. Sukham Bai, aged about 50 years, Widow of late Ram Kishun, D/o Thanu Ram Sahu, R/o Bhaismundi, at present R/o Ramkishun Sahu, Bade Kareli, Tahsil and District- Dhamtari (CG)
2. Bishrat, aged about 46 years, S/o Ruhela Sahu
3. Renu Ram, aged about 29 years, S/o Ruhela Sahu, Both R/o Village Bhaismundi, P.O. Magrload, District-Dhamtari (CG)
4. State of Chhattisgarh through the Collector Dhamtari, Dhamtari

---- Respondents

For Appellants : Shri Vishnu Koshta, Advocate

For Respondent No.3 : Shri R.S. Patel and Shri Malay Jain, Advocates

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/07/2019

Heard on admission.

1. The plaintiffs' suit for decree of specific performance was dismissed by the learned trial Court against which appeal was also dismissed. In this second appeal, learned counsel for the appellants argues that the substantial question of law as proposed in clause (2) of the memo of appeal would arise for consideration. He would argue that the agreement (Ex.P-1) clearly proves receipt of money by the deceased- Ramotin Bai. After receiving full

consideration amount, nothing more was required to be done on the part of plaintiffs because they had already paid money and were also delivered possession. In support of his submission, learned counsel for the appellants relied upon the decision of the Supreme Court in the case of **Kartar Singh Vs. Harjinder Singh & Ors.** (AIR 1990 SC 854).

2. The finding of fact of the Court below is that even through plaintiffs claim to have paid entire sale consideration, their own witness to the document had not supported and, contrary, Leelaram (PW2) has stated that only Rs.8500/- was paid and balance was to be paid after one month. This discrepancy in the terms of the agreement and the evidence of plaintiffs own witness was taken into consideration by the learned trial Court to record a finding that the very agreement between the parties and terms and conditions thereof become doubtful. Learned trial Court also taken into consideration that the dispute relates to undivided share in the property taking into consideration that in revenue records, no mutation had taken place and as per records, it continued as undivided share. Learned trial Court also taken into consideration that the agreement is said to have been executed on 30th May 1990 and for almost two years, the plaintiffs did not take any further steps in the matter until it issued a notice to defendant as late as on 6.3.1992. On this basis, the learned trial Court has recorded that the plaintiffs failed to prove that they were ready and willing to perform their part of contract. The aforesaid finding have been affirmed in the appeal. Therefore, no substantial question of law arise for consideration.

3. The appeal is therefore dismissed.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge