

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 45 of 2005****Reserved on : 21.01.2019****Delivered on : 31.01.2019**

Arun Kumar Pathak, S/o Sufal Prasad, Caste- Bramhan, aged about 42 years, R/o Ward No. 3 Old, New- 4, Champa (M.P.) (Now C.G)

---- Appellant**Versus**

1. Chhabilal (Dead) through-
 - 1(a) Smt. Tarabai, W/o Late Chhabi Lal, aged about 52 years.
 - 1(b) Smt. Geeta, W/o Santosh, aged about 30 years.
 - 1(c) Dinesh Pathak, S/o Late Chhabi Lal, aged about 26 years.
 - 1(d) Smt. Purnima, W/o Surendra Pandey, aged about 25 years.
 2. Vishnu Prasad, S/o Firanlal Pathak, aged about 52 years.
 3. Ashok Kumar, S/o Fulchand Pathak, aged about 44 years.
 4. Sufalchand, S/o Kaushal Prasad Pathak, aged about 72 years.
- All Caste- Bramhan, R/o Ward No. 4, Champa, District- Janjgir- Champa (C.G.)

---- Respondents

For Appellant	:	Mr. H.B. Agrawal, Sr. Advocate with Mrs. Iturani Mukherji, Advocate.
For Respondents	:	None.

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 14.12.2004 passed by Third Additional District Judge (FTC), Janjgir, District- Janjgir- Champa (C.G.) in Civil Suit No. 57-A/2004, wherein the said court

dismissed the suit filed by the appellant/ plaintiff for specific performance of contract regarding house No. 76/03 situated at Ward No. 4, Champa, District- Janjgir-Champa (C.G.) which is mentioned in Schedule-A of the plaint.

2. As per the appellant/ plaintiff, the property in question was owned by one Kalyanibai who orally entered into an agreement with the appellant that last rite of husband of said Kalyanibai namely Ramshankar will be performed by the appellant and the property in question will be given to the appellant as consideration for expenses of last rite of Ramshankar. It is further case of the appellant that in specific performance of contract, the property was handed over to him and one deed was executed on 19th December, 1999 in favour of the appellant. Later on, said Kalyanibai refused to execute sale deed in favour of the appellant that is why a suit was filed before the trial court which was dismissed as mentioned above.
3. Learned counsel for the appellant submits as under:-
 - (i) The trial court has decided that the document Ex.P/3 is proved, but wrongly decided that agreement between the parties is not proved.
 - (ii) The trial court further committed error in recording finding that the said document ought to have been registered.
 - (iii) The document conferred title of the property in the appellant, therefore, decree ought to have been passed in favour of the appellant, therefore, the finding arrived at by the trial court is liable to be reversed and decree be passed in favour of the appellant.

4. First question for consideration before this Court is whether the document Ex.P/3 is an agreement to sell the property in question. As per the document, since the appellant has performed rituals of death of her husband Ramshankar that is why Smt. Kalyanibai is giving property to the appellant forever.
5. After going through the entire evidence and the document Ex.P/3, it is clear that the said document is not an agreement to sell the property, but it is a document of delivering the property to the appellant because the appellant has borne the expenses of rituals regarding death of husband of Kalyanibai namely Ramshankar Pathak. In the said document, there is no recital to execute the said deed in favour of the appellant in the future, therefore, the trial court is right in holding that it is not an agreement to sell the property in question. Again, if intention of Smt. Kalyanibai was to sell the property in favour of the appellant, she should have executed a sale deed in favour of the appellant, but that is not done.
6. As per version of Sufal Chand (AW-1) & Arun Kumar (AW-9), amount of Rs. 13000/- and more was borne by Arun Kumar (AW-1) in rituals of Ramshankar. If, this amount is taken as consideration of the property in question, the sale deed ought to have been registered as per Section 54 of the Transfer of Property Act, 1882, but that is not done.
7. After going through the entire evidence, the trial court opined that the document Ex.P/3 is neither the agreement to sell nor it is registered sale deed, therefore, decree for specific performance of contract cannot be passed in favour of the appellant.

8. The finding arrived at by the trial court is based on factual matrix and legal aspect of the matter. After reassessing the entire evidence, this Court has no reason to record contrary finding.
9. Accordingly, the decree is passed against the appellant and in favour of the respondents on following terms and conditions :-
 - (i) The appeal is dismissed with cost.
 - (ii) Parties to bear their own costs.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge