

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 06-10-2018****Judgment delivered on 22-02-2019****FA No. 87 of 2012**

1. Mahadev Singh S/o Shri Mahavir Prasad, aged about 73 years, R/o Reeta Laundry, Khaparganj, Tahsil And District Bilaspur

---- Appellant**Versus**

1. Bihari Lal Sanadaya S/o Mangal Prasad Sanadaya, aged about 43 years, R/o Near Pani Tanki, Kududand, Tahsil And District Bilaspur.

---- Respondent

For Appellant	Shri Parag Kotecha, Advocate
For Respondent	Shri B.P. Sharma, Advocate
For Intervener	Shri Vikas Shrivastava, Advocate on behalf of Shri Arvind Dubey, Adv.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Smt. Justice Vimla Singh Kapoor****C A V Judgment**

The following judgment of the Court was delivered by
Prashant Kumar Mishra, J.

1. This is defendant's first appeal under Section 96 of the Code of Civil Procedure, 1908 challenging the legality and validity of the judgment and decree passed by the trial Court allowing respondent/plaintiff's suit for specific performance for sale of land together with superstructure admeasuring 1008 sq.ft.

bearing Nazul Sheet No.28, Plot No.21/1, Khaparganj, Bilaspur.

2. The respondent/plaintiff (*henceforth 'the plaintiff'*) preferred the suit on pleadings that the appellant/defendant (*henceforth 'the defendant'*) executed notarised agreement dated 4-10-2008 for sale of the suit property and received the entire sale consideration of Rs.6.00 lacs on the date of agreement itself. The defendant agreed to execute the sale deed within 3 months and also agreed to handover possession of two shops built over the suit property, but possession was not delivered. Subsequently, defendant avoided to execute the sale deed despite repeated request by the plaintiff, therefore, legal notice dated 13-5-2009 was served on the defendant, but still the sale deed was not executed. Hence, the suit.
3. The defendant denied to have executed the agreement or receiving Rs.6.00 lacs. He pleaded that the non-judicial stamp of Rs.50/- was not purchased by the defendant nor possession of two shops was ever promised to be delivered or delivered to the plaintiff. The State Government has never issued any lease in favour of defendant nor any application for renewal has been made nor any assurance in this regard was extended.

4. Before the trial Court the plaintiff examined himself as PW-1 and his witnesses Gajpati Chandrakar and Dr. (Ku.) Sunanda Dege as PW-2 & PW-3 respectively whereas the defendant examined himself as DW-1 and his witness Pramod Jain as DW-2.
5. The trial Court decreed the suit on findings that execution of agreement and receipt of Rs.6.00 lacs by the defendant has been proved. The trial Court also found that defendant's plea that the suit property was valued at Rs.50.00 lacs on the date of agreement has not been proved.
6. Shri Parag Kotecha, learned counsel appearing for the appellant/defendant, would submit that the agreement (Ex.P/1) is not admissible in evidence because it carries recital about delivery of possession on the date of agreement, therefore, the document would require payment of stamp duty and registration as conveyance. It is also argued that on the date of agreement the suit property was valued at Rs.50.00 lacs, therefore, the agreement is suspicious as the defendant has never signed any such agreement in favour of the plaintiff. It is vehemently highlighted that if the whole amount was paid on the date of agreement itself what was the reason for non execution of sale deed on the date of agreement itself.

7. Shri B.P. Sharma, learned counsel appearing for the respondent/plaintiff, *per contra*, would submit that the document Ex.P/1 was exhibited without objection by the defendant, therefore, now the plea of non-admissibility of document cannot be raised. Learned counsel would further argue that the trial Court's view is a probable view of the issue, therefore, no interference is called for. Learned counsel would next submit that a notarised agreement carries more value and binds the parties.
8. To buttress their respective contentions, learned counsel appearing for both the parties would place reliance upon the decisions rendered in **Parakunnan Veetill Joseph's Son Mathew v Nedumbara Kuruvila's Son and Others¹**, **Her Highness Maharani Shantidevi P. Gaikwad v Savjibhai Haribhai Patel and Others²**, **Satish Kumar v Karan Singh and Another³**, **B.K. Malik v Narendra Singh Airen and Others⁴**, **Omprakash v Laxminarayan and Others⁵**, **P.D'Souza v Shondrilo Naidu⁶**, **Moumita Poddar v Indian Oil Corporation Limited and Another⁷**, **Silvey and Others v Arun Varghese and Another⁸**, **Sanjay Kumar Jain v**

1 1987 (Supp) SCC 340 = AIR 1987 SC 2328

2 AIR 2001 SC 1462

3 (2016) 4 SCC 352

4 2011 (4) CGLJ 129 (DB)

5 (2014) 1 SCC 618

6 (2004) 6 SCC 649

7 (2010) 9 SCC 291

8 (2008) 11 SCC 45

**Shambhulal Goyal and Another⁹, Yashchandra (D) By
Lrs. v State of Madhya Pradesh and Others¹⁰.**

9. The defendant has moved two applications under Order 41 Rule 27 of the CPC for submission of additional evidence. First document is the market value guidelines of the year 2008-09 having the market value of the suit land at Rs.6,456/- per sq.mtr. The document filed with the second application under Order 41 Rule 27 (18-9-2017) is judgment and decree passed by the First Civil Judge Class II, Bilaspur, in civil suit No.55-A/14 holding that the defendant's daughter Sucharita is joint owner of the suit property.
10. Upon hearing learned counsel for the parties, we are of the considered view that both the applications deserve to fail because they are not germane for deciding the issue concerning enforceability of the agreement to sell.
11. Admittedly, the agreement Ex.P/1 records that defendant has received the entire sale consideration of Rs.6.00 lacs and has handed over possession of two shops to the plaintiff yet the agreement has not been registered.
12. Admissibility of such document when it is made basis for enforcing a decree of specific performance has been dealt with

9 2010 (3) CGLJ 114

10 AIR 2017 SC 4572

by the Supreme Court in **Omprakash** (supra). After referring to definition of the term 'conveyance' under Section 2 (10) of the Indian Stamp Act, 1899 and the amendment to the Stamp Act in the erstwhile unified State of Madhya Pradesh vide Stamp (Madhya Pradesh Second Amendment) Act, 1990 (22 of 1990) the Supreme Court held thus in paragraphs 16, 17 & 18 :

16. From a plain reading of the aforesaid provision, it is evident that an authority to receive evidence shall not admit any instrument unless it is duly stamped. An instrument not duly stamped shall be admitted in evidence on payment of the duty with which the same is chargeable or in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with penalty. As we have observed earlier, the deed of agreement having been insufficiently stamped, the same was inadmissible in evidence. The court being an authority to receive a document in evidence to give effect thereto, the agreement to sell with possession is an instrument which requires payment of the stamp duty applicable to a deed of conveyance. Duty as required, has not been paid and, hence, the trial court rightly held the same to be inadmissible in evidence.

17. The view which we have taken finds support from a decision of this Court in *Avinash Kumar Chauhan v. Vijay Krishna Mishra*, in which it has been held as follows: (SCC p. 538, paras 21-22)

“21. It is not in dispute that the possession of the property had been delivered in favour of the appellant. He has, thus, been exercising some right in

or over the land in question. We are not concerned with the enforcement of the said agreement. Although the same was not registered, but registration of the document has nothing to do with the validity thereof as provided for under the provisions of the Registration Act, 1908.

22. We have noticed heretofore that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of Section 35 of the Act.”

18. To put the record straight, the correctness of the impugned judgment, *Laxminarayan v. Omprakash* came up for consideration before a Division Bench of the High Court itself in Writ Petition No. 6464 of 2008 (*Mansingh v. Rameshwar*) and the same has been overruled by the judgment dated 22-1-2010. The High Court observed as follows: (MPLJ p. 142, paras 8-9)

8. A document would be admissible on basis of the recitals made in the document and not on basis of the pleadings raised by the parties. In the matter of *Laxminarayan*, the learned Single Judge with due respect to his authority we do not think that he did look into the legal position but it appears that he was simply swayed away by the argument that as the defendant was denying the delivery of possession, the endorsement/recital in the document lost all its effect and efficacy.

9. It would be trite to say that if in a document certain recitals are made then the court would decide the admissibility of the document on the strength of such recitals and not otherwise. In a given case, if there is an absolute unregistered sale deed and the parties say that the same is not required to be registered then we do not think that the court would be entitled to admit the document because simply the parties say so. The jurisdiction of the court flows from Sections 33, 35 and 38 of the Stamp Act and the court has to decide the question of admissibility. With all humility at our command we overrule the judgment in Laxminarayan.”

We respectfully agree with the conclusion of the High Court in this regard.

13. In view of the above, the agreement (Ex.P/1), which records delivery of possession, but is not registered is inadmissible in evidence. The argument that the agreement being notarised and having been received in evidence without objection, its admissibility cannot be questioned, is no longer open for discussion in view of the observations by the Supreme Court in the above extracted paragraphs of the judgment.
14. It is also settled that receiving a document in evidence and its admissibility under the Indian Stamp Act, 1899 and the Registration Act, 1908 are different matters. A document, which is not required to be stamped or registered stands on a different footing after the same was received in evidence, but

a document which requires to be sufficiently stamped and registered before it is made admissible in evidence would not be made admissible in evidence merely because it is exhibited and received in evidence. For such document marking of exhibit is only for convenience and it does not decide the admissibility of the document. Holding it otherwise would make the provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908 redundant and the Court's would allow decree for specific performance on the basis of documents which are not enforceable.

15. For the above stated reasons, we are fully satisfied that the appellant/defendant has made out a case for interference and the judgment rendered by the trial Court must be set aside. We accordingly set aside the judgment and decree passed by the trial Court.
16. In the result, the appeal is allowed.
17. A decree be drawn accordingly.

Sd/-

Sd/-

Judge
Prashant Kumar Mishra

Judge
Vimla Singh Kapoor

Gowri