

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 355 of 2010**

Namedeo Chopkar, Aged 65 years, S/o Late Tikaram Chopkar, R/o Phool Chowk, Raipur, Tahsil and District Raipur, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Municipal Corporation, Raipur (Constituted under the Municipal Corporation Act, 1956) Malviya Road, Tahsil and District Raipur, Chhattisgarh.
2. Commissioner, Municipal Corporation, Raipur, Malviya Road, Raipur, Tahsil and District Raipur, Chhattisgarh.

---- Respondents/Defendants

For Appellant :- Mr. Ram Kumar Tiwari, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

22/09/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of the CPC against the impugned judgment and decree

by which the first appellate Court dismissed the appeal of the plaintiff and affirmed the judgment and decree of the trial Court dismissing the suit.

3. Mr. Ram Kumar Tiwari, learned counsel for the appellant/plaintiff, would submit that both the Courts below have concurrently erred in not granting decree of specific performance of the contract in favour of plaintiff qua 266.5 sq. ft. of land which is left to be registered in his name as dispute between the Municipal Corporation and the private person has now been resolved, therefore, the appeal deserves to be admitted by formulating substantial question of law.

4. Plaintiff purchased plot No. 72 admeasuring 2632 sq. ft. under the housing scheme from the Municipal Corporation, Raipur vide exhibit P/1, but thereafter, he filed the instant suit stating that the Municipal Corporation has agreed to execute the sale deed with regard to 2898 sq. ft. of land but out of that 266 sq. ft. has been encroached by the private person, therefore, only 2632 sq. ft. of land was registered in his favour, but now since the dispute has been settled between the Municipal Corporation and the

private person, therefore, that 266.5 sq. ft. of land be directed to be registered in the name of the plaintiff by granting appropriate decree.

5. The two Courts below did not accept the pleadings of the plaintiff and dismissed his suit as well as his appeal in light of the provisions contained under Section 73-74 of the Municipal Corporations Act, 1956 holding that in absence of written contract, no oral contract is permissible with the corporation.

6. Both the Courts below have rightly held that plaintiff has failed to prove any agreement with regard to the 266 sq. ft. of land with the Municipal Corporation in view of Section 73-74 of the Act of 1956. As such, in absence of valid agreement, both the Courts below have rightly not granted decree in favour of the plaintiff as he has failed to prove any written agreement with the Municipal Corporation with regard to 266.5 sq. ft. of land. Thus, the aforesaid finding recorded by both the Courts below is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record and does not involve any substantial question of law for determination.

7. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet