

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 164 of 2008**

Virendra Kumar Singh S/o Jagarnath Singh, Aged about 60 years, Occupation Business in Medicines, Caste Kshatriya, R/o Village Sontarai, Police Station and Tahsil Ambikapur, District Surguja, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Indrajeet Singh Bedi S/o Jyoti Singh, Aged about 60 years, Occupation Contractor, Village Sitapur, Police Station and Tahsil Sitapur, District Surguja, Chhattisgarh.
2. Parshuram S/o Bindiadas, Aged about 55 years, Caste Panika, Occupation Cultivation, Village Sontarai, Police Station and Tahsil Sitapur, District Surguja, Chhattisgarh.
3. State of Chhattisgarh acting through Collector, Surguja, Ambikapur, Chhattisgarh.

--- Respondents/Defendants

For Appellant	:- Mrs. Hamida Siddiqui, Advocate
For State	:- Mr. Ravi Bhagat, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

11/02/2020

1. 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

passed by the first appellate Court affirming the judgment and decree by which the trial Court dismissed the suit of the plaintiff for specific performance of contract and permanent injunction.

2. Mrs. Hamida Siddiqui, learned counsel for the appellant/plaintiff would submit that both the Courts below have concurrently erred in not granting decree for specific performance of the contract as well as for permanent injunction in favour of the plaintiff as the oral evidence has not been appreciated in proper perspective and also the fact that plaintiff is in possession of the suit property for a fairly long time has not been considered and incorrect finding has been arrived at to dismiss the suit, as such, the second appeal deserves to be admitted by formulating substantial question of law. She relies upon the decision rendered by the Supreme Court in Santosh Hazari v. Purushottam Tiwari (deceased) by LRs.¹.

3. Sole plaintiff – Virendra Kumar Singh filed a suit for specific performance of contract and permanent injunction upon the suit property bearing Khasra No. 1043/1 area 0.287 hectare

¹ (2001) 3 SCC 179

stating that he has entered into agreement to sale with defendant No. 2 on 19/03/1963 vide Ex. C/1 for a cash consideration of ₹ 100 and since then, he has been in possession of the suit property, but thereafter, defendant No. 2 sold the suit property to defendant No. 1 on 22/06/1979 and defendant No. 1 got his name mutated in the revenue records to which defendant No. 1 refuted by filing written statement and stating that he has purchased the suit property from defendant No. 2 and his brother and mother on 26/02/1979 for a cash consideration of ₹ 700 and defendant No. 2 has never sold the suit property to the plaintiff, as such, he is not entitled for possession of the suit property and his suit deserves to be dismissed.

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, negatived the agreement to sale by defendant No. 1 in favour of the plaintiff vide Ex. C/1 and also held that plaintiff is not in possession of the suit property and ultimately, dismissed the suit by holding that it is barred by limitation which the first appellate Court also affirmed in the appeal

preferred by the plaintiff under Section 96 of the CPC.

5. Both the Courts have clearly held that the agreement to sale (Ex. C/1) dated 19/03/1963 executed by defendant No. 2 in favour of the plaintiff is not established and possession of plaintiff over the suit land has also not been found established and the suit is apparently hopelessly barred by limitation as the agreement to sale is dated 19/03/1963 whereas plaintiff filed the suit on 30/05/1995.

6. The said finding recorded by both the Courts below holding plaintiff's suit to be barred by limitation is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record. Likewise, the finding with regard to agreement to sale (Ex. C/1) not having been established also does not suffer from any perversity and similarly, both the Courts below have clearly held that plaintiff is not in possession of the suit property which is also a pure finding of fact that does not suffer from any perversity or illegality warranting interference under Section 100 of the CPC, much

less framing of any substantial question of law is required 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