

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 28.01.2021****Judgment delivered on : 17.02.2021****FA No. 46 of 2004**

- Chhattar Singh, S/o. Rodhan Singh Chandrakar, Aged about 45 years, R/o. Village Jamil, PHN, RNM Durg, Tahsil and District Durg

---- Appellant**Versus**

- Anil Kumar Rawal, Aged about 60 years, R/o. Opp. Krishna Talkies, Shakti Vihar, Risali, Plot No. 20, Tahsil and District Durg CG
- The State of Chhattisgarh, Through the Collector, Durg (CG)

---- Respondents

For Appellant	: Shri D.N.Prajapati, Advocate
For Respondent No.1	: Shri Arvind Dubey, Advocate
For Respondent No.2/State	: Shri Rakesh Sahu, Dy. GA

Hon'ble Smt. Justice Rajani Dubey**C A V Judgment****17/02/2021**

This appeal is directed against the judgment and order dated 02.12.2003 passed in civil suit No.5A/2002 by the First Additional District Judge, Durg whereby the learned trial court dismissed the civil suit of appellant/plaintiff.

2. It is an admitted fact before the trial court that respondent NO.1/defendant is the owner of Khasra No. 519/1, Rakba 1 acre and

Khasra No. 519/3 Rakba 0.45 acres, area totalling to 1.45 acres of land and this fact is also not disputed before the learned trial court that wife of respondent No.1 Damyanti Rawal executed sale deed in favour of appellant/plaintiff on 13.01.97 and sold her land Khasra 492/3 Rakba 0.60 acres and Khasra No. 519/3 Rakba 0.45 acres to the appellant/plaintiff.

3. Brief facts of the case are that respondent No.1/defendant is the owner of land situated at village Jamul bearing Khasra No. 519/1, Rakba 1 acre and Khasra No. 519/3 Rakba 0.45 acres, area totalling to 1.45 acres of land. An oral agreement was executed between the appellant/plaintiff and the respondent No.1 for selling the disputed land and respondent No.1 had received advance of Rs. 50,000/-. Apart from the disputed land, some other land was also purchased by the appellant/plaintiff from the respondent No.1/defendant and it has been promised to the appellant for executing the sale deed of the suit land after execution of the sale deed of other lands. Respondent No.1/defendant had agreed to sell the total land of 7.51 acres for a consideration of Rs. 7 lacs and out of which Rs. 6,39,500/- have been received by the respondent No.1/defendant herein on various dates and therefore he had executed the sale deed for 6.06 acres of land but the sale deed for the remaining 1.45 acres of land has not been executed. It has been stated that the respondent No.1/defendant has also applied for No Objection Certificate for the disputed land and obtained the same but the sale deed was not executed in favour of the appellant/plaintiff therefore, he filed a civil suit seeking the relief of Specific Performance of the contract against the respondent

No.1/defendant.

4. In his written statement respondent No1/defendant denied all the allegations and stated that he never entered into any agreement with the appellant/plaintiff and his wife has executed the sale deed in favour of the appellant/plaintiff for his land. He has stated that neither he had entered into any agreement nor has received any money in advance for the said land from the appellant/plaintiff.

5. Learned trial court after appreciating the oral and documentary evidence dismissed the suit of plaintiff. Hence, this appeal filed by the appellant/plaintiff.

6. Learned counsel for the appellant submits that the judgment and decree passed by the learned trial court is bad, perverse, erroneous and is liable to be set aside. He submits that the learned trial court has committed a grave error in dismissing the civil suit particularly, when the defendant No.1 has admitted in his cross-examination that he has signed the affidavit regarding the suit land before the competent authority which is Ex.P-2. He further submits that the trial court has erred in disbelieving the statement of appellant/plaintiff and wrongly appreciated the evidence adduced by the respondent No.1. He submits that the trial court has ignored the fact that defendant No.1 had specifically deposed in her cross-examination that he had agreed to sell the total land of 7.5 acres in favour of the plaintiff therefore, the civil suit of the plaintiff should have been allowed. He submits that the trial court has erred in ignoring the documents Ex.P-2 wherein the respondent No.1/defendant has admitted his signature. He submits

that the trial court has committed grave error of law as well as in procedure while passing the impugned judgment and decree and therefore the same is liable to be set aside. He placed his reliance in the matter of **Subhan Shah Vs. Barkat Bai** reported in **1999(1) MP Weekly Note 199**; **Lakhan Singh and another Vs. Ram Kumar and Another** reported in **AIR 2013 Rajasthan 155** and **Vijay A. Mittal and Others Vs. Kulwant Rai (Dead) through legal representatives and Another** reported in **(2019) 3 SCC 520**.

7. On the other hand, learned counsel for the respondents support the impugned judgment and decree of the trial court.

8. Heard counsel for the parties and perused the material available on record.

9. Appellant/plaintiff's suit is based on oral agreement between him and the respondent No.1/defendant. He filed the document Ex.P-1 bearing Khasra No. 498-1.42 acres/515-1.00 acres, 516/1-0.74 acres/516/2-0.24 acres and 521/1-0.66 acres/521/2-1.00 acres totalling to 5.06 acres of land which was executed between the appellant and wife of respondent No.1 Damyanti Rawal. Ex.P-2 is the No Objection Certificate in the name of respondent No.1/defendant which belongs to Khasra No. 519/1 and 519/3. Appellant/plaintiff's suit is based on Ex. P-2. Appellant/plaintiff and his witness has contended that defendant has filed for No Objection Certificate and Ex. P-1 and P-2 reveals that there was agreement of sale between the parties. Respondent denied the allegation and further contended that he never applied for No Objection Certificate. However, the defendant has

admitted his signature on the affidavit but he denied all other suggestions of the appellant. The mere signature on Ex.P-2 is not sufficient to show the intent of the respondent/defendant to sell his land to the plaintiff but also that the plaintiff failed to prove the oral agreement and receipt of transaction.

Learned trial court after appreciating the oral and documentary evidence, found in para 6 to 10 that the appellant/plaintiff has failed to prove any agreement between them. Learned trial court has rightly stated that the statement of the appellant/plaintiff does not seem to be reliable because when the agreement in respect of all the land was done then the agreement of this land should also have been done but the agreement has not been done.

10. Thus, from the perusal of the judgment of the trial court, it is found that the trial court has correctly assessed the evidence and came to a correct conclusion which does not call for any interference in the appeal by this Court. The judgment and decree of the trial court does not suffer from any such infirmity so as to call for any interference. Accordingly, the appeal being devoid of merits is hereby dismissed.

Sd/-

(Rajani Dubey)
Judge