

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 17/03/2021****Order Delivered on 23/03/2021****FA No. 131 of 2010**

1. Vijay Kumar Ojha S/o Siddhnath Ojha Aged About 45 Years, R/o Vidyut Nagar, Tifra, Tahsil & District - Bilaspur, Chhattisgarh.
2. Aash Narayan Singh S/o Rajendra Singh, R/o Vidyut Nagar, Tifra, Tahsil & District - Bilaspur, Chhattisgarh.
3. Munna Panday S/o Rajmangal Pandey, R/o Vidyut Nagar, Tifra, Tahsil & District - Bilaspur, Chhattisgarh.
4. Raghav Jha S/o Late Shivnarayan Jha, R/o Vidyut Nagar, Tifra, Tahsil & District - Bilaspur, Chhattisgarh.
5. C. K. Tiwari S/o Sudarshan Tiwari, R/o Vidyut Nagar, Tifra, Tahsil & District - Bilaspur, Chhattisgarh.
6. Kamlesh Singh S/o Nandbahadur Singh, R/o Vidyut Nagar, Tifra, Tahsil & District - Bilaspur, Chhattisgarh.
7. Prabhunath Sharma S/o Satyanarayan Sharma, R/o Vidyut Nagar, Tifra, Tahsil & District - Bilaspur, Chhattisgarh.

---- Appellants**Versus**

1. Smt. Sushila Yadav W/o Late Ramawadh Yadav, R/o House Of Lallan Singh, In Front Of Nehru Nagar, Kuanwa Bhatha, Korba, Tahshil and District - Korba C.G.
2. Puthu Yadav S/o Late Ramawadh Yadav, R/o House Of Lallan Singh, In Front Of Nehru Nagar, Kuanwa Bhatha, Korba, Tahshil and District - Korba C.G.
3. Parikshit Yadav S/o Late Ramawadh Yadav, R/o House Of Lallan Singh, In Front Of Nehru Nagar, Kuanwa Bhatha, Korba, Tahshil and District - Korba C.G.
4. Ku. Pratiksha Yadav, D/o Late Ramawadh Yadav, R/o House Of Lallan Singh, In Front Of Nehru Nagar, Kuanwa Bhatha, Korba, Tahshil and District - Korba C.G.
5. State of Chhattisgarh, Through : Collector, Bilaspur, Chhattisgarh.

---- Respondents

For Appellants	: Mr. Ravish Verma, Adv.
For Respondents No. 1 to 4	: None, though notice has been served through paper-publication.
For State/Respondent No. 5	: Mr. Rakesh Sahu, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey**C A V Order**

Date : 23/03/2021

1. Appellants have filed this appeal being aggrieved by the judgment and decree dated 29.06.2010 passed by learned 9th Additional District Judge (FTC), Bilaspur in Civil Suit No. 01-A/2010, whereby the suit filed by appellants/plaintiffs for Specific Performance herein was dismissed by the learned trial Court.
2. Brief facts of the case are that, appellants/ plaintiffs filed Civil Suit No. 01-A/2010 for Specific Performance of the contract for execution of sale-deed of 30 decimal disputed land of Khasra No. 835/1 of total area 0.34 acre which is situated at Tifra, P.H. No. 23 R.C. Bilaspur, Tahsil and District-Bilaspur. At the time of execution of agreement, Ramawadh Yadav was the owner of the suit land, who executed an agreement of sale and received Rs. 80,000/- in cash in lieu of the said agreement on 04.05.2006, and also delivered the possession of the suit land to the appellants on the date of the agreement, but the Ramawadh could not execute the sale-deed in favour of the plaintiffs. So, appellants/plaintiffs sent the registered notice on 06.09.2006. After receiving the said notice, Ramawadh again assured in writing on 24.12.2006 that he will execute the sale-deed of suit land till 29.12.2006. The appellants/plaintiffs were remained present with the balance amount of the agreement in the Bilaspur registry office but the Ramawadh Yadav did not come there for execution of sale-deed. Thereafter, the appellants/plaintiffs filed suit for permanent injunction. During the pendency of the suit, Ramawadh died, therefore, his legal heirs defendant/respondents No. 1 to 4 were implicated as necessary party, but after service of summons they were also remained ex-parte in the suit. It is alleged that the legal heirs of the Ramawadh Yadav are trying to sale the suit land to some other, and therefore, suit for specific performance is instituted on 17.12.2009 before the trial Court. The defendant/respondents No. 1 to 4 did not appear before the trial Court even after service of notice through news-paper publication, but the learned trial Court dismissed the plaintiffs' suit. Hence, this appeal filed by the appellants/plaintiffs.

3. Appellants filed I.A. No. 4/2021 under Order 41 Rule 27 of CPC an application for taking documents on record.
4. Learned counsel for the appellants submits that before trial Court defendants did not appear and not contest the civil suit. Even they did not file any written statement but the learned trial Court dismissed the plaintiffs' suit. He also submits that the impugned order is perverse and contrary to the facts and against the provisions of Section 54 of the Limitation Act. He further submits that the learned trial Court erred in calculating the period of limitation. The learned trial Court has not properly appreciated evidence and documents filed by the appellants, therefore, judgment and decree passed by the learned trial Court is liable to be set aside. Learned counsel for the appellants also submits that I.A. No. 4/2021 is filed on the ground that during the pendency of civil suit, the revenue record were not produced and could not be considered. These records are very important and are necessary for proper adjudication of the suit land. These additional evidence would disclose the real facts of the case. These documents are public documents and in the interest of justice, these documents should be taken on record.
5. Respondents No. 1 to 4 did not appear before this Court even after service of notice through news-paper publication.
6. Learned counsel for the State/respondent No. 5 submits that State is a formal party in this case and supported the impugned judgment and decree of the trial Court.
7. Heard learned counsel for appellants and perused the material available on record.
8. In the case in hand, Ramawadh Yadav had executed an agreement on 04.05.2006 for sale of the suit land in favour of the plaintiffs, but during the pendency of the Civil Suit, the revenue records were not produced and thus could not be considered. The said revenue records pertains to year 2004, 2008 and 2016-2017 and report B-1, P-2 of current year is being filed for perusal that at the time of execution of the agreement Ramawadh Yadav was the owner of the concerned Khasra No. 835/1 area 0.34 decimal and

after his death the successors herein implicated in the civil suit and after due process of notices, none remain present. Therefore, ex-parte proceeding, judgment and decree was drawn by the trial Court. Now the record has been filed with an inadvertent delay. It is substantive material which is to be considered and may be taken on record, which is annexed herein as Annexure A-2, (copy of B-1 Khatoni and P-II report) of suit land. These documents were not produced before learned trial Court. This being a suit for specific performance of contract execution of sale-deed of suit land therefore, these documents are necessary for proper adjudication of the case.

9. Learned counsel for the appellants submits that the documents are certified copies of suit land which need to be examined to arrive at the right conclusion, and therefore, the same may be taken on record.
10. While dealing with the issue, Hon'ble Supreme Court, in the matter of **Jayaramdas & Sons Vs. Mirza Rafatullah Baig and others**, reported in **AIR 2004 Supreme Court 3685** has held that :-

“additional evidence whether oral or documentary, is not to be admitted in Appellate Court unless a case for admission thereof is made out by reference to clause (a) or (aa) of sub-rule (1) of Rule 27 or unless the Appellate Court requires such evidence to enable it to pronounce judgment or for any other substantial cause within the meaning of clause (b)”.

11. True it is that the documents regarding disputed land, as these were not produced before the trial Court, they could not be considered by the trial Court. Since the dispute is related to the execution of sale-deed, they should first be examined by the trial Court to arrive at a right conclusion.
12. Upon due consideration, the application of appellants filed under Order 41 Rule 27 of CPC (I.A. No. 4/2021) dated 09.03.2021 is allowed and the documents are taken on

record as an additional evidence. The judgment and decree dated 29.06.2010 passed by the 9th Additional District Judge (FTC), Bilaspur (C.G.) is set aside and the case is remitted back to the Court concerned for deciding it afresh after affording opportunity of hearing to the parties, to adduce oral and documentary evidence in support of their case and also afford opportunity to amend their pleading, if any. The trial Court is at liberty to frame additional issue, if necessary.

13. Thus, it is made clear that this Court has neither touched upon nor expressed any opinion on the merits of the case. Only production of additional evidence has been permitted. The trial Court shall be free to form its own opinion afresh on all the questions of facts and law arising for decision in the case.
14. The parties, through their respective counsel, are directed to appear before the trial Court on 30th April, 2021.

**Sd/-
(Rajani Dubey)
JUDGE**