

(2019) 08 CHH CK 0221

Chhattisgarh High Court

Case No: First Appeal No. 197 Of 2009

Prem Lal Lodhi And Ors

APPELLANT

Vs

Dukhni Bai And Ors

RESPONDENT

Date of Decision: Aug. 30, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96
- Transfer Of Property Act, 1882 - Section 53A, 54
- Registration Act, 1908 - Section 17

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Shreyankar Nandy, Anup Majumdar, Pawan Kesharwani

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 29-10- 2009 passed by the First

Additional District Judge, Rajndnagaon (CG) in Civil Suit No. 12-A/2008 wherein the said court denied the decree for specific performance but ordered

in favour of the original appellant/plaintiff namely Prem Lal and against respondent No.1 to repay the amount of earnest money to the tune of

Rs.61,000/- with interest.

2. Original appellant/plaintiff filed a suit before the trial Court for specific performance of contract for land bearing survey No. 487/2 area 1.20 acres

on the ground that respondent No.1 entered into agreement with him to sell the land in question for cash consideration of Rs.61,000/- on 6-9-1998. It is

pleaded that respondent No.1 handed over possession of land to appellant but did not execute the sale deed in his favour despite several requests

made by him. It is further pleaded that on 13-2-2001 respondent No.1 sold the land in question to respondent No.2 who tried to possess the land that is

why suit was filed. After hearing both parties, the trial court did not grant decree for specific performance but ordered for refund of earnest money as

mentioned above.

3. Learned counsel for the appellant would submit that respondent No.1 received consideration amount and handed over possession to him, therefore,

decree of specific performance ought to have been passed by the trial court. He would further submit that there was willingness and readiness on the

part of original appellant but the trial court has overlooked this aspect of the matter. Proviso to Section 53-A of the Transfer of Property Act, 1882 is

available to the original appellant, therefore, finding of the trial court is liable to be reversed.

4. I have heard learned counsel for the appellant and perused the record of court below including the judgment and decree.

5. The question for consideration of this court is whether decree of specific performance could be granted in favour of original appellant (present

appellants are legal representatives of said Premalal). The alleged agreement is Ex.P/2 which is filed before the trial court. In the said agreement it is

mentioned by respondent No.1 that she has relinquished her right in favour of original appellant Premalal. From bare perusal of the agreement it is no

where mentioned that the parties have entered into contract to sell the land in question. Time of execution of sale deed is also not mentioned in the

said agreement. It is not clear how the contract shall be complied by either side. The document is neither sale deed nor it is an agreement to sell the

land in question. It is only mentioning of relinquishing the right of respondent No.1. The document is unregistered. Right of the property which valued

at Rs.61,000/- can be extinguished by registered instrument as per Section 54 of the Transfer of Property Act, 1882 and Section 17 of the Indian

Registration Act, 1908., therefore, this document is legally not a document of relinquishing the right. Suit of specific performance can only be filed

when the party under obligation has refused to perform its part of contract. In the present case from the agreement it is not clear as to what part was to be performed by respondent No.1.

6. The trial Court after evaluating the entire evidence recorded finding that it is not an agreement to sell, therefore, decree of specific performance

cannot be passed. After reassessing the entire evidence, this court has no reason to take a contrary view what is recorded by the trial court. The trial

court already granted decree of refund of earnest money which is proper relief in the facts and circumstances of the case. Argument advanced on

behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

7. Accordingly, the decree is passed against the appellant and in favour of the respondents as under:

i) The appeal is dismissed with cost.

ii) Parties to bear their own costs.

iii) Pleader's fee, if certified, as per schedule or whichever is less.

iv) A decree be drawn up accordingly.