

**(2019) 02 CHH CK 0333**

**Chhattisgarh High Court**

**Case No:** First Appeal No. 181 Of 2003

Jatan Devi Bothara

APPELLANT

Vs

Usha Devi Agrawal

RESPONDENT

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**Date of Decision:** Feb. 20, 2019

**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 96
- Chhattisgarh Land Revenue Code, 1959 - Section 165(6)
- Registration Act, 1908 - Section 17(i)(b), 49
- Specific Relief Act, 1963 - Section 9, 10, 20(2)(a), 20(2)(b), 20(2)(c)
- Transfer Of Property Act, 1882 - Section 53A

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Dharmendra Kumar Bothara, Manoj Paranjpe, Bharat Sharma

**Final Decision:** Dismissed

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**Judgement**

Ram Prasanna Sharma, J

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 30.07.2003 passed by

Additional District Judge, Korba, District- Korba (C.G.) in Civil Suit No. 3A/2002, wherein the said court dismissed the suit filed by the appellant for

specific performance of contract regarding land bearing Survey No. 493/27A area admeasuring 62 x 22 = 1364 sq.ft. situated at Main Road, Korba,

Patwari Halka No. 04, Revenue Circle, Tahsil & District- Korba (C.G.) in which, house shop and godown are constructed. Map of the said property

is appended with the plaint.

2. Admittedly, the respondent/ defendant is owner of the property in question. As per version of the appellant, the respondent was agreed to sale the suit property for a cash consideration of Rs. 1,95,000/- on 18.04.1998 to the appellant/ plaintiff and received Rs. 11,000/- as earnest money from her.

The balance consideration was to be paid at the time of execution of registering the sale deed.

3. The respondent/ defendant had agreed to obtain the requisite sanction from the competent revenue authority for sale deed. The contract was oral and was not evidenced by any documents or deed. The possession of the suit property was delivered to the appellant/ plaintiff in pursuance of the agreement of sale. The respondent/ defendant had applied before Collector, Korba for sanction on 21.07.1998 as per provision of Section 165 (6) of the Madhya Pradesh/ Chhattisgarh Land Revenue Code, 1959 as the region is tribal region. The appellant sent a registered notice on 23.12.2000 to the respondent to execute the sale deed as the appellant was always ready and willing to perform her part of contract, but sale deed was not executed.

The trial court dismissed the suit on the ground that agreement to sale ought to have been registered as per provision of Section 17(1)(b) of the Registration Act, 1908.

4. This appeal is preferred on the following grounds:-

(i) No law requires agreement to sale must be in writing, therefore, oral agreement for sale is also enforceable.

(ii) Section 10 of the Specific Relief Act, 1963 applies for sale to agreement whether oral or in writing.

(iii) Sale of contract does not create any interest in or charge on such property.

(iv) The trial court has lost sight of the provision of Section 49 of the Registration Act, 1908 which says that an unregistered document may be received as evidence for the purpose of Section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction without registration.

(v) The respondent has given statement before Tahsildar as per Ex.P/3 and has clearly admitted that she agreed to sale the property in favour of the appellant/ plaintiff and delivered the possession of the property after receiving Rs. 11,000/- as advance sum. There is nothing on record to refuse the

decree of specific performance in view of Section 20(2)(a),(b) & (c) of the Specific Relief Act, 1963.

(vi) As per Section 9 of the Specific Relief Act, 1963, the Court may compel the respondent/ defendant to apply for such permission before the revenue authority, therefore, finding recorded by the trial court is liable to be set aside.

5. He placed reliance in the matter of Rattan Lal (Since deceased) through his Legal Representatives Vs. S.N. Bhalla & another reported in AIR

2012 SC 3094, Girimallappa Vs. Special Land Acquisition Officer M & MIP & another reported in AIR 2012 SC 310, 1Munnalal & others Vs.

Atmaram & others reported in AIR 2008 (NOC) 843 (M.P.,) S. Kaladevi Vs. V.R. Somasundaram & others reported in 2010 (2) CGLJ 305 (SC,)

Jawahar Lal Nagdev Vs. Sattibai reported in 2010 (2) CGLJ 312.

6. The first question for consideration before this Court is whether the land in question is within notified area for which Section 165 (6) of the Madhya Pradesh/ Chhattisgarh Land Revenue Code, 1959 will apply and whether the sanction from competent authority/ Collector is required before executing the sale deed.

7. The appellant relied on document Ex.P/1 to P/5 which are related to proceeding before the Collector for seeking permission to sale the property in question owned by respondent/ defendant. It appears from these documents that proceeding was drawn and it was pending for about two years, but no permission was granted by the Collector.

8. The application for permission was filed by the respondent, therefore, it cannot be said that she was not willing to execute the sale deed in favour of the appellant. It appears from these documents that permission was not granted for sale that is why the sale deed was not executed. The appellant adduced evidence of Mohan Lal Bothra (PW-

1), Sitaram Dewangan (PW-2) and Suraj Kumar Jaiswal (PW-3). Against this, the respondent/ defendant adduced evidence of Smt. Usha Devi (DW-1) and Ganesh Agrawal (DW-2).

9. From evidence of Mohan Lal Bothra (PW-1), it is clear that before the agreement, he was tenant of ancestral of the respondent namely Rai Sahab

Banwari Lal and Ganesh Prasad on monthly rent of Rs. 125/-, it means earlier they were tenant and now they are saying after agreement that they are in possession of the land in part performance of the contract. It means now right of recovery of future rent of the respondent is extinguished by agreement of sale. Again, right of possession of the respondent is also limited because it is delivered to the appellant on the basis of agreement.

10. Now, the point for consideration before this Court is whether right of the respondent can be extinguished or limited without there being any registered document. Right to future rent is a right in immovable property.

11. In the present case, admittedly, the appellant was tenant of the respondent and her ancestral. As the possession is delivered to the appellant on the basis of agreement to sale, right to get future rent is extinguished by agreement to sale immovable property of the respondent. Again, after delivery of possession, their right is limited.

12. As per Section 17(1)(b) of the Registration Act, 1908, when any right is extinguished or limited in immovable property valued to Rs. 100/- or more, the same can be affected only by way of registered document, therefore, in the present case, registration of the document i.e. agreement to sale was compulsory, but that is not done and suit is brought on the basis of oral agreement, which is not permissible.

13. It is admitted by both side that earlier the dispute regarding land lord and tenant was decided by rent authority and against order of rent authority, the appellant preferred revision before the High Court of Madhya Pradesh and as per order dated 11.04.1986 in Civil Suit No. 1319/1984, the case was remanded to rent authority for further adjudication which proves relation between the parties as landlord tenant. Without permission of Collector sale deed cannot be executed.

14. As there was no document regarding agreement to sale and in the present case, it must have been a registered document, therefore, in absence of registered document, the trial court was right in not granting relief to the appellant. Case law cited on behalf of the appellant is clearly distinguishable from the fact of present case and do not help for any purpose. Argument advanced on behalf of the appellant is not sustainable and this Court has no reason to substitute contrary finding and the appeal is liable to be dismissed.

15. Accordingly, the decree is passed against the appellant and in favour of the respondent on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.