

Wahid Sharif And Ors Vs Mehatarin Bai And Ors

Court: Chhattisgarh High Court

Date of Decision: Aug. 9, 2018

Acts Referred: Code Of Civil Procedure 1908 â€” Section 96, Order 41 Rule 1
Chhattisgarh Land Revenue Code, 1959 â€” Section 165(7b)
Transfer Of Property Act, 1882 â€” Section 53A

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Ratnesh Kumar Agrawal, V.G. Tamskar, Sameer Behar

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred by the appellants under Section 96 read with Order 41 Rule 1 of Code of Civil Procedure 1908 against the judgment and

decree dated 17-5-2017 passed by the 9th Additional District Judge, Raipur (CG) in Civil Suit No.111- A/2011, wherein the said court decreed the suit

filed by the respondents No. 1 to 11 for specific performance of contract relating to land bearing survey No. 217/22 admeasuring area 2.023 hectares,

situated at village Sarora, Patwari Halka No. 101, Tahsil & District Raipur and for declaring the sale deed dated 17-4-2014 to be void executed in

favour of one Madhusudhan Mishra.

2. As per suit filed by the respondents No. 1 to 11, the land in question is inherited by the appellants No. 1 to 6 in succession, earlier the property

owned by late Daoud Sharif. As per averments, the appellants and one Yusuf Sharif entered into contract with Beer Singh Sahu to sell the said land

for cash consideration of Rs.3,00,100/- and Rs.50,100/- was paid as earnest money on the date of agreement i.e., 21-12-2000. The property was

delivered to Beer Singh Sahu as purchaser of the land. After passing of Beer Singh Sahu, respondents No. 1 to 11 who are successors of Beer Singh

Sahu asked the appellants/defendants to perform their part of contract as the respondents are ready and willing to perform their part of contract and

the appellants assured to execute the contract till 21-12-2000, but they did not perform their part of contract.

3. As per the appellants, the land was allotted to Daoud Sharif on lease in the year 1981 as he was an Ex-Military man and for selling the same,

permission of Collector was required, but since they are unable to obtain permission, sale deed cannot be executed. Again, the land was delivered to

Beer Singh Sahu on crop-share basis for the year 2000 only.

4. The first question for consideration of this court is whether the appellants entered into contract for selling the land to Beer Singh Sahu and delivered

the possession to him as purchaser of the property. Written agreement of sale is Ex.P/2 which was produced and proved by the respondents before

the trial Court through their power of attorney holder. It is not in dispute that the land was delivered to Beer Singh Sahu for cultivation. Possession of

Beer Singh Sahu shows that the contract was entered into between the parties and that is why the land was delivered to Beer Singh Sahu and the

appellants are recorded owners of the property in question, therefore, contract entered into between the parties is based on record of rights and

specific description of the land.

5. Learned counsel appearing for the appellants would submit that the land was allotted to Daoud Sharif on lease, therefore, sale deed cannot be

executed without permission of the Revenue Officer, not below the rank of Collector as per Section 165 (7-b) of Chhattisgarh Land Revenue Code,

1959 (For short, "the Code 1959") which may be read as under:

7-b) Notwithstanding anything contained in sub-section (1) a person who holds land from the State Government or a person who holds land in

Bhoomiswami rights under sub-section (3) of section 158 or whom right to occupy land is granted by the State Government or the Collector as a

Government lessee and when subsequently becomes Bhoomiswami of such land, shall not transfer such land without the permission of a revenue

officer, not below the rank of a Collector, given for reasons to be receded in writing".

6. Now the point for consideration of this Court is whether the appellants became Bhoomiswami of the land because Daoud Sharif was holding the

land from the State Government.

7. As per record of the trial Court, one book of Bho Adhikar Avam Rin Pustika was issued in the name of the appellants. As per Section 114 -A of

the Code, 1959 they are owners of the property. No Revenue Officer was examined by the appellants to show that they required full right on account

of any lease granted by the State Government. Again from the document (Ex.P/26), it is clear that they made a sham transaction for executing the

sale deed in favour of one Madhusudhan Mishra without delivering him possession of the said land. It is admitted position that the land was delivered

to Beer Singh Sahu in the year 2000 and the possession was never recovered by the appellants from said Beer Singh Sahu. When possession was

delivered to Beer Singh Sahu, present respondents are in possession of the said land being successors of Beer Singh Sahu, any sale deed executed

without delivering the property is not transferring the land. As per Section 54 of the Transfer of Property Act, 1882 which commands that delivery of

tangible immovable property takes place when the seller places the buyer or such person as he directs in possession of the property.

8. As the appellants are recorded owner of the property. As per Bho Adhikar Avam Rin Pustika, they declared themselves to be owner of the

property. As per record, now they are stopped from saying that they are not owners of the property. In absence of evidence of any officer of the

Revenue Department, it cannot be held that the names of the appellants in Bhoo Adhikar Avam Rin Pustika are recorded on the basis of any lease,

therefore, Section 165 (7-b) of the Code, 1959, has no application in the present case. The trial Court is right in saying that the appellants are duty

bound to execute the sale deed in favour of respondents No. 1 to 11. Again, when no possession was delivered to one Madhusudhan Mishra on

account of same transaction, the trial Court is right in declaring the said sale deed void. As the appellants contracted to transfer for consideration any

immovable property by writing signed on their behalf from which the terms necessary to constitute the transfer is ascertained and transferee has in

part of the performance of the contract taken possession of the property, continuous in possession in part performance of the contract and willing to

perform his part of contract, present is a case in which Section 53-A of the Transfer of Property Act, 1882 relating to doctrine of part performance

will apply. The appellants who are transferees are debarred from enforcing against the respondents any right in respect of the property. As earlier

stated, since the respondents No. 1 to 11 are in possession of the land, possession of the property cannot be delivered to anyone and no sale of the

property in question can be performed by the appellants to third party.

9. For the foregoing, this court is of the opinion that the finding arrived at by the trial Court is based on proper appreciation of the evidence for grant of

decree of specific performance and for declaring one sale deed dated 17-4-2014 to be void.

10. Accordingly, the decree is passed against the appellants/defendants and in favour of respondents/plaintiffs on the following terms and conditions.

i) The appeal is dismissed with cost.

ii) Appellants shall pay cost of the respondents No. 1 to 11.

iii) Counsel fee, if certified be calculated as per certificate or as per Schedule whichever is less.

iv) A decree be drawn accordingly.