

## Mahesh Kumar Mishra Vs Kumar Yadav And Ors

**Court:** Chhattisgarh High Court

**Date of Decision:** Aug. 9, 2018

**Acts Referred:** Code Of Civil Procedure 1908 " Section 96

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

**Bench:** Single Bench

**Advocate:** Swati Upadhyay, Manoj Kumar Dubey

**Final Decision:** Allowed

### Judgement

Ram Prasanna Sharma, J

1. The appellant has preferred this appeal under Section 96 of Code of Civil Procedure 1908 against the judgment and decree dated 21-12-2004

passed by 3rd Additional District Judge, Raipur (CG) in Civil Suit No.18-A/2003 wherein the said court decreed the suit in favour of the respondent

for specific performance of contract regarding land bearing survey No. 331 area 0.44 and survey No.334 area 0.40 hectare.

2. In the present case, appellant and respondent entered into contract according to which appellant promised to sell the land bearing survey No. 494/1

and 495/1 area one hectare (2.47 acres) @ Rs.25,000/- per acre. The total cash consideration was Rs.61,750/- out of which Rs.25,000/- was paid by

the respondent to the appellant on the date of contract dated 14-8-1997. Survey number of the said land was converted to survey number 331 area

0.44 hectare and survey No.334 area 0.40 (total 0.84 hectare) after settlement. After settlement , the land was mutated in the name of the appellant

on 10-2-2001, but the appellant/defendant did not execute the sale deed in favour of the respondent despite notice dated 21-8-2003 and 28-8-2003. The

suit was filed by the respondent and after hearing the both parties, the court decreed the suit as mentioned above.

3. Learned counsel appearing for the appellant would submit that the date of contract is 14-8-1997 and the suit was filed on 24-9- 2003 i.e., after six

years which is apparently barred and there was no term in the contract which could have been said to be a clause extending the period of limitation.

He would further submit that the time was essence of the contract and it was not a continuous contract, therefore, it cannot be specifically

performed., therefore, the finding arrived at by the trial Court is without substance.

4. On the other hand, learned counsel appearing for the respondents supports the judgment/decreed passed by the court below.

5. I have heard learned counsel for the appellants and perused the record in which judgment and decree passed by the court below.

6. As per oral and documentary evidence adduced by the parties, both the parties entered into contract on 14-8-1997 as per Ex.P/1. Admittedly, it is

mentioned in the said agreement that the appellant is not recorded owner of the land bearing survey No. 494/1, 495/1 area 1.000 hectare. It was

recorded in the name of his father. As per record of right (Ex.P/2), land survey No. 77/2, 91/1, 99/3, 781/2, 426/3, 469/1. 438/1, 495/1 and 631/3, total

area 12.226 hectare was recorded in the name of Basawan Prasad Mishra. As per mutation register (Ex.P/8), Mahesh Kumar (appellant ) who is son

of Basawan Prasad Mishra, Smt. Vimla Kumari and Smt. Manju, who are daughters of Basawan Prasad Mishra and Shanti Devi, who is wife of

Basawan Prasad Mishra were successors of the suit property. As the mutation proceeding in favour of the appellant was completed on 10.02.2001 as

per P/8 and before that he was not recorded owner therefore, sale deed could not have been executed. In the agreement between the parties, it was

the condition that record of right will be brought by the appellant therefore, sale deed was to be executed after 10.02.2001. Therefore, finding of the

trial court is correct that suit filed within three years from 10.02.2001 is within time.

7. From the record, it is clear that the trial court has not considered two aspects of the matter; one is that whether the appellant is sole owner of the

land replaced against survey No. 494/1 & 495/1 which is mentioned in the agreement. Again, the trial court has not considered as to which land is

replaced in place of both these survey numbers because record of replacement is not available in the record of the trial Court.

8. Considering all these facts, this court is of the view that the trial court while passing the judgment/decreed, has not considered the above facts and

thereby the said judgment is not sustainable. The respondent is entitled only for sale deed regarding the land which is mentioned in the agreement,

therefore, the matter requires reconsideration by the trial court.

9. Accordingly, the appeal is allowed and the judgment/decreed passed by the trial court is set aside. Now, the matter is remanded back to the trial

court for considering as to which survey is replaced by survey 494/1 & 495/1 after settlement and whether the appellant is sole owner of the said land.

After recording its finding, after hearing the parties, the trial court will adjudicate the matter afresh.

10. Both the parties are directed to appear before the trial court on 17th September, 2018.