

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 15--02-2019

Judgment delivered on 29-03-2019

FIRST APPEAL No. 38 of 2005

Smt. Mati Bai, Lohar by caste, aged 76 years we/o. Jagdish Prasad, cultivator anjd resident of Hathni Bhatapara (nayapara Mohalla), Tahsil Bhatapara, District Raipur, CG (died and deleted) through following Lrs.

1. Lakhan Lal s/o. Kejuram Lohar aged about 39 years.
2. Ishwari Bai w/o. Lakhanlal Lohar aged about 37 years , both (iron smit) labourers and resident of Hathni (Bhatapara), tahsil Bhatapara, Dist. Raipur (CG).

---- Appellants.

Versus

1. Smt. Pushpa Devi (Tiwadi) Sharmaw/o. Omprakash aged 40 yars, carryuing bnusiness and resident of Gandhi Mandir Ward, Bhatapara, District Raipur (CG).
2. Om Prakash (Tiwadi) Sharma, s/o. Jamuna Lal aged 45 years, Grain Merchant, carrying business and r/o. Gandhi Mandir Ward, Bhatapara, Tahsil Bhatapara, Dist. Raipur (CG).
3. State of Chhattisgarh through the Collector, Raipur, District Raipur (CG).

– Respondents.

For appellants : Mr. Kishore Bhaduri, Advocate

For respondents No.1&2 : Mr. Shreekumar Agrawal, Sr. Advocate with Mr. Anand Kumar Gupta, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

- 1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 23-11-2004

passed by 2nd Additional District Judge, Baloda Bazar, District Raipur (CG) in Civil Suit No.21-A/2003 wherein the said court decreed the suit in favour of respondent No.1 for specific performance of contract regarding land bearing survey No. 385/1 actual area 0.238 hectares (in agreement 0.368 hectares), situated at village Hathani, Patwari Halka No. 6, Revenue Circle and Tahsil Bhatapara.

2) The respondent Pushpa Devi and her husband Om Prakash/plaintiffs have filed a suit on 20-8-2003 and it is pleaded that though agreement was entered into between the parties for land area 0.368 hectares but it was actually found after measurement to be 0.238 hectares. As per contract, the rate of land was Rs.2,80,000/- per acre.

3) Learned counsel for the appellants would submit as under:

- i) The land in question was earlier recorded in the name of Jagdish Prasad who was husband of Mati Bai and after death of Jagdish name of Mati Bai was recorded as owner, Jania Bai was daughter of said Jagdish and therefore, Mati Bai was not sole owner of the property in question and was not competent to enter into agreement to alienate the specific land in question, therefore, finding of the trial Court is not sustainable.
- ii) The agreement in question is suspicious

because Mati Bai is an illiterate lady and execution of agreement is not proved satisfactorily before the trial court.

- iii) The daughter of Jagdish namely Jaria Bai died and his son Lakhan was also share holder of the property and one will was executed in favour of Lakhan by Mati Bai, therefore, decree passed by the trial Court is arbitrary.
- iv) Finding of the trial court that the suit land is actually measuring to 0.238 hectares after demarcation the same is also not proper and the finding of the trial Court in this regard is perverse.

Reliance has been placed on the decision of Hon'ble the Supreme Court in the matter of **Sawarni vs. Inder Kaur (1996) 6 SCC 223, K. Prakash vs. B.R. Sampath Kumar (2015) 1 SCC 597 and Central Inland Water Transport Corporation Ltd., and another vs. Brojo Nath Ganguly another AIR 1986 SC 1571 and L.I.C. OF INDIA & another vs. Consumer Education Research Centre and others reported AIR 1995 SC 1811.**

- 4) On the other hand, learned counsel for the State would submit that the finding of the trial court is based on record of right (Ex.P/1) which is solely recorded in the name of Mati Bai and she is in possession of the land in question by cultivating paddy on the

said land as per Ex.P/4 and agreement to sell is proved before the trial Court by attesting witness Rakesh Kumar Tiwari PW/3, Ramesh Kumar Agrawal, Typist (PW/4) and J.K. Agrawal (PW/5). He would further submit that finding of the trial Court is based on proper marshalling of the evidence which does not call for any interference by this court while invoking jurisdiction of the appeal.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) The area of the land in question was measured by the Revenue Inspector J.L Mahendra (PW/6) and as per version of this witness, area was found to be 0.238 hectares which was supported by Patwari Shankarlal (PW/7). No one examined on behalf of the appellant to establish that anyone else has any right over the property in question.

7. The first question for consideration of this court is whether Mati Bai is the sole owner of the property in question. From the oral evidence adduced by both sides and documentary evidence (Ex.P/1, P/2 and P/4), it is established that Mati Bai was sole owner of the property. The trial Court has elaborately discussed the entire evidence and recorded the finding that no one else has right over the property in question, therefore, Mati Bai is sole owner. After re-assessing the entire evidence adduced by appellant side, this court has no reason to substitute contrary

finding. From the oral and documentary evidence, it is established that Mati Bai is sole owner of the property in question. Therefore, argument advanced on behalf of the appellant that some Lakhanlal has also share over the property is beyond record and same is not sustainable.

8) The second question for consideration of this court is what is the measurement of the land for which parties entered into an agreement. From the evidence of Revenue Inspector J.L. Mahendra (PW/6) and Patwari Shankarlal (PW/7), it is established that they demarcated the land and it was found to be 0.238 hectares. Version of these witnesses who are experts in the field of agricultural land is unshaken during cross examination which is supported by document ExP/18. There is no documentary or oral evidence in rebuttal of version of these witnesses, therefore, the trial court is right in holding that the area of the said property is 0.238 hectares which is not liable to be interfered with.

9. The third question for consideration of this court is what is the consideration amount for land in question. From the evidence of respondent No.1/plaintiff side, it is established that as per agreement the rate was fixed to be Rs.2,80,000/- per acre. They by oral evidence of appellate side tried to state that the amount of Rs.3,00,000/- was fixed price of the land in question but that is not supported by any documentary evidence. As per agreement

Ex.P/7, the consideration price is Rs.2,80,000/- per acre, therefore, on the basis of oral and documentary evidence it is established that consideration price settled between the parties is Rs.2,80,000/- per acre which is finding of the trial court and same is not liable to be disturbed looking to the entire evidence on record.

10. The next question for consideration is whether respondent No.1 is ready and willing to perform his part of contract. In the present case, date of agreement is 7-4-2003. As per notice issued on behalf of the respondent No.1/plaintiff Ex.P/8 dated 12-4-2003, respondent No.1 informed the appellant to get the land measured and execute the sale deed. Again notice Ex.P/11 dated 12-5-2003 was also issued to appellant for execution of sale deed. As per notice (Ex.P/15), dated 17-6-2003 again notice was issued to appellant for execution of sale deed. When the sale deed was not executed suit was filed before the trial court on 21-8-2003 by respondent No.1 and after decree by the trial Court, the balance consideration amount to the tune of Rs.1,54,200/- was deposited by respondent No.1 in civil court deposit on 31-8-2005. Looking to the constant notice just after agreement of sale, it is clear that respondent No.1 was always ready and willing to perform his part of contract whereas the appellant was not ready and willing to perform his part of contract, therefore, the trial court was right that

the respondent is entitled for specific performance of contract. Argument advanced on behalf of the appellant is not sustainable.

11. After re-assessing the entire evidence adduced by appellant side, this court has no reason to substitute contrary finding. Finding of the trial court is based on factual matrix and legal aspect of the matter which is not liable to be interfered with while invoking jurisdiction of the appeal. The appeal is liable to be dismissed. The case laws cited by learned counsel for the appellant do not help to him as the same are clearly distinguishable from the facts of the present case.

12) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondent No.1 and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellants to bear the cost of respondent No.1 through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE