2026:CGHC:4150-DB

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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on : 04-12-2025

Judgment delivered on: 23-01-2026

FA No. 201 of 2019

Chhedan Prasad Sharma (CP Sharma) S/o Late Kunjlal Sharma (Ghughwa Wale) Aged About 63 Years R/o 415A, Sunder Nagar, Raipur, District Raipur Chhattisgarh.

... Appellant

Defendant No.1

versus

1 - Vinod Agrawal S/o Late Chhaganlal Agrawal Aged About 51 Years R/o Ramsagarpara, Raipur, District Raipur Chhattiagarh (Plaintiff)

2 - The State Of Chhattisgarh Through The Collector, District Durg Chhattisgarh. (Defendant No.2)

... Respondents

For Appellant	:	Mr. B.P. Sharma with Mr. Sameer Uraon and Mr. M.L. Saket, Advocates.
For Respondent No.1	:	Mr. Ashish Shrivastava, Sr. Adv. with Mr. Rahul Ambast, Mr. Udit Khatri, Mr. Ishan Singh Rathore, Mr. Shatabdi Bagchi and Mr. Ashutosh Shrivastava, Advocates.
For Respondent No.2/State	:	Mr. Rahul Tamaskar, Govt. Advocate.

Hon'ble Smt. Justice Rajani Dubey
Hon'ble Shri Justice Amitendra Kishore Prasad, JJ

CAV Judgment

Per Rajani Dubey, J

Challenge in this appeal is to legality and validity of the judgment and decree dated 7.3.2019 passed by learned III Additional District Judge, Durg in Civil Suit No.116A/2015 thereby decreeing the suit of the plaintiff/respondent No.1 for specific performance of contract. (*For the sake of convenience, parties shall hereinafter be referred to as per their description before the learned trial Court*).

02. Plaintiff Vinod Agrawal filed a suit for specific performance of contract with the averments that defendant No.1 Chhedan Prasad Sharma being in need of money contacted him and discussed for selling his land bearing Khasra No.820, area 1.150 hectare, Village-Ghughwa, P.H.No.12. R.N.M. Bhilai-3, Tahsil Patan, Distt. Durg for a sum of Rs.8.50 lakhs per acre. The plaintiff agreed to the said proposal and paid Rs.2.50 lakhs as advance to him on 31.12.2012 and

accordingly an agreement was executed on the same day in presence of two witnesses. As per the said agreement, defendant No.1 was to provide all the original necessary revenue documents pertaining to the said suit land to the plaintiff for perusal and supply a copy thereof to him and also get the demarcation of the suit land done. However, defendant No.1 failed to do so whereas the plaintiff was always ready and willing to perform his part of contractual obligation. Hence on 30.3.2013 the plaintiff through his advocate sent a registered legal notice to him, in reply to which he stated that time was not essence of the agreement dated 31.12.2012. The plaintiff on 20.3.2013, 30.4.2014 and 20.11.2014 requested many times for complying with the conditions of the agreement and on 3.3.2013 he also got a public notice published in daily newspaper of Raipur city i.e. Navbharat and Dainik Bhaskar regarding aforesaid agreement between the parties in respect of the suit land. From the above, it is clear that defendant No.1 was having no intention at all for complying with the conditions of the agreement whereas the plaintiff has ever been ready and willing to perform his part of contractual obligations and also has the requisite fund with him for this. The plaintiff sent two registered legal notices to him i.e. on 30.3.2013 and 22.9.2015 and despite receipt of it, defendant No.1 did not comply with the conditions of the agreement. He stated that he has paid the requisite ad valoram court fee and therefore, looking to the averments made above, he prayed for passing a decree in his favour thereby directing defendant No.1 to hand over possession of the suit land to the plaintiff after obtaining the remaining amount of the sale consideration in terms of the agreement.

03. Defendant No.1 in his written statement though admitted the agreement dated 31.12.2012 and receipt of advance amount from the plaintiff but averred that the plaintiff in his plaint has not specifically described the agricultural land held by his family and himself which could show that the suit land is not affected by Agriculture Ceiling Limitation Act. Further, he averred that within three months of execution of the agreement, he had given to the plaintiff the requisite documents i.e. Khasra, Map, B-1, Rin Pustika of the suit land, PAN Card, Photograph and Identity Card which is mentioned in the plaintiff's reply dated 25.4.2013 to his notice as also in letter dated 3.4.2013 of defendant No.1. The plaintiff only after examination of the revenue records of the suit land agreed to purchase the same from him and he had also orally informed the plaintiff that the suit land is his self-acquired property. He further averred that without knowledge of defendant No.1, the plaintiff had himself got the suit land demarcated on 27.12.2013 and was satisfied with it which is mentioned in para 4 of his notice dated 30.3.2013. The plaintiff also got a public notice published in the newspapers on 3.3.2013 with regard to the aforesaid agreement and no objection was raised to this sale by anyone which makes it clear that the suit land is free from all encumbrances.

Defendant No.1 contends that he never refused to comply with the terms and conditions of the agreement dated 31.12.2012. In fact, it is the plaintiff who was avoiding demarcation of the suit land. He has given all the revenue documents pertaining to the suit land to the plaintiff. Therefore, on account of failure of the plaintiff in performing his contractual obligations, he is not entitled for any relief as against defendant No.1. Therefore, the instant suit is liable to be dismissed.

04. Learned trial Court based on the pleadings of the respective parties framed as many as 8 issues and after appreciation of oral and documentary evidence decreed the suit in favour of the plaintiff by the impugned judgment and decree dated 7.3.2019. Hence this appeal.

05. Learned counsel for the appellant/defendant No.1 would submit that impugned judgment and decree are perverse and not sustainable in law. Although it is true that generally in suit for specific performance of contract, time is not the essence but when the circumstances placed on record prove that in order to fulfill a dire need defendant No.1 was forced to sell his property and for not complying with the obligation in time by the plaintiff, he was forced to sell his another property, it can be said that time was in fact essence of contract. He submitted that the plaintiff failed to comply with his obligations of making payment of balance sale consideration and avoided registration of sale deed on frivolous grounds like obtaining no objection from different members of family and adopting hair splitting attitude. In fact, this is the case where

plaintiff's conduct disentitles him to have any equitable decree much less decree of specific performance of contract. He would next submit that the learned trial Court ought not to have rejected the various applications filed by the appellant/defendant No.1 including the one dated 6.12.2018 filed under Section 151 of CPC for summoning Income Tax Officer and also ought not to have allowed applications filed by the plaintiff/respondent No.1; herein. Hence it is prayed that this Court in exercise of its jurisdiction under Section 105 of CPC be pleased to reverse the said order and pass appropriate order on those applications in favour of the appellant and other consequential orders.

06. Learned counsel for the appellant/defendant No.1 vehemently argued that at the time of recording evidence of plaintiff (PW-1) when he exhibited the agreement dated 31.12.2012 as Ex.P/1, defendant No.1 raised objection and the learned trial Court observed that this objection shall be decided at the time of passing final judgment but did not decide the same and without any reason, read the agreement dated 31.12.2012 (Ex.P/1) as exhibited document and decreed the suit which is erroneous and illegal. He would submit that the said document of Ex.P/1 is apparently not properly valued and is not admissible in evidence but the learned trial Court relied upon this document and decreed the suit of the plaintiff. Thus, present is a fit case for remand of the matter on the above issue and decision afresh.

Reliance has been placed on the decisions in the matters of ***RVE Venkatachala Gounder Vs. Arulmigu Viswesaraswami & VP Temple and another, (2003) 8 SCC 752; Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, (2009) 2 SCC 532;*** and ***GM Shahul Hameed Vs. Jayanthi R. Hegde, (2024) 7 SCC 719***.

07. Learned counsel for respondent No.1/plaintiff supporting the impugned judgment and decree would submit that the learned trial Court minutely appreciated the oral and documentary evidence on record and rightly decreed the suit in favour of the plaintiff. There is no illegality or infirmity in the impugned judgment and decree warranting any interference by this Court. As regards objection of defendant No.1 of less stamp duty, such defects can be cured at any time and as such there is no need to remand the matter to the trial Court. Even otherwise, defendant No.1 in his written statement has admitted execution of the agreement dated 31.12.2012 between the parties. Therefore, the present appeal being *sans* merits is liable to be dismissed.

Reliance has been placed on the decisions in the matters of ***Rama Kt. Barman (died) Thr. LRs Vs. Md. Mahim Ali and others, 2024 SCC OnLine SC 4083*** and ***Muruganandam Vs. Muniyandi (died) through LRs., 2025 SCC OnLine SC 1067***.

08. Learned counsel for the State/defendant No.2 submits that grievance of the appellant is mainly against respondent No.1/plaintiff

and no relief has been claimed against the State/defendant No.2, it is only a formal party in the matter. The impugned judgment and decree has to undergo judicial scrutiny and its validity or otherwise has to be decided on merits by this Court.

09. Heard learned counsel for the parties and perused the material available on record.

10. It is clear from the record of learned trial Court that the plaintiff filed a suit for specific performance of contract against the appellant/defendant No.1. The appellant/defendant No.1 admitted the agreement dated 31.12.2012 but objected that the plaintiff has failed to perform his part of contractual obligations. Learned trial Court framed following issues on the basis of pleadings of the respective parties:

क.	**वाद प्रश्न**	**निष्कर्ष**
1.	क्या दिनांक 31.12.2012 को उभयपक्षों के मध्य मौजा ग्राम घुघवा प.ह.न. 12 खसरा नंबर 820, रकबा 1.1506 भूमि के संबंध में निष्पादित विक्रय इकरारनामा में समय संविदा का सार है ?	प्रमाणित नहीं
2.	यदि हा तो क्या निष्पादित विक्रय इकरारनामा के अनुसार वर्णित समय में पक्षकारों द्वारा संविदा का पालन नहीं किया गया है ?	प्रमाणित नहीं
3.	क्या वादी द्वारा सौदे के पालन के लिये वर्णित अवधि की समाप्ति के पश्चात् वाद प्रस्तुत किया है ?	प्रमाणित नहीं

4.	क्या वादी विक्रय इकरारनामा के अनुसार संविदा का पालन करने के लिये तैयार व तत्पर रहा है ?	हाँ प्रमाणित
5.	क्या प्रतिवादी संविदा का पालन करने के लिये तैयार व तत्पर रहा है ?	प्रमाणित नहीं
6.	क्या वादी संविदा के विनिर्दिष्ट पालन के परिप्रेक्ष्य में प्रतिवादी से विवादित संपत्ति का बयनामा पंजीयन स्वयं के पक्ष में कराने का अधिकारी है?	हाँ प्रमाणित
7.	क्या प्रतिवादी वादी से धारा 35-क व्य.प्र.सं. के तहत प्रतिकारात्मक खर्च पाने का अधिकारी है?	प्रमाणित नहीं
8.	सहायता एवं व्यय	कडिका 30 के अनुसार

As regards the main objection of the appellant/defendant No.1 that the learned trial Court did not appreciate the admissibility of document of Ex.P/1 and the objection of defendant No.1 was not decided at the time of passing of final judgment, looking to the statements of the parties in this regard, it is clear from the statement of the plaintiff Vinod Agrawal (PW-1) that while exhibiting the agreement dated 31.12.2012, defendant No.1 raised objection to its admissibility for want of sufficient stamp duty and the learned trial Court noted under para 8 as under:

> "नोट- इसी स्तर पर आपत्ति किया गया कि उपरोक्त दस्तावेज पचास रूपये नॉन ज्यूडिसियल स्टाप पर निष्पादित नहीं है इसलिये दस्तावेज साक्ष्य में ग्राहय नहीं हैं। वादी अधिवक्ता यह आपत्ति किया गया कि उपरोक्त आपत्ति जवाबदावा में नहीं है। इस आपत्ति का निराकरण निर्णय के समय किया जावेगा।"

11. The document of Ex.P/1 shows that only adhesive stamp is affixed. Section 11 of the Indian Stamp Act deals with the use of adhesive stamps, specifying which instruments can use readily affixable stamps (like postage stamps). It allows adhesive stamps for low-value items, certain international bills, endorsements, and notarial acts.

12. The Hon'ble Apex Court in the matter of ***Avinash Kumar Chauhan*** (supra) held in paras 22, 23, 25 & 29 of its judgment as under:

> "22. We have noticed heretobefore that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of Section 35 of the Act.
>
> 23. The contention of learned counsel for the appellant that the document was admissible for collateral purpose, in our opinion, is not correct. In *Bondar Singh (2003) 4 SCC 161* this Court was not concerned with the provisions of the Act. Only interpretation of the provisions of the Registration Act, 1908 was in question. It was opined: (SCC p. 163, para 5)
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>> "5. The main question, as we have already noted, is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9-5-1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor-in-interest of the plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defence set up against the said document is that it is

> unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorised."

25. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature d shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes.

29. In *T. Bhaskar Rao v. T. Gabriel, AIR 1981 AP 175* it has been held: (AIR p. 177, para 5)

> "5. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso (a) to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped or on payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of the purpose, be it for main or collateral purpose, unless the requirements of proviso (a) to Section 35 are complied with. It follows that if the requirements of proviso (a) to Section 35 are satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence."

It was further held: (*Gabriel case*, AIR p. 177, para 7)

> "7. It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an

unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act."

(See also *Firm Chuni Lal Tukki Mal v. Firm Mukat Lal Ram Chandra, AIR 1968 All 164 and Chandra Sekhar Misra v. Gobinda Chandra Das, AIR 1966 Ori 18*)."

13. In the matter of ***GM Shahul Hameed*** (supra) the Hon'ble Supreme Court held in paras 20, 21, 22 & 24 as under:

"20. However, Section 35 of the 1957 Act is not the only relevant section. It is preceded by Sections 33 and 34 and all such sections are part of Chapter IV, titled "*Instruments Not Duly Stamped*". Certain obligations are cast by Section 33 on persons/officials named therein. Should the Presiding Officer of the court find the instrument to be chargeable with duty but it is either not stamped or is insufficiently stamped, he is bound by Section 33 to impound the same. Section 34 places a fetter on the court's authority to admit an instrument which, though chargeable with duty, is not duly stamped. The statutory mandate is that no such instrument shall be admitted in evidence unless it is duly stamped.

21. The Presiding Officer of a court being authorised in law to receive an instrument in evidence, is bound to give effect to the mandate of Sections 33 and 34 and retains the authority to impound an instrument even in the absence of any objection from any party to the proceedings. Such an absence of any objection would not clothe the Presiding Officer of the court with power to mechanically admit a document that is tendered for

admission in evidence. The same limitation would apply even in case of an objection regarding admissibility of an instrument, owing to its insufficient stamping, being raised before a court of law. Irrespective of whether objection is raised or not, the question of admissibility has to be decided according to law.

22. The Presiding Officer of a court when confronted with the question of admitting an instrument chargeable with duty but which is either not stamped or is insufficiently stamped ought to judicially determine it. Application of judicial mind is a sine qua non having regard to the express language of Sections 33 and 34 and interpretation of pari materia provisions in the Stamp Act, 1899 ("the 1899 Act" hereafter) by this Court. However, once a decision on the objection is rendered be it right or wrong-Section 35 would kick in to bar any question being raised as to admissibility of the instrument on the ground that it is not duly stamped at any stage of the proceedings and the party aggrieved by alleged improper admission has to work out its remedy as provided by Section 58 of the 1957 Act.

24. Once again, addressing a matter concerning Section 36 of the 1899 Act, a Bench of three Hon'ble Judges of this Court in Ram Rattan v. Bajrang Lal, (1978) 3 SCC 236 held as follows: (SCC pp. 239-40, para 6)

> "6. When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objects in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however would not mean that the objection as to admissibility on the ground that the

> instrument is not duly stamped is judicially decided; it is merely postponed. In such a situation at a later stage before the suit is finally disposed of it would nonetheless be obligatory upon the court to decide the objection. If after applying mind to the rival contentions the trial court admits a document in evidence, Section 36 of the Stamp Act would come into play and such admission cannot be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. The court, and of necessity it would be the trial court before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case and *where a document has been inadvertently admitted without the court applying its mind as to the question of admissibility, the instrument could not be said to have been admitted in evidence with a view to attracting Section 36 (see Javer Chand v. Pukhraj Surana, 1961 SCC OnLine SC 22*). The endorsement made by the learned trial Judge that "Objected, allowed subject to objection", clearly indicates that when the objection was raised it was not judicially determined and the document was merely tentatively marked and in such a situation Section 36 would not be attracted."

14. In light of the above, in the present case, it is manifest that when the agreement dated 31.12.2012 was tendered in evidence and marked as Ex.P/1 during the examination of PW-1 plaintiff, a specific and categorical objection was raised by defendant No.1 regarding its admissibility on the ground of insufficient stamping. The learned trial Court expressly recorded that the objection would be decided at the time of final judgment. Thus, the document was only tentatively exhibited, subject to judicial determination of the objection. The law on this issue is no longer *res integra*. Sections 33 and 35 of the Indian Stamp Act cast a mandatory statutory duty upon the Court to examine, at the threshold, whether an instrument chargeable with duty is duly

stamped and, if not, to impound the same. The Court has no discretion to defer such determination indefinitely or to bypass it while adjudicating the suit on merits. The Court must judicially decide the objection at the stage when it is raised or at least before final adjudication.

15. In the present case, the learned trial Court failed to discharge this statutory obligation. While the objection to Ex.P/1 was expressly kept open, the learned trial Court neither adjudicated upon the objection in the impugned judgment nor passed any order under the Stamp Act directing payment of deficit duty and penalty. Despite this, the Court proceeded to rely upon Ex.P/1 as the foundational document for decreeing the suit for specific performance. The agreement dated 31.12.2012 is the very basis of the plaintiff's claim; unless it is held to be legally admissible, the findings recorded on readiness and willingness, breach, and entitlement to specific performance cannot be sustained. Deciding the suit on merits without first determining the admissibility of this document amounts to material irregularity in exercise of jurisdiction.

16. The contention of learned counsel for respondent No.1 that in view of admission of execution of the agreement by defendant No.1, there is no need to decide the objection, is legally untenable. Admission of execution does not cure a defect of insufficient stamping. The bar under Section 35 of the Stamp Act operates irrespective of

pleadings or admissions and goes to the competence of the Court to read the document in evidence.

17. In the result, the impugned judgment and decree are hereby set aside and the matter is remanded to the learned trial Court to first adjudicate the objection raised by defendant No.1 regarding admissibility of Ex.P/1 in accordance law and pass appropriate orders thereon, and thereafter to reconsider and decide the suit afresh on merits in accordance with law. The appeal stands allowed to the above extent. A decree be drawn up accordingly.

Needless to say that the parties shall be allowed to amend their pleadings and adduce additional oral and documentary evidence, if so desire. Parties to appear before the learned trial court on 03rd February, 2026.

Sd/	**Sd/**
(Rajani Dubey)	**(Amitendra Kishore Prasad)**
Judge	**Judge**

Khan