

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 391 of 2003

Hiralal Keshari	...	...	Appellant
	Versus		
Govind Singh and Ors.	...	...	Respondents

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant	: Mr. Rajiv N. Prasad, Advocate
	: Mr. Nilendu Kumar, Advocate
For the Resp. No.6	: Mr. Arvind Kr. Choudhary, Advocate
	: Mr. Shambhu Nath Tiwari, Advocate
	: Ms. Vinita Prakash, Advocate

15/06.08.2025

The learned counsel for the appellant and the learned counsel for the respondent no.6 are present. Nobody appears on behalf of the respondent nos.1 to 5 and 7 to 8.

2. The learned counsel for the appellant has submitted that this appeal arises out of suit seeking specific performance of agreement with regard to sale of immovable property dated 13.03.1997 (Exhibit - 1). The trial court had decreed the suit and the 1st appellate court has reversed the judgement and ultimately this Court has formulated the following substantial question of law vide order dated 13.08.2004 as under:

“Whether the lower appellate Court has adopted a wrong legal approach in setting aside and reversing the judgement and decree of the trial Court?”

3. The learned counsel submits that the entire dispute relates to a portion of half kathas of land which stood jointly in the name of Hira Singh, Dashrath Singh and Anant Singh. So far as Hira Singh and Dashrath Singh are concerned, they have already transferred their respective shares to the plaintiff by registered sale deed and there was an agreement of sale with Anant Singh which is subject matter of dispute in the present case. He has submitted that immediately after entering into an agreement for sale, said Anant Singh and his sons sold 136 sq. ft by registered sale deed on 24.09.1997 to defendant 2nd party and 170 sq. ft. to defendant 3rd party vide registered sale deed dated

27.09.1997. The learned counsel submits that prior to the sale deed, the suit was filed and the aforesaid two sale deeds executed in favour of the 2nd party and 3rd party were challenged by way of amendment. The amendment was allowed and the defendant 2nd party as well as 3rd party had contested the suit.

4. The learned counsel submits that in order to prove the agreement, the relevant witnesses were P.W.2, 3, 15 and 17. P.W. 2 was the typist, who had typed the agreement. He has also submitted that so far as D.W. 2 is concerned, he was the son of Anant Singh and he also had identified the signature of Anant Singh on the agreement. He has further submitted that there was another exhibit namely Exhibit - 6 which was the vakalatnama executed by Anant Singh in another proceedings under Section 107 Cr.P.C on the same date and the said vakalatnama was exhibited at the request of the defendants and upon comparison, it was found that the signature tallied with the signature of Anant Singh on the agreement.

5. The learned counsel submits that the learned trial court after appreciating the materials found that the agreement was valid and ultimately cancelled the two sale deeds dated 24.09.1997 and 27.09.1997 executed in favour of 2nd and 3rd party and directed for specific performance of contract. The learned counsel has in particular referred to the discussion of the learned trial court at paragraph 27 as to how and in what manner, the signature of Anant Singh was compared and established in the agreement dated 13.03.1997 (Exhibit 1). The learned counsel has also submitted that although Anant Singh was alive at the relevant point of time but he was never produced as witness before the learned court. He has submitted that the written statement was jointly filed by Anant Singh and his sons. He has submitted that the sons of Anant Singh were made party in the proceeding as the sons had sold the property to 2nd party and 3rd party during the lifetime of Anant Singh.

6. The learned counsel has submitted that so far as the learned 1st appellate court is concerned, agreement was held to be void and the learned 1st appellate court refused to grant any relief. The learned 1st

appellate court has upset the judgement of the learned trial court by observing that the property having already been sold, no relief under Specific Performance Act can be granted. The learned counsel submits that the entire transaction vide registered sale deed dated 24.09.1997 and 27.09.1997 were not only subject to *lis pendens* but also subject to the agreement of sale dated 13.03.1997 (Exhibit - 1).

7. The learned counsel for the appellant has referred to the issues framed by the learned trial court at paragraph 15 whose English translation is available in paragraph 5 of the impugned 1st appellate court judgement, which is quoted as under:

1. *Is the suit as framed maintainable?*
2. *Has the plaintiff got cause of action for filing the suit?*
3. *Is the suit barred by any provision of law?*
4. *Was an unregistered agreement dt.13.3.97 executed between the plaintiff and defendant Anant Singh @ Jattu Singh for the sale of his 1/3rd share in the suit-property for a consideration of Rs.25,000/-after receiving Rs.9000/-as an earnest money?*
5. *Is the plaintiff entitled to get the sale-deed registered in his favour with respect to 1/3rd share of Jattu Singh in the suit-property after paying the balance consideration money of Rs. 16,000/-to the defendant in specific performance of the contract and in the event of the defendant No.1 failing to execute the sale-deed can he get the sale-deed registered through the Court after depositing the consideration money?*
6. *Did the three sons of Sonia Kumari get the title and possession over 1 1/2Kattha of suit land after the death of Sonia Kumari in equal shares?*
7. *Is Navin Singh the adopted son of Hira Singh and whether he is entitled to the 1/3rd share of Hira Singh in the suit-property and, accordingly, he has*

validly sold his 1/3rd share by registered sale-deed in favour of the plaintiff?

8. *Are the sons of Jattu Singh entitled to sell the suit-property in the life time of Anant Singh?*

9. *Is the registered sale-deed dt.24.9.97 executed by Anant Singh @ Jattu Singh and his four sons Gobind Singh, Gautam Singh, Uttam Singh and Ratan Singh in favour of the defendant's 2nd set Narendra Nath Rao and Dwijendra Kr. Jaiswal (Sic) with respect to 17ft.x8ft. in the suit-property is a valid document. or the same is a sham, illegal and invalid document?*

10. *Is the registered sale-deed dt.27.9.97 executed by Anant Singh and his four sons in favour of defendant No.4 Sanjay Singh, a valid document or the same is sham, illegal and invalid?*

11. *Is the plaintiff entitled to get the relief of permanent injunction with respect to the suit-property against the defendants? and,*

12. *Is the plaintiff entitled to any other relief?*

8. The learned counsel for the appellant has submitted that the learned trial court has considered each and every aspect of the matter while allowing specific performance of contract in the present case and while holding that the agreement was duly signed by Anant Singh @ Jattu Singh has referred to the evidence of D.W. 2 his son. The learned counsel has also submitted that Anant Singh never appeared before the court for his evidence and at the time of filing written statement did not put his signature.

9. The learned counsel has submitted that the learned 1st appellate court while holding that the agreement did not have the signature of Jattu Singh @ Anant Singh has referred to Exhibit – 6 which was photocopy but has completely ignored the evidence of his son D.W. 2, who had identified the signature of Jattu Singh during his evidence. He has submitted that the evidence of D.W. 2 was enough to hold that

the signature of Jattu Singh on the agreement was duly proved and the evidence of D.W. 2 has been, inter alia, considered by the learned trial court to hold that the agreement contained the signature of Jattu Singh. He has also submitted that the signature of Jattu Singh was marked Exhibit 1/A without objection.

10. The learned counsel for the respondents has opposed the prayer and submitted that the learned trial court has extensively relied upon Exhibit – 6 while holding that the signature on the agreement was that of Jattu Singh, but at the same time, the appellate court has considered this aspect of the matter and found that Exhibit – 6 was photocopy of the Vakalatnama filed in the proceeding under Section 107 of Cr.P.C and has completely disbelieved the same and found that such evidence could not be taken into consideration for comparison of the signature. The learned counsel has also submitted that the learned trial court had referred to the evidence of D.W. 2 and had recorded that D.W. 2 admitted signature of his father on the agreement of sale Exhibit - 1 but from perusal of paragraph 6 of the evidence, he has clearly stated that his father had not put his signature on the agreement and during his cross-examination also in paragraph 40, D.W. 2 has clearly denied the suggestion about entering into agreement by his father on 13.03.1997. The learned counsel submits that it was for the plaintiff to prove the agreement but the plaintiff having failed to prove the agreement, the specific performance could not be granted to enforce the agreement itself.

11. The learned counsel on behalf of the appellant *in response*, has submitted that Exhibit - 6 was taken into evidence on admission and insistence of the defendants and the D.W. 2 had admitted in paragraph 21 that the vakalatnama contained the signature of his father. He also submits that it was at the instance of the respondents themselves the signature was compared by the learned trial court and it was held that the signature in Exhibit 6 was tallying with the signature in the agreement. The learned counsel has also submitted that the signature of Jattu Singh on the agreement was exhibited without any objection and therefore the signature stood admitted by the defendants. He has

also submitted that the learned trial court has rightly drawn adverse inference for non-examination of Jattu Singh and has also taken note of the fact that Jattu Singh had not even put his signature on the written statement filed before the court so as to completely rule out the scope of any comparison of signature. Moreover, Jattu Singh did not appear as a witness before the learned court.

12. The learned counsel for the appellant has relied upon the judgement passed by the Hon'ble Supreme Court reported in **(2008) 5 SCC 796 (Guruswamy Nadar Vs. P. Lakshmi Ammal (dead) through Lrs. And Ors.) paragraphs 14 and 15** and **(2009) 13 SCC 229 (L.N. Aswathama and Anr. Vs. P. Prakash) paragraph 8.**

13. Post this case tomorrow i.e. 07.08.2025 for further dictation of the judgement.

(Anubha Rawat Choudhary, J.)

Saurav/