

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 94 of 2003**

1. Goverdhan Sahu, son of Dhanaram Sahu, aged about 46 years
2. Smt. Sohadra Bai, wife of Dhanaram Sahju, aged about 76 years.

Both are residents of Village-Joba, Tehsil and District – Mahasamund (C.G.)

---- Appellants/Defendants

Versus

- Chhagan Lal Sahu, son of Ramau, aged about 49 years, Caste – Teli, resident of Village – Joba, Tehsil and District – Mahasamund (C.G.)

---- Respondent/Plaintiff

For Appellants	:	Shri Vivek Tripathi, Advocate.
For Respondent	:	Shri Manoj Paranjpe assisted by Shri Arun Kumar Bajaj, Advocates

Judgement On Board By Sanjay Agrawal, J.

04/10/2016

The defendants have filed this appeal under Section 96 of the Code of Civil Procedure, 1908 (for short 'the Code') against the judgment and decree dated 25.02.2003 passed by the 2nd Additional District Judge, Mahasamund in Civil Suit No. 9-A/2002 whereby the plaintiff's suit for specific performance of contract has been decreed in part by awarding him the refund of earnest money of Rs.45,000/-. That is the finding which has been assailed by the defendants before this Court.

2. Brief facts of the case, as projected before the Court below, are that the plaintiff – Chhagan Lal Sahu has instituted a suit for specific performance of contract on the basis of registered agreement to sell dated 26.05.2000 (Ex.P.1) purported to have been executed by the defendants – Goverdhan Sahu and Smt. Sohadra Bai in his favour. It is pleaded that as per the said agreement to sell, the property in question bearing Kh.No. 983 area 0.52 hectares was required to be alienated for a

sum of Rs.62,000/- by 31.12.2000. It is put forth in the plaint that the plaintiff has been continuously making requests to the defendants to execute the registered deed of sale in pursuance of the said agreement (Ex.P.1) and when the defendants declined in executing the sale deed in pursuance of the aforesaid agreement (Ex.P.1), the plaintiff immediately sent a notice (Ex.P.2) to the defendants requesting them to get the sale deed registered, as per the terms and conditions stipulated in the agreement to sell (Ex.P.1) dated 26.05.2000. Despite of all these efforts, the defendants have not executed a registered deed of sale, therefore, the plaintiff has been constrained to file the suit in the instant nature.

3. The defendants have contested the aforesaid claim of the plaintiff denying the execution of the alleged agreement to sell and pleaded that they have not received any earnest amount of Rs.45,000/- under the said agreement.

4. The plaintiff, in order to establish his claim, has examined Jayesh Kumar as plaintiff's witness No.1 (P.W.1), a Government employee working in the Office of Deputy Registrar, Mahasamund, who has just stated with regard to the execution of agreement to sell (Ex.P.1) and was not aware in respect of transactions made between the parties. Thereafter, the plaintiff has examined himself as P.W.2. He has stated in para – 3 that prior to the execution of alleged agreement to sell dated 26.05.2000, a sum of Rs.10/- was paid as earnest money to the defendants and has stated that parties have agreed to get the sale deed executed for consideration of Rs.62,000/-. It is stated by him in para – 5 that a sum of Rs.45,000/- was paid to the defendants before the Registrar and at that particular time, mother Sohadra Bai was present. The said witness has further stated in para – 6 by denying the endorsement made in the alleged agreement to sell with regard to payment of earnest amount of Rs.45,000/-. The plaintiff's another witness, namely, Punit Ram, the attesting witness to the alleged agreement, was examined as P.W.3, who has stated that the alleged agreement to sell was executed between the parties and the said earnest amount was paid by the plaintiff to the defendants.

5. The defendants have examined one Kaliram, the another attesting witness to the alleged agreement, as D.W.1 in their support. The statement of this witness does not support the claim of the plaintiff and particularly with regard to the payment of Rs.45,000/-, as the same was not paid by him in his presence.

6. The trial Court decreed the suit in part on 25.02.2003. The trial Court in its judgment and decree, by relying upon the plaintiff's witnesses, has come to the conclusion that alleged agreement to sell dated 26.05.2000 (Ex.P.1) was executed by the defendants in favour of the plaintiff and observed further in para 12 of its judgment that the earnest money of Rs.45,000/- was paid by the plaintiff to the defendants and, thus, arrived at the conclusion that the said earnest amount was paid by the plaintiff to the defendants at the time of execution of the registered agreement to sell dated 26.05.2000. It held further that the sufficient fund for getting the registered deed of sale in pursuance of the alleged agreement (Ex.P.1) to sell was not available with him, and therefore, while declining the grant of decree for specific performance of contract, the trial Court has directed the defendants to refund the earnest amount of Rs.45,000/- to the plaintiff.

7. I have heard learned counsel for the parties and perused the record of the Court below.

8. In para – 3 of the plaint, it has been pleaded by the plaintiff that defendants No. 1 & 2 have received Rs.45,000/- as earnest amount and made a statement that it was received at the time of execution and has agreed to execute the sale deed by 31.05.2000. It is not pleaded that any amount like earnest amount of Rs.45,000/- was paid by the plaintiff before the Registrar, and therefore, the statement as made by him in Court that he paid a sum of Rs.45,000/- before the Registrar is contrary to the pleadings made by him. Thus, the findings recorded by the trial Court in para – 12 of its judgment in this regard is not at all sustainable. Besides, in para – 6 of his statement, the purchaser, i.e., Chhaganlal Sahu, the plaintiff himself has admitted very specifically that the endorsement with regard to the payment of earnest amount

of Rs.45,000/- is wrongly mentioned in that particular document, i.e., agreement to sell dated 26.05.2000 (Ex.P.1).

9. In view of the said pleading, particularly, in para – 3 of the plaint put forth by the plaintiff and the statement as adduced before the Court below by himself would lead to an irresistible conclusion that no amount, like earnest amount of Rs.45,000/- was ever paid to the defendants. Therefore, the findings recorded by the trial Court and decreeing the plaintiff's claim in part by directing the defendants to refund the earnest amount of Rs.45,000/- are not sustainable, and therefore, liable to be set aside.

10. In view of above, appeal is allowed and the judgment and decree passed by the trial Court in Civil Suit No.9-A/2002 is hereby set aside.

11. Parties are directed to bear their own costs.

12. A decree be drawn accordingly.

Sd/-
(Sanjay Agrawal)
Judge