

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 53 of 2004

- Bhagwati Ram Patel

---- Petitioner

Versus

- Dharmik Kumar Sahu And Another

---- Respondent

For Petitioner	Shri Manoj Jaiswal, Advocate.
For Respondent No.1	Shri Aditya Bhardwaj, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

25/10/2017

1. This is defendant's first appeal challenging the decree passed by the trial Court directing him to repay the amount of Rs. 50,000/- to the plaintiff within a period of 30 days, failing which the amount shall carry interest at the rate of six percent per annum from the date of filing of suit till the date of recovery.
2. Both the parties are working as labourer in the Simplex Industries Rajnandgaon and were, thus, previously known to each other.
3. On 03.05.2002 the appellant/defendant sought loan of Rs. 50,000/- from the plaintiff promising to repay the amount within one month, failing which he shall execute sale deed of 19 decimal land bearing Khasra No.333/2. The agreement Ex.P/1 was executed between the parties and

was signed by two witnesses namely Savitri Bai and Basantram. When the defendant failed to repay the amount, the present suit for specific performance of the agreement or in the alternative for refund of the amount was preferred wherein the defendant denied to have received the amount.

4. The plaintiff examined himself as PW1, the attesting witnesses Savitri Bai PW/2 and Basantram PW/3. Not only the plaintiff, but the attesting witnesses have fully supported the plaintiff's case that the amount was paid to the defendant in their presence.
5. On the other hand, the defendant examined himself as DW 1 and his witness Bansilal Sahu as DW2.
6. On the basis of the agreement (Ex-P1) and the statement of witnesses, the trial Court has concluded that there was no agreement to sale between the parties but the said clause pertaining to the execution of sale deed was by way of security for recovery of loan amount, therefore, there was no independent contract concerning sale of the land or the building standing thereon.
7. The trial court has carefully and minutely marshaled the evidence adduced by the parties and has assigned cogent reasons to accept the plaintiff's case. The trial Court has assigned well founded reasons as to why the defendant's case is not believable.
8. Once it is found that the trial Court has not recorded any perverse finding and has not travelled beyond the material available in the suit, it is not open for the first Appellate Court to interfere with the impugned judgment merely because some other view is also possible. The defendant

having obtained loan of Rs. 50,000/- and having failed to repay the amount, the trial Court is fully justified in passing the decree for repayment of the amount. There is no error or illegality in the finding recorded by the trial Court.

9. In the result, the appeal, sans merit, is liable to be and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Akhilesh