

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 74 of 2007

1. Manju Goyal, W/o Shri Rajmal Goyal, aged about 37 years
2. Rajmal Goyal S/o Shri Shankar Lal Goyal, aged about 42 years
3. Ashok Kumar Goyal S/o Shri Shankar Lal Goyal, aged about 38 years

All R/o Village Pendra, Tahsil- Pendraroad , District -Bilaspur (CG)

---- Appellants/Defendants

Versus

Santosh Gupta S/o Shri Dhaniram Gupta, aged about 35 years, R/o Bus Stand
Pendra, Tahsil -Pendraroad, District -Bilaspur (CG)

---- Respondent/Plaintiff

For Appellants	:	Shri Ashok Soni, Advocate
For Respondent	:	Shri K.M. Ansari, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

C.A.V. Judgment

25/07/2017

1. This First Appeal arises out of judgment and decree dated 11th May, 2007 passed by the Additional District Judge, Pendraroad, District-Bilaspur in Civil Suit No.22-A/2006 by which the respondent-plaintiff's suit for recovery of possession and permanent injunction has been decreed in his favour and against the appellants-defendant. By the impugned judgment and decree, the agreement dated 9.10.2004 has been declared void and illegal and appellants- defendant is directed to handover the possession of the house in dispute to the plaintiff. Learned trial Court has also granted decree of permanent injunction in favour of plaintiff and against the defendants restraining the appellants- defendant from interfering with the possession of the plaintiff over the land in dispute.
2. Respondent-plaintiff filed a suit for declaratory decree, recovery of

possession of the house in dispute and also for permanent injunction on the pleadings inter alia that the house in dispute is owned by the plaintiff. It was pleaded that the plaintiff and defendant were known to each other and the plaintiff, in need of money, demanded a loan of Rs.25,000/- from Rajmal Goyal, the defendant No.2. It was the case of the plaintiff that a stamp paper was purchased and the plaintiff was asked to sign on stamp paper by misleading him that the document relates to transaction of loan of Rs.25,000/- taken by the plaintiff from the defendant No.2. The plaintiff, it is stated, had never agreed to sell his property to defendant No.1 nor he ever executed any sale deed or any agreement of sale with defendant No.2. Further case of the plaintiff was that when the plaintiff went to the house of defendant in the month of November 2004 to return the loan amount, the defendant No.2 was not found and his brother defendant No.3 asked him to leave the money with assurance that when defendant No.2 returns, the stamp paper would be returned to the plaintiff. It was the case of the plaintiff that thereafter on 20th November, 2004, defendants No. 2 & 3 along with 8 to 10 armed persons arrived in the disputed house, abused plaintiff's wife and attempted to dispossess them, in respect of which a report was lodged in the police station. Later on, it is pleaded, again attempt was made to dispossess by throwing away households and movable property of the plaintiff, kept in the disputed house, on 28.11.2004 and again a report was made in the police station but no action was taken and on the other hand, on the basis of report lodged by the defendants, a false case of commission of offence under Section 307 IPC was registered by the police against the plaintiff and other persons on 10.1.2005. Finally, the defendants succeeded in their attempt to dispossess the plaintiff and his wife by use of criminal force. When no action was taken, the wife of the plaintiff filed a criminal complaint before the Judicial Magistrate First Class, Pendraroad. Further allegation was that thereafter on 10.1.2005, defendant again arrived with 10 to 12 armed persons and damaged the house, broke the shutter and took possession of the house by throwing movable properties of the plaintiff which was kept in the house. It was the case of the plaintiff that the plaintiff never sold his property to the defendant and his signatures were obtained on so called agreement dated 9.10.2004 by playing fraud and misleading and preparing a

forged document and, therefore, in these circumstances, the plaintiff was entitled to recovery of possession of the property in dispute from the defendant.

3. The defendant, in rebuttal of the plaintiff pleadings, came out with the case that the plaintiff was in need of money for repayment of loan borrowed by him towards purchase of a vehicle and therefore, the plaintiff proposed to sell the shop to defendant No.2 and a deal was struck for sale of the shop in dispute for consideration of Rs.4 lakh towards which, advance of Rs.71,000/- was paid to the plaintiff by the defendant No.2. It was further pleaded that stamp was also purchased by the plaintiff and it was agreed to execute the deed of agreement after receipt of consideration. Thereafter, defendant No.2 again paid Rs.25,000/- and then leaving the balance of Rs.25,000/- to be paid at the time of registration, a total of Rs.3,75,000/- was paid by the defendant No.2 to plaintiff. Further pleading of the defendant was that thereafter the agreement of sale prepared on the stamp paper was notarized before the Notary on 9.10.2004 which was signed by the defendant No.1 in the presence of witnesses. Plaintiff's case of there being a loan transaction between the parties was denied. According to written statement of the defendant, possession of the house was also handed over to defendant after receiving part consideration. According to the defendant, when the defendant insisted on execution of sale deed, the plaintiff started avoiding and then defendant came to know that house in dispute was situated on Government land and that was the reason why the plaintiff was avoiding to execute the sale deed and at this stage, the dispute arose between the parties in which the plaintiff along with his associates came to the spot, assaulted the defendant which led to lodging a police case and registration of offence under Section 307 IPC against the plaintiff and others.

4. On the basis of pleadings of the parties, learned trial Court framed as many as five issues which are as below:

“1. क्या, वादी ने वादग्रस्त मकान के कथित विक्रय इकरारनामा दिनांक 9.10.2004 को ना लिखकर 25,000/- रुपये के उधार रकम के लिए दस्तावेज निष्पादित किया था ?

2. क्या, प्रतिवादीगण ने वादग्रस्त मकान में अवैध तरीके से दिनांक 20.11.2004 को कब्जा किया है ?
 3. क्या ,छ0ग0 राजस्व संहिता 1959 की धारा 165 के अन्तर्गत कलेक्टर के अनुमति के बिना वादग्रस्त मकान का विक्रय इकरारनामा नहीं किया जा सकता था ?
 4. क्या, वादग्रस्त मकान का वाद मूल्यांकन व न्यायालय शुल्क उचित है ?
 5. अन्य सहायता एवं वाद व्यय ?”
5. On the first issue as to whether the plaintiff has executed agreement in respect of loan of Rs.25,000/- and not an agreement of sale on 9.10.2004, learned trial Court held that it was highly doubtful whether document dated 9.10.2004 (Ex.D-2) was dully executed as an agreement of sale. It was also held by the learned trial Court that there is no specific pleading and evidence led by the defendants with regard to date and place of demand made by defendant No.2 to the plaintiff so as to prove that the plaintiff was paid Rs.3,75,000/- by the defendant No.2. Learned trial Court disbelieved the evidence of the witnesses of so called agreement of sale dated 9.10.2004 (Ex.D-2) and other witnesses of the defendant in whose presence the dispute between the parties was tried to be settled and finally came to the conclusion that there was no agreement of sale executed by the plaintiff in favour of defendant No.1 upon receipt of part consideration of Rs.3,75,000/- and that there is contradiction in the recital of agreement Ex.D-2 and the oral evidence of Rajmal Goyal (DW2) with regard to time when the possession was given to defendant. On this finding, it was held by the trial Court that the defendant forcibly dispossessed the plaintiff. On such finding, the trial Court came to the conclusion that the it has not been proved that there was any valid execution of agreement of sale in respect of disputed land by the plaintiff in favour of defendant No.2 and that the plaintiff was forcibly dispossessed which led to grant of decree appealed against in favour of the plaintiff and against the defendant.
6. During the hearing of this appeal, an issue arose for consideration before this Court as to whether the plaintiff's story that he had taken Rs.25,000/-

towards loan or whether it was a receipt of part consideration under an agreement of sale as recited in agreement dated 9.10.2004 (Ex.D-2), it was found that the defendant, in order to prove, that the plaintiff himself had submitted a report before the Superintendent of Police, Bilaspur on 26.11.2004 in which plaintiff admitted that there was an agreement of sale between the parties, a copy of that report was filed as Annexure D-1, admissibility of which was objected to by the plaintiff and even though the trial court while recording evidence noted that admissibility of the document would be decided at the time of final hearing of the case, it was never decided. This Court, therefore, recorded in its order dated 26.2.2008 that in order to do complete justice between the parties, it was necessary to formulate additional issue for determination and to obtain finding of the trial Court on that issue. The additional issue framed by this Court was as below:

“Whether the respondent/plaintiff did lodge a report
Ex.D-1 to the Superintendent of Police, Bilaspur?”

7. The trial Court thereafter afforded the parties opportunity to lead evidence on this issue and then returned its finding vide its order dated 31st July, 2008 that Ex.D-1 was signed by the plaintiff Santosh Kumar Gupta and submitted before the Superintendent of Police, Bilaspur.
8. Assailing correctness and validity of the impugned judgment and decree and relying upon the finding on the additional issue recorded by the trial Court, learned counsel for the appellant-defendants argued that the plaintiff's case that there was no agreement of sale and the agreement dated 9.10.2004 was false and fabricated was liable to be disbelieved and rejected as the defendant succeeded in proving due execution of agreement of sale Ex.D-2 dated 9.10.2004 by leading reliable oral evidence of defendant witness which not only included intending purchaser defendant No.1-Manju Goyal who duly proved her signature in the said document but also the evidence of Ashok Goyal (DW3) witness to execution of agreement (Ex.D-2), Anil Agrawal (DW.5), the other witnesses to the agreement who also proved his signature. The intending purchaser Manju Goyal (DW1) and the two witnesses of execution of the agreement namely Ashok Kumar Goyal (DW3) and Anil Agrawal (DW5) fully established the defendant's case and falsified

the case of the plaintiff of it being a case of loan transaction and not a case of an agreement of sale of the shop in dispute. It is further submitted that the defendant's other witnesses namely Rajmal Goyal (DW2), Bhaman Chand Goyal (DW4) and Suresh Kumar Jaiswal (DW6) fully supported the defendant's case of there being an agreement of sale between the parties. It is next contended that from the finding now recorded by the trial Court on the additional issue as framed by this Court, it is clear that Ex.-D1, complaint dated 26.11.2004, was submitted by the plaintiff before the Superintendent of Police Bilaspur in which the plaintiff clearly admitted that the transaction between the parties was that of agreement of sale of the property by receiving huge amount in advance by the plaintiff and not a case of loan transaction, as pleaded by the plaintiff. It was further contended that even according to the plaintiff, the defendant were in possession of the suit property and there is reliable evidence led by the defendant that after receipt of part consideration, the plaintiff had peacefully parted with the possession of the house in dispute and handed it over to defendant, where the defendant was running a shop, which possession the plaintiff sought to recover by use of criminal force leading to registration of criminal case against the plaintiff and his wife for commission of offence under Section 307 IPC alleging assault on life on defendant. Therefore, in these circumstances, the suit of the plaintiff was liable to be dismissed.

9. Per contra, learned counsel for the respondent-plaintiff argued that undisputedly, the plaintiff was the owner of the house and also in its possession. He argued that the defendant's case of agreement of sale between the parties was rightly held to be not proved and highly doubtful because the defendant's pleadings and evidence with regard to details of payment of part consideration are vague, unspecific and also at variance with the oral evidence led by them. It is further argued that no reliance could be placed on the so called witnesses of the execution of document dated 9.10.2004 (Ex.D-2) because they all are interested and related witnesses of the defendant and there is no independent witness to prove execution of agreement of sale between the parties. It is next contended that the defendant's story of they having been given peaceful possession was rightly doubted by learned trial Court, because there is variance in pleading and

evidence in this regard and therefore, when the agreement of sale itself was doubtful, there was no occasion for the plaintiff to part with possession of the house in dispute and the plaintiff and his wife immediately after the criminal act of dispossession, have not only lodged report in the police station repeatedly, but when no action was taken, a criminal complaint was also filed before the Magistrate of which cognizance has also been taken. He submits that as the house was situated on the Govt. land, it could not be sold and this itself shows that Ex.D-2 is a sham document. The plaintiff has clearly stated in his evidence that he was kept in dark and by misleading that his signature are being obtained in the agreement evidencing loan transaction, by playing fraud, recital of agreement of sale were prepared and fraudulently, signatures obtained, which fact was rightly appreciated by the trial Court. Learned counsel for the respondent-plaintiff further argued that Ex.D-2, agreement of sale, being an unregistered document, was not at all admissible in evidence. He submits that the finding recorded by the trial Court on the aforesaid issue, as directed by this Court, is liable to be reversed because the learned trial Court failed to appreciate that the evidence of handwriting expert was not reliable in view of various discrepancies admitted by him in his cross-examination and that there was clear denial by the plaintiff that he had filed any such complaint (Ex.D-1) to the Superintendent of Police on 26.11.2004.

10. I have considered the rival submissions made by learned counsel for the parties and perused the records of the Courts below.

11. If the pleadings of the plaintiff are looked into, it is evident that the plaintiff and defendants are known to each other and defendant No.2 had been advancing loan to plaintiff from time to time and in continuation of that, plaintiff had obtained loan of Rs.25,000/- in the month of April 2004 and thereafter the plaintiff himself purchased a stamp of Rs.50/- in the name of defendant No.2 and gave it to him by stating that there is likelihood of delay in returning the amount, therefore, defendant may get the stamp prepared and his signature taken, whereafter, defendant No.2 advanced loan of Rs.25,000/- to the plaintiff on 7.10.2004. However, in his evidence, the plaintiff Santosh Kumar (PW1) came out with a different version of the transaction under which the said amount of Rs.25,000/- was received by him

from defendant No.1. In his evidence, Santosh Kumar (P.W.1) had deposed in para -2 of his evidence that Rajmal talked to him in connection with letting the house in dispute on rent in the month of May, 2005 as he wanted to open a motor parts shop and towards that tenancy, it was agreed to give Rs.25,000/- as advance on a monthly rent of Rs.2,000/-. He has further deposed that thereafter on 7.10.2004, Rajmal came to his house and gave him Rs.25,000/- stating that document would be executed after one or two days. Further evidence of this witness is that later on, Rajmal got his signature obtained on a blank paper on which "Goyal Motor Parts" were written. He states that there was a discussion for granting tenancy of only one room. He further pleads that on 9.10.2004, Anil, Manju and younger brother of Rajmal came to his house on 9.10.2004. In his further evidence, this witness deposes that Ashok came to his house saying that he was sent by Rajmal and then Ashok told him that they have got prepared document of tenancy which is required to be registered and though this witness was not feeling well, on insistence of Ashok that Anil and Manju have also came and let the agreement be executed, he went to the house of Notary along with Ashok, Manju and Anil with one B.L.Yadav. He further deposes that in the house of Notary, his signatures were obtained on the stamp document and then he left for his house. According to this witnesses, after 10-12 days, he went to the house of Rajmal to return Rs.25,000/- as he was not willing to rent out his shop He met Ashok and returned Rs.25,000/- and demanded stamp document on which Ashok stated that his brother Rajmal has gone out of station and when he returns, stamp document would be returned and thereafter it was never returned despite demands.

12. Thus from the evidence of plaintiff himself, the transaction under which he demanded Rs.25,000/- as pleaded in the plaint is in complete variance with the transaction under which he had taken Rs.25,000/-. While in the plaint, he has deposed that he was in need of money and therefore had taken a loan of Rs.25,000/- from defendant No.2 Rajmal, there being no whisper of transaction of tenancy between the parties, in his evidence, he came out with completely different story of having Rs.25,000/- as advance towards creation of tenancy of a part of his accommodation to defendant. In his cross-examination, this witness states that he does not even know khasra

number of his shop nor he has produced any document of his ownership possession. In para-16 of his evidence, he stated, upon being confronted with the pleadings of the plaint, that he does not know why the fact of tenancy and receiving of Rs.25,000/- towards creation of tenancy is not written in the plaint. He empathetically deposed that he had not taken Rs.25,000/- towards loan but as rent. This witness has further admitted that he had gone to Notary but states that he had not read the document because he was not well and he was told that execution of document is towards creation of tenancy due to which he did not read it. He has also admitted having signed the typed stamp document.

13. The aforesaid evidence clearly goes to show that the plaintiff is telling lie and his version that he had taken Rs.25,000/- towards loan, as pleaded in the plaint or that he had taken Rs.25,000/- as advance towards creation of tenancy, as deposed in the Court being contradictory are liable to be disbelieved. Further, plaintiff is not a rustic villager and his version that he signed stamp document in the presence of Notary without reading the same also cannot be believed. This shows that the plaintiff is not giving correct details of the transaction towards which he had initially received Rs.25000/-. In para 26 of his cross-examination, this witness further admits that he himself had purchased the stamp paper and signed in the register of stamp vendor and also signed in the register of Notary. It is highly improbable that a person, signing on a written stamp document, would sign without reading the contents of the document. There are no attending circumstance of the case that plaintiff either because of the illiteracy or in unequal bargaining condition would have succumbed to defendant pressure to sign the document as document containing recitals of an agreement of sale.

14. Ex. D-2, agreement dated 9.10.2004, on its bare perusal, is of agreement of sale in respect of disputed house by the plaintiff in favour of respondent No.1 Manju Goyal (DW1). Manju Goyal (DW1) herself has stated that she had signed the document and has proved her signature. According to her, this document was executed towards transaction of sale under which plaintiff sold the disputed shop in favour of defendant No.1 for consideration of Rs.4 lakh. There are two witnesses of the agreement (Ex.D-2). Ashok Kumar Goyal (DW3) who has proved the execution of document as one of the

witnesses by proving his signature on the document. He has also stated that towards sale of the disputed shop in favour of defendant No.1 by plaintiff, an agreement of sale was executed between the parties. This witness in his cross-examination, has stated that notarization was done in the house of Notary and on that day, Rs.25,000/- was received by Santosh from Rajmal Goyal. He has stated that at the time of notarization, his sister-in-law, Anil Agrawal and Santosh were present. He has also stated that in his presence, Santosh, Manju and thereafter Anil and he himself signed Ex.D-2.

15. Anil Agrawal (DW5), the other witness of the execution of the agreement, also supports the case of the defendant by deposing that he was witness to transaction of sale between Santosh Kumar and Manju Goyal and document was notarized in the house of Yadav Notari at Gourela where he had signed the document and along with him, Santosh, Manju and Anil also signed the document. He further deposed that before obtaining signature of Santosh and Manju, the Notary had read over the document to them whereafter first Santosh signed and thereafter Manju signed the document followed by he himself and Ashok Goyal. The fact that the contents of the document were read over and then it was signed has also been reiterated in his further cross-examination by stating that Rs.3,75,000/- was already paid and remaining 25,000/- was agreed to be paid at the time of registration of the agreement of sale. It is pertinent to mention here that the plaintiff has not denied his signature in the sale document (Ex.D-2) but his case is that he signed the document believing what was stated by others without reading the same, which has been found to be improbable and liable to be disbelieved. Therefore, in these circumstances, the finding of learned Courts below that defendant failed to prove execution of sale document, is liable to be reversed. It is accordingly held that defendant proved due execution of sale document (Ex.D-2) by not only proving the signature of seller/vendor Santosh (DW1) and Santosh and purchaser Manju but also on the strength of reliable evidence of two attesting witnesses namely Ashok Kumar Goyal (DW3) and Anil Agrawal (DW5). It is pertinent to mention here that though Ashok Goyal (DW3) is the brother in law of Manju Goyal, Anil Agrawal (DW5) is not stated to be related to either of the parties and there is no reason why his evidence should be disbelieved.

16. The plaintiff's version, as stated in the pleading of plaint being in variance with what he stated in his own evidence regarding nature of transaction under which he received money, having been disbelieved for reasons stated hereinabove and the defendant having succeeded in proving due execution of sale document (Ex.D-2), it has, therefore, to be held that the plaintiff had executed document (Ex.D-2) as agreement of sale in favour of defendant Manju. Moreover, the sale document clearly contains recital of the plaintiff having receipt of Rs.3,75,000/- which document plaintiff signed with open eyes and therefore, in the absence of there being any other circumstances creating doubt on the transaction, it has to be held that plaintiff received Rs.3,75,000/- out of total amount of Rs.4 lakh payable by the defendant to the plaintiff as sale consideration of the house with agreement that remaining Rs.25,000/- would be paid at the time of registration of sale document.
17. The learned trial Court recorded a finding that as the defendant has not come out with specific details of the dates on which total amount of Rs. 3,75,000/- was paid to him from time to time. In the considered opinion of this Court, that would not render the transaction doubtful once the due execution of sale document is proved from the evidence of witnesses and particularly when the plaintiff does not dispute the signature on the document and is giving different version of transaction under which he had received money from the defendant and further when due execution of sale document is proved from the testimony of attesting witnesses.
18. Another crucial aspect of consideration of present case which goes in favour of the defendants is the finding recorded by the trial Court on the additional issue framed by this Court. The said well reasoned finding of the trial Court based on the evidence of the parties clearly proves that the plaintiff had submitted a complaint on 26.11.2004 before the S.P. Bilaspur. Learned counsel for the respondent could not satisfy the Court with any substantial argument against such a finding of the learned trial Court. In order to hold that complaint dated 26.11.2004 (Ex.D-1) contains the signature of the plaintiff Santosh, learned trial Court has relied upon all oral evidence supported by the evidence of handwriting expert Ashok Kumar (DW7). He has submitted his report (Ex.D-3) after detailed analysis and comparison of

signature obtaining on questioned document with the sample signatures of the plaintiff submitted in the Court and also his signature in various documents already submitted in the Court and forming part of the Court record. He has been subjected to detailed cross examination and nothing could be elicited to impeach the credibility of his evidence and the report (Ex.D-3) that a complaint dated 26.11.2004 contains a signature of plaintiff Santosh and it is not a fabricated or forged document. The Court below itself examined, compared the documents and recorded a satisfaction with regard to signature of the plaintiff Santosh. Production of the said document from the official record has been duly proved by Inspector R.L. Bada (D.W.8) who has clearly deposed that a complaint (Ex.D-1) with the signature of one Santosh, submitted in the office of Superintendent of Police Bilaspur, was received in the police station concerned, wherein enquiry was made and report was sent back to the office Superintendent of Police. Therefore, the finding of the learned trial Court on additional issue is liable to be affirmed. Once it is held that complaint dated 26.11.2004 was submitted in the office of Superintendent of Police Bilaspur by plaintiff Santosh under his own signature, the recitals of this complaint assume importance because in this complaint, the plaintiff himself has admitted that it was a sale transaction between the parties which completely negates the plaintiff own version of there being loan transaction. Thus, there is concrete full proof of the fact that there was a sale transaction between the parties and not loan transaction as has been built up by the plaintiff.

19. As far as the possession part is concerned, the sale document clearly contains a recital of plaintiff having given peaceful possession of the house in dispute to the defendant No.1. A doubt has been raised on the ground that there is some variance with regard to time when possession was given to the defendant because of pleadings and evidence of another version of possession having been given after receipt of initial amount of Rs.75,000/-, in the opinion of this Court, once the bonafides of the transaction of sale between the parties is not doubted and found proved, document containing recital of plaintiff having parted with the possession, the plaintiff case that he was forcibly dispossessed by the defendant and that it is not a case of he handing over peaceful possession to the defendant is liable to be rejected.

20. An argument has been raised by learned counsel for the respondent-plaintiff that the sale document being unregistered one is not admissible in evidence is liable to be rejected. The document evidencing an agreement of sale between the parties has been led in evidence by the defendant in proof of the fact that defendant had paid Rs.3,75,000/- under a sale transaction between the parties and obtained possession and it is not a case of forcible dispossession of the plaintiff. For this collateral purpose of proving the nature of transaction between the parties, the documents would be admissible in evidence.
21. The plaintiff came out with a suit for recovery of possession under Specific Relief Act for which no decree could be granted in his favour in the absence of there being a proof of he being wrongfully dispossessed from his property and when this Court has found that there was an agreement of sale between the parties and plaintiff having received substantial amount had handed over peaceful possession of the shop in question to the defendant.
22. In view of above analysis and consideration, the impugned decree and judgment is set aside and the plaintiff suit is dismissed.
23. The appeal is accordingly allowed. Let the decree be drawn accordingly. Cost of the suit shall be payable as certified.

Sd/-
(Manindra Mohan Shrivastava)
Judge