

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 25 of 2016**

1. Smt. Hemlata Desmukh Wd/o Late C. P. Desmukh, Aged About 48 Years
2. Chitresh Deshmukh S/o Late C. P. Desmukh, Aged About 22 Years
3. Kumari Lalita Deshmukh D/o Late C. P. Desmukh, Aged About 21 Years,

All are R/o House No.357/14, Latakunj, Ward No.66, Road No.2-2-F, Pragati Nagar, Risali, Power House, District Durg (Chhattisgarh).....

Note: Name of appellant No.3 is wrongly typed in the impugned judgment as Lalish Correct Name is Lalita).....
(Defendants)

---- Petitioner

Versus

- Sukhadev Basak S/o Shri Nirmalchandra Basak, Aged About 31 Years, R/o Shikshit Nagar, Charoda, Tahsil Patan, District Durg (Chhattisgarh).....(Plaintiff)

---- Respondent

For Appellants
For Respondent

Shri R. S. Patel, Advocate
Shri Vikram Dixit, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By Prashant Kumar Mishra J.

25/07/2017

1. The present appeal is listed today for admission and on I. A. No.1 for grant of stay. However, the record of the trial Court being available, the matter is heard finally with the consent of learned counsel for the parties.
2. The respondent/plaintiff preferred a suit for recovery of amount of Rs.8,51,000/-, which he had paid by way of advance to Late C. P. Deshmukh, the husband of appellant No.1 and the father of appellant Nos.2 and 3. The amount was paid on different dates as advance pursuant to sale agreement for Khasra No.404, area 1 Acre, situated at Village Charoda, Tehsil Patan, District Durg. According to the plaintiff, the agreement was executed on 01.01.2008 with stipulation that the plaintiff shall pay Rs.18,01,001/- as sale consideration and the sale deed shall be executed by 30.06.2008. The plaintiff paid total amount of Rs.8,50,000/- in installments on different dates to Late Shri Deshmukh, which was acknowledged by the said recipient on the reverse side of the agreement dated 01.01.2008. The plaintiff requested Late Shri Deshmukh to execute the sale deed on or before 30.06.2008 and the subsequent agreement was also executed on 10.05.2008, wherein also the fact of receipt of Rs.8,50,000/- was acknowledged. By this agreement, the time allowed for execution of sale deed was extended till 31.12.2008. Late Shri Deshmukh returned a sum of Rs.1 Lakh to the plaintiff on 19.05.2008, however, the cheque was dishonored. The plaintiff

having sufficient funds for payment of the balance consideration, he again requested for execution of sale deed, however, on the excuse of non preparation of necessary documents, Late Shri Deshmukh avoided to execute the sale deed and once again the agreement was executed on 31.12.2008 extending the time till 30.06.2009. It is also mentioned in this agreement that in case of death of any of the party, the agreement shall be binding on the legal heirs. Previous agreements also formed part of the subsequent agreement dated 31.12.2008. When the plaintiff went to contact Shri Deshmukh in May 2009, he was informed that Shri Deshmukh has died. His legal heirs were informed about the agreement but the defendants denied to have any knowledge thereof, however, when the agreements were shown to the defendants, they consented to the same, but the legal heirs did not execute the sale deed. The plaintiff further pleaded that from the amount received by Late Shri Deshmukh as advance from the plaintiff, he had purchased 1 Acre land in the name of his wife, however, after the death of Shri Deshmukh, the defendant No.1 divided the area and allotted shares to other legal heirs making the execution of sale deed highly difficult and impermissible. The plaintiff therefore filed the present suit for return of the amount paid to Late Shri Deshmukh.

3. The defendants denied the plaint allegations and contested the suit on pleadings that if the plaintiff has ever paid the amount

of Rs.8,50,000/- to Late Shri Deshmukh, they are not aware of the same, therefore, it is not binding on them. They have denied that any amount was ever paid to Late Shri Deshmukh. It was also stated that khasra number or the particulars of the land, which can be identified by name or location, is not mentioned in the agreement, therefore, the entire agreement is not in accordance with law and the defendants are not liable to return any amount.

4. Based on the pleadings by the parties, the trial Court has framed 17 issues for adjudication, however, on perusal of the issues, it appears, most of the issues would hinge around execution of one or other agreements and payment of the amount by the plaintiff to Late Shri Deshmukh, therefore, for deciding the present appeal, we would proceed to dwell on two issues as to whether the agreement was executed between the parties and the amount of Rs.8,50,000/- was paid by the plaintiff to Late Shri Deshmukh.
5. While the plaintiff has examined himself and his witnesses namely PW-2 Shankarjeeti and PW-3 S. Venkatramanna and the defendant No.1 examined herself as DW-1 without examining any other independent witness in support of her case. In addition, the plaintiff has exhibited and proved the agreements dated 01.01.2008 (Ex-P-1), 10.05.2008 (Ex-P-2) and 31.12.2008 (Ex-P-3).

6. We have closely scrutinized the pleadings made by the parties; deposition and the documents exhibited by the plaintiff. The plaintiff would state in detail about the date and manner in which the amount of Rs.8,50,000/- was paid at different point of time during the validity of the sale agreement and his statement is duly corroborated and supported by the attesting witnesses, PW-2 Shankarjeeti and PW-3 S. Venkatramanna, to the agreement. These witnesses have also signed over the agreement, therefore, the execution of agreement between the parties is duly proved. The finding recorded by the trial Court on this aspect of the matter is fully borne out from the evidence available on record and there is no perversity either in the finding or in the approach while marshaling the evidence.
7. Insofar as the other issue concerning payment of Rs.8,50,000/- by the plaintiff to Late Shri Deshmukh, it would appear that on each occasion when the amounts were paid to Late Shri Deshmukh, it was endorsed on the reverse side of the agreement, which carries the signature of Late Shri Deshmukh. In course of cross examination of the plaintiff (PW-1), the defendants have not challenged or suggested to him that the acknowledgement alleged to be signed by Late Shri Deshmukh is not under his signature or that the signature is forged. Similarly, neither in her affidavit under Order 18 Rule 4 CPC nor during her cross examination, the defendant No.1 (DW-1) would state that the document is not signed by her late

husband. More importantly, there is no averment in the written statement denying the signature of Late Shri Deshmukh as a token of receipt of amount of Rs.8,50,000/-, even though this fact is pleaded in the plaint that Late Shri Deshmukh had acknowledged the receipt of amount by putting signature while accepting the amount. It appears, the defendants have never challenged the signature of Late Shri Deshmukh in the document, therefore, there is implied admission about the signature of Late Shri Deshmukh about the receipt of amount of Rs.8,50,000/- on different dates.

8. The fact of receipt of Rs.8,50,000/- by Late Shri Deshmukh is also established in view of clear assertion by the plaintiff that when he needed some funds, Late Shri Deshmukh issued cheque of Rs.1 Lakh to the plaintiff on 19.05.2008, which was dishonored but subsequently Mr. Deshmukh again paid the amount by issuing another cheque, which was honored and later on when the third agreement was executed, the plaintiff paid Rs.1 Lakh more, thus the total amount paid by the plaintiff to Late Shri Deshmukh was Rs.9,50,000/-, out of which Rs.1 Lakh was repaid by Late Shri Deshmukh to the plaintiff by a cheque. These transactions have not been denied by the defendants in their written statement or in their examination in the Court. If Late Shri Deshmukh had not received any amount from the plaintiff, there was no occasion for him to have issued two cheques, one after another, out of which one was honored.

9. Considering the entire evidence available on record, we have found that the fact of payment of Rs.8,50,000/- by the plaintiff to Late Shri Deshmukh is fully proved and the defendants being the legal heirs of Late Shri Deshmukh are liable to return the amount, because the amount was paid by way of advance for execution of sale deed, which never happened.
10. In view of the above discussion, we do not find any merit in the appeal, it deserves to be and is hereby dismissed.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Arvind Singh Chandel

Nirala