

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 121 of 2004**

Prabhuram S/o Roopram Sahu, aged 55 years, R/o Village Nipani,
Tahsil & Police Station Gurur, District Durg (CG)

---- Appellant

Versus

1. Umesh Kumar S/o Gajrooram Caste Kalar, aged 35 years, R/o Village Sohpur, Tahsil Gurur, District Durg (CG), At present residing at Nagadabri Post Nipani, P.S.& Tahsil Balod, District Durg (CG)
2. Rameshar S/o Roopram Sahu, aged 53 years,
3. Devlal S/o Roopram Sahu, aged 51 years,
4. Laxminarayan D/o Roopram Sahu, aged 28 years,
5. Sukhbatl Widow Roopram Sahu, aged 75 years,
Respondent / Defendant No.2 to 5, all agriculturist, R/o village Nipani,
Tahsil & Police Station Durg, District Durg (CG)
6. State of Chhattisgarh Through Collector Durg, Durg (CG)

---- Respondents

For Appellant	:	Shri Atul Pandey, Advocate.
For Respondent 1	:	Shri H.B. Agrawal, Sr. Advocate with Ms. Priti Yadav, Advocate
For State/ respondent 6	:	Shri Vijay Bahadur Singh, P.L.
For Other respondents	:	None.

SB: Hon'ble Shri Justice Ram Prasanna Sharma**JUDGMENT ON BOARD****31.01.2019**

1. This First Appeal under Section 96 of the Code of Civil Procedure, 1908 has been filed by the appellant against the judgment and decree passed by the Additional District Judge, Balod, Civil District Durg(CG) on 27.2.2004 in Civil Suit No. 10A/2001, wherein the said Court has decreed the suit of respondent No.1- Umesh Kumar regarding return of earnest money advanced by him to the appellant in connection with agreement to sale for land bearing Survey No.37/2 area 1.40 hectares situated at village Sohpur.

2. Facts of the case are that respondent No.1 filed a civil suit against the present appellant for specific performance of contract for the land mentioned above and in alternate for returning the advance sum of Rs.46,800/- in case sale deed is not executed.
3. Learned counsel for the appellant submits that he received only sum of Rs.500/- in advance and did not receive Rs.46,800/- as concluded by the trial Court, therefore, respondent No.1 was not entitled to get Rs.46,800/- from him. The trial Court has not evaluated the evidence in its true perspective, therefore, finding of the trial Court is liable to be reversed.
4. On the other hand, learned counsel for the respondents supported the judgment and decree passed by the trial Court.
5. I have heard learned counsel for the parties at length and perused the record.
6. Now, the core issue for consideration of this Court is whether a sum of Rs.46,800/- was paid in advance or Rs.500/- ?
7. The case of respondent No.1 is based on written agreement to sale which is Ex. P/1. In the said document, it is mentioned that Rs.46,800/- is paid to the appellant in advance. Attesting witnesses Kulanjan Ram Sahu (AW2) and Gautam Chand (AW4) have clearly deposed before the trial Court that Rs.46,800/- was paid in advance. Respondent No.1 Umesh Kumar (AW1) deposed on same line. Devlal Chandrakar (AW3) also deposed on same line. In rebuttal the appellant examined himself as DW1 and one Bhagiram as DW2 who deposed that Rs.500/- was paid in advance. Name of Bhagiram is not mentioned in the document Ex. P/1 which is reduced in writing on 16th

August, 1999. Version of Prabhuram (DW1) is not acceptable looking to the written document Ex. P/1 and statements of AW1 to AW4 who were subjected to searching cross examination but remained unshaken.

8. After evaluating the entire oral and documentary evidence, the trial Court opined that the execution of the sale deed is not possible because the land in question is not the sole property of respondent No.1, but it is undivided property of joint family and the amount paid in advance should be returned to respondent No.1. The finding of the trial Court is based on proper marshalling of evidence and same is not based on irrelevant or extraneous material, therefore, this Court has no reason to substitute a contrary finding. The appeal being devoid of merits is liable to be dismissed.
9. Accordingly, the decree is passed in favour of respondent No.1 and against the appellant as under:
 - (1) The appeal is dismissed with cost.
 - (2) Appellant to bear the cost of respondent No.1 throughout.
 - (3) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (4) A decree be drawn up accordingly.

Sd/

(Ram Prasanna Sharma)
JUDGE