

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 165 of 2006****Reserved on : 06.03.2019****Delivered on : 29.03.2019**

1. Jhanaklal, S/o Ramchand Sahu, aged about 42 years, R/o Village- Khaparikala, Tahsil & District- Rajnandgaon (C.G.)
2. Smt. Rajbati, W/o Ramchandra Sahu, aged about 70 years, R/o Village- Khaparikala, Tahsil & District- Rajnandgaon (C.G.)

---- Appellants**Versus**

Madan Jain, S/o Late Shivraj Ji Jain, aged about 36 years, R/o 97 Vardhman Nagar, Rajnandgaon, Tahsil & District- Rajnandgaon (C.G.)

---- Respondent

For Appellants	:	Mr. Hemant Kumar Agrawal, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 31.12.2005 passed by First Additional District Judge, Rajnandgaon (C.G.) in Civil Suit No. 39-A/2004, wherein the said court decreed the suit filed by the respondent/ plaintiff against the appellants/ defendants for specific performance of contract for land bearing survey No. 498/3 area admeasuring 4.14 acres situated at Village- Khaparikala, Patwari Halka No. 20, Tahsil & District- Rajnandgaon (C.G.)

2. In the present case, the appellants/ defendants are owner of the land in question and the respondent is a moneylender by profession who gave some loan to the appellants. On 01.08.2003, an agreement to sale was executed in stamp paper between both sides that the appellants will execute sale deed by 01.03.2004 in favour of the respondent for a cash consideration of Rs. 60,000/-, but the sale deed was not executed that is why suit was filed which was decreed as mentioned above.
3. Learned counsel for the appellants submits as under:-
 - (i) The appellants were not provided proper opportunity for filing written statement and to lead evidence in support of their case.
 - (ii) The agreement to sale is written on the basis of fraud, therefore, finding of the trial court is not proper.
4. Learned counsel for the appellants placed reliance in the matter of **Azhar Hasan & others Vs. Distt. Judge, Saharanpur & others** reported in **(1998) 3 SCC 246**, **Marine Container Services South Pvt. Ltd. Vs. Go Go Garments** reported in **(1998) 3 SCC 247** and **Balraj Taneja & another Vs. Sunil Madan & another** reported in **AIR 1999 SC 3381**.
5. In the present case, the appellants have not filed written statement and not adduced any evidence in rebuttal of evidence adduced by the respondent. From statement of respondent (PW-1), it is established that the parties have entered into an agreement to sale in question and Rs. 30,000/- was paid as advance money on 01.08.2003 and rest

of the amount was to be paid on the date of execution of sale deed. Version of this witness is supported by document (Ex.P/1) which is agreement to sale and it is proved by respondent (PW-1) and Ratan Kumar Jain (PW-2) which is not rebutted by the appellants side.

6. When oral and documentary evidence adduced by the respondent is not rebutted, the trial court answered the issues in favour of the respondent and this Court has no reason to record contrary finding. The appellants are under obligation to execute sale deed as per the agreement executed by them, therefore, the decree passed by the trial court is not liable to be interfered with and the case laws cited above are clearly distinguishable in the facts and circumstances of the present case
7. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellants and in favour of the respondent on the following terms and conditions:-
 - (i) The appeal is dismissed with cost.
 - (ii) Parties to bear their own cost.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge