

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment reserved on 20--02-2019**

**Judgment delivered on 08-03-2019**

**FIRST APPEAL NO. 93 of 2001**

Dhani Ram Sahu s/o. C.R. Sahu aged 42 years, r/o. Village Pouni via Bilaigarh, Tah Baloda Bazar, District Raipur (CG).

**---- Appellant.**

**Versus**

1. Rajendra Agrawal age 35 years.
2. Bajrang Lal, age 24 years.  
Both sons of Prabhudayal and r/o. Ramkumar Vaidh Market, Sarafa Line, Sadar Bazar, Raipur.
3. Murlidjar Bhansali.
4. Dharamdas Bhansali,  
Both sons of Deumal Bhansali r/o. Badhaipara, Raipur (CG).
5. Raipur Development Authority, Raipur (CG) deleted.  
Municipal Corporation Raipur through Commissioner, Municipal Corporation Raipur, CG.

**---- Respondents.**

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|---------------------------|---|-----------------------------------------------------------------------------------------|
| For appellant             | : | Dr. (Shri) Nirmal Kumar Shukla,<br>Sr. Advocate with Shri Ashwin<br>Panickar, Advocate. |
| For respondents No.1&2    | : | Shri M.L. Sakat, Advocate<br>appears on behalf of Shri B.P.<br>Sharma, Advocate.        |
| For respondent No. 3 to 5 | : | Shri S.S. Baghel, Advocate<br>appears on behalf of Shri B.D.<br>Guru, Advocate.         |

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**SB: Hon'ble Shri Justice Ram Prasanna Sharma**

**CAV JUDGMENT**

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 11-5-2001 passed by 3rd Additional District Judge, Raipur (CG) in Civil Suit No.21-A/2000 wherein the said court dismissed the suit filed by the appellant/plaintiff for cancellation of sale deed dated 3-5-1988 for land area 3630 sq.ft situated at Devendra Nagar, Plot No. 109, Sector -4, C-12, Raipur).

2) As per version of the appellant/plaintiff, he purchased the land from Raipur Development Authority vide registered sale deed dated 18-6-1986 which falls in Residential Scheme No.32 and constructed a house which was of country tiles roof and executed sale deed in favour of respondents No. 1 and 2 for the said property on 3-5-1988. Though there is a recital of the effect that the entire consideration of Rs. 82,000/- was paid by the respondents No. 1 and 2, but in fact only Rs.40,000/- was received by the appellant through cheque and rest of the amount of Rs.42,000/- was never paid to him that is why he filed suit for cancellation of sale deed which was dismissed as mentioned above.

3) Learned counsel for the appellant would submit as under:

i) The trial Court committed error in holding that the

property in question is mutated in the names of respondents No. 3 and 4 as they are purchasers of respondents No. 1 and 2, therefore, sale deed executed after receiving full consideration.

ii) The trial Court has not evaluated the evidence adduced by the appellant in its right perspective.

iii) The appellant proved fraud against him, but the trial Court did not accept the same, therefore,

finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the respondents would submit as under:

i) Full consideration was paid on the date of registration and same is mentioned in the sale deed and no oral evidence is admissible against documentary evidence.

ii) As Sections 91 and 92 of the Evidence Act, 1872 bars oral evidence against documentary evidence, therefore, finding of the trial Court is not liable to be interfered with.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) The sale deed in question is Ex.D/2 in which it is clearly mentioned that Rs.82,000/- was received by the appellant and there is no outstanding. This document is proved by the statement

of Dharam Das (DW/2). The appellant entered into witness box as PW/1 and adduced evidence of one Sudama Prasad (PW/2), appellant deposed that Rs.42,000/- was remained to be paid, but version of this witness is not acceptable because there is no such document in record that any sum was outstanding towards sale deed. When sale deed is reduced in writing, the oral evidence is not permissible unless same is rebutted by any written document. No written document was executed for any balance sum , therefore, version of the appellant is not acceptable.

7) The trial Court has elaborately discussed the entire evidence and recorded finding that property in question was sold after getting full consideration by the appellant from respondents No. 1 and 2. Respondents No. 1 and 2 sold the said property to respondents No. 3 and 4 and they are bona fide purchasers and sale deed is binding on the appellant which cannot be cancelled in absence of admissible documentary evidence. Finding of the trial court is based on factual matrix and legal aspect of the matter which is not liable to be interfered with while invoking jurisdiction of the appeal. The appeal is liable to be dismissed.

8) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondents and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of respondents through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

**(Ram Prasanna Sharma)**  
JUDGE

Raju