

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment reserved on 03-04-2019**

**Judgment delivered on 02-05-2019**

**First Appeal No.64 of 2019**

1. Dharam Das, aged about 33 years, s/o. Shri Ishwari Prasad.
  2. Rakesh Khutel, aged about 29 years, s/o. Shri Ishwari Prasad.
  3. Ishwari Prasad Khutel, aged about 56 years s/o. Late Rajulal.
- All residents of village Hanaud, Tahsil and Dist. Durg (CG).

**---- Appellants/plaintiffs**

**Versus**

1. Dularwa Satnami (Since Dead Through His Legal Heirs)
  - 1.A Jeevan Satnami S/o Late Dularwa Satnami Aged About 54 Years R/o Village - Devsara, Tahsil - Gunderdehi, District Durg Chhattisgarh.,
  - 1-B Vedram Satnami S/o Late Dularwa Satnami Aged About 46 Years R/o Village And Post - Hanaud, Tahsil And District Durg Chhattisgarh.
  - 1.C - Smt. Hirabai D/o Late Dularwa Satnami Aged About 56 Years R/o Village And Post - Hanaud, Tahsil And District Durg Chhattisgarh.
  - 1.D - Smt. Devkumari D/o Late Dularwa Satnami Aged About 36 Years R/o Village And Post - Hanaud, Tahsil And District Durg Chhattisgarh. (Defendants),
2. Ramkhilawan S/o Veersingh Satnami Aged About 52 Years R/o Village Hanaud, Tahsil and District Durg Chhattisgarh.
3. State of Chhattisgarh Through Collector, Durg, District Durg Chhattisgarh.

**-Respondents/defendants.**

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| For Appellants             | : Mr. Anchal Kumar Matre, Advocate. |
| For respondents            | : Mr.Avinash Chand Sahu, Advocate.  |
| No.1-A, 1-B, 1-C & 1-D & 2 |                                     |
| For respondent No.3        | :Mr. Shubha Shrivastava, PL.        |

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

1. This appeal is preferred against judgment and decree dated 26-09-2018 passed by the First Additional District Judge, Durg (CG) in Civil Suit No.1236214/2012 wherein the said Court ordered for refund of advance sum to the tune of Rs.83,000/- and denied the decree for specific performance of contract regarding land bearing survey No. 161 admeasuring area 0.25 hectares and Khasra No.162 admeasuring area 0.24 hectares situated at village Hanaud, Patwari Halka No. 28/39, Tahsil and District Durg.

2. As per version of appellants/plaintiffs, there was an oral proposal of sale of land in question on 17-4-2002 to the appellant No.3 namely Ishwari Prasad Khutel by respondents No. -1-A and 1-B namely Jeevan Satnami and Vedram Satnami and on the basis of oral proposal Rs.500/- was paid as advance sum and thereafter total sum of Rs.83,000/- was paid as consideration amount for land in question, but the sale deed was not executed, therefore, suit was filed but the trial court did not grant decree for specific performance of contract.

3. Learned counsel for the appellants submits as under:

- (i) On the basis of oral transaction land was handed over in possession of the appellant on 17-4-2002 but the sale deed was not executed for about ten years which

shows unwillingness of the respondents in registration of the sale deed.

- (ii) Brother of respondents Jeevan and Vedram namely Alkhu also agreed to sell property, therefore, finding of the trial court is bad-in-law.
- (iii) The respondents have not adduced any evidence in rebuttal, therefore, case of the appellants is proved and decree ought to have been passed in their favour, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondents would submit that the finding arrived at by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the court below in which judgment/decreed has been passed.

6. The case of the appellants/plaintiffs is based on oral agreement entered into between the parties on 17-4-2002 and the suit was filed on 16-8-2012 i.e., after ten years of the said oral agreement. It is alleged that one Alkhu was also recorded as owner of the property in question as per Exs. P/2, P/3 and P/4, but the said Alkhu was not examined before the trial Court and did not

support the claim of the appellants. Both sides adduced evidence in rebuttal of averments of other side, but the fact remains that one person namely Alkhu who was joint owner of the property is not supporting the claim of the appellants and he did not enter into witness box before the trial Court, therefore, the trial Court was not in a position to grant decree against Alkhu who was not party to the suit.

7. In absence of written agreement , the term of agreement is not clear as to on what date sale deed was to be executed and on what date respondents refused to execute sale deed, therefore, the trial court was right in holding that it is not a case where discretionary relief of specific performance should be granted in favour of the appellants/plaintiffs. The trial Court ordered for refund of earnest money which cannot be termed as improper. As the agreement is not in writing, protection under Section 53-A of the Transfer of Property Act 1882 is not available to the appellants in view of amendment in Section 17 of the Registration Act, 1908. Finding of the trial court is based on proper marshalling of the evidence and in view of this court the same is not liable to be interfered with while invoking jurisdiction of the appeal. The appeal is liable to be dismissed as argument advanced on behalf of the appellants is not sustainable.

8. Accordingly, the decree is passed in favour of the respondents and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

**(Ram Prasanna Sharma)**  
JUDGE

Raju