

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 9-8-2019

Judgment delivered on 30-08-2019

FA No. 99 of 2007

- Deepchand aged about 60 years, son of late Shri Nemichand Lalwani, resident of Sadar Bazar, Rajnandgaon, District. Rajnandgaon (CG).

---- Appellant/plaintiff .

Versus

1. Khileshwar aged about 39 (58) years son of late Shri Chandrika Lal Chandrakar, agriculturist and resident of village and post Bharregaon, District Rajnandgaon (Cg).
2. State Of C.G. Through, The Collector, Rajnandgaon, C.G.

---- Respondents/defendant.

For appellant : Mr. Shashi Bhushan Tiwari, Advocate.

For respondent No.1 ; None

For respondent No.2/ : Mr. Aman Kesharwani, Panel Lawyer
State

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 13-4-2007 passed by the First Additional District Judge, Rajnandgaon (CG) in Civil Suit No. 17-A/2005 wherein the said court dismissed the suit filed by the plaintiff/plaintiff for specific performance of contract and possession of the land bearing Khasra No.216 area 0.52 dismal, Khasra No. 218 area 0.22 dismal, Khasra No. 219 area 0.23 dismal

and Khasra No.217 area 0.54 dismal, total area 1.51 acres situated at village Bharregaon, Patwari Halka No.31, Revenue Circle Rajnandgaon, Tahsil and District Rajnandgaon (CG).

2. Appellant/plaintiff instituted a civil suit for specific performance of contract of land as mentioned above. The parties agreed to sell/purchase the land @ Rs.50,000/- per acre and total consideration amount was to Rs.75,500/- . Rs.13,000/- was paid as earnest money. Rs.10,000/- and Rs.10,400/- were paid subsequently on different dates. The sale deed was not executed by the respondent that is why suit was filed, but same was dismissed by the trial court contrary to factual matrix and legal aspect of the matter.

3. Learned counsel for the appellant submits as under.

- i) Appellant has proved agreement (ExP/1) and transaction between the parties, but the trial court has not acted upon the agreement which is improper.
- ii) Though Rs.29,000/- was refunded by the respondent, the appellant was ready to return the same and further to pay the balance amount, but that was not considered by the trial Court.
- iii) The trial Court has misinterpreted the application for compromise filed on 7-5-

2005.

- iv) The appellant was entitled for alternative relief of refund of amount rs.46,000/- but that is not awarded by the trial court, therefore, finding of the trial court is liable to be set aside.

4. I have heard learned counsel for the appellant and perused the record of court below including the judgment and decree.

5. The first question for consideration of this court is whether parties have entered into agreement for sale of land in question. Witness of appellant namely Dinesh deposed before the trial court that respondent came to him for taking loan of Rs.10,000/- and he took Rs.10,000/- from appellant and kept his land record appellant him on 7-4-2001. The other witness of the appellant namely Sunil deposed before the trial court that Rs.13,000/- was given by the appellant to respondent No.1. Version of both the witnesses is different on payment of amount by the appellant. One witness deposed that Rs.13,000/- was paid by the appellant while other witness is deposing that Rs.10,000/- was given by the appellant. Witness of respondent No.1 namely Lajjaram deposed before the trial court that Rs.25,000/- was given to the appellant by the respondent for

settling the case after compromise on 7-5-2005 and again on 14-5-2005 Rs.4,000/- was paid to the appellant by the respondent in all Rs.29,000/- was paid. One compromise application dated 7-5-2005 was presented before the court in which it is written that case should be dismissed in consequence of compromise. When parties have entered into compromise and it is stated in compromise application that after getting Rs.29,000/- no further relief is required to the appellant, nothing remains to be executed by either side.

6. Looking to the entire evidence, the trial court opined that it is a case of loan transaction and money was returned to appellant, therefore, no decree for specific performance of contract can be passed and as per term of compromise, no amount is now refundable to the appellant. After re-assessing the evidence, this court has no reason to record a contrary finding. Argument advanced on behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

7. Accordingly, the decree is passed against the appellant and in favour of the respondent No.1 as under:

- i) The appeal is dismissed with cost.
- ii) Appellant to bear the cost of respondent No.1 through out.
- iii) Pleader's fee, if certified, as per schedule or

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whichever is less.

iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju