

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 23.01.2019****Judgment delivered on 14.02.2019****First Appeal No.176 of 2004**

1. Ahmad Hasan S/o. Umend Hasan, aged about 50 years,
 2. Mustafa Hussain, S/o. Umend Hasan, aged about 48 years,
 3. Abdul Sajaque S/o. Umend Hasan, aged about 45 years,
- All are R/o. Talapara, near Bal Mukund School, Bilaspur Tah & District Bilaspur (CG)

---- Appellants**Versus**

Kamal Kumar Saraf S/o. Narmada Prasad Saraf, aged about 42 years, by caste Agrawal, R/o. Link Road, Near CMD College Chowk, Bilaspur, Tah. & Distt. Bilaspur (CG)

---Respondent

For Appellants	: Shri Malay Bhaduri, Advocate
For respondent	: None present.

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

1. This appeal is preferred against judgment and decree dated 18.8.2004 passed by Forth Additional District Judge, Bilaspur (CG) in a Civil Suit No.9B/2004 wherein the said Court decreed the suit for Rs.1,17,400/- with interest in favour of the respondent /plaintiff and against the appellants/defendants.

2. The respondent/plaintiff filed civil suit before the trial Court for recovery of amount against the appellants/defendants inter alia on the ground that both the parties have entered into the agreement for purchase of suit land bearing Survey No.156/1 area

22500 sq.ft. situated at village Talapara, Bilaspur Patwari Halka No.22 Block Bilha for a case consideration of Rs.7,87,500. An amount of Rs.4,15,000/- was given to the appellants as advance amount of sale transaction. Some reasons agreement dated 16.5.1997 could not be performed. Thereafter the appellants returned Rs.3,00,000/- to the respondent and rest of the amount Rs.1,15,000/- was not returned that is why the suit was filed and the same was decreed.

3. Learned counsel for the appellants submits as under:

(i) Witnesses of the agreement to the sale (Ex-P/1) have not supported the said agreement and document (Ex-P/2) was executed under undue influence, therefore, the same is not binding on the appellants.

(ii) Yasin Hasan who paid the amount on 21.02.2002 has not been examined in the present case, therefore finding arrived at by the trial Court is not sustainable.

4. The first question for consideration before this Court is whether the appellants/defendants received Rs.4,15,000/- from the respondent/plaintiff or they received Rs.3,00,000/-.

5. From the documents filed before the trial Court (ExP/1 & P/2) it is established that the appellants received Rs.4,15,000/- from the respondent/plaintiff.

6. Admittedly Rs.3,00,000/- was returned to the appellants and as per the finding of the trial Court Yasim Hasan returned Rs.28,250/- to the respondent on 21.02.2002. This finding is not challenged by the respondent and the same attains finality.

7. Looking to the evidence, the amount of Rs.3,28,750/- was returned to the respondent and balance amount to be recovered from the appellants was Rs.86,250/-. Case of the appellants is based on oral evidence but the fact remains that oral evidence is not sufficient to rebutt the documentary evidence which is proved by the respondent before the trial Court. Therefore, arguments advanced on behalf of the appellants is not sustainable. The trial Court awarded decree for Rs.86,250/- which is the balance amount and awarded interest of 12% from the date of agreement to the date before the filing of the suit and awarded interest of 9% from the date of filing of the suit till realization. Interest awarded by the trial Court cannot be termed as excessive, therefore, interest part is not liable to be interfered with.

8. Accordingly, the appeal is liable to be dismissed and the decree is passed in favour of the respondent and against the appellants as under:

- (1) The appeal is dismissed with cost.
- (2) The appellants to bear the cost of the suit throughout.
- (3) Pleader's 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