

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 8 of 2016**

- Ashok Bajaj S/o Shri Aalmchand Bajaj, Aged About 38 Years R/o Janjgir, Tahsil- Janjgir, District Janjgir-Champa, Chhattisgarh

---- Appellant**Versus**

- Pratik Agarwal S/o Shri Sajan Agarwal, Aged About 28 Years Resources Pvt. Ltd. Through Sajan Agarwal S/o Rudmal Agarwal, R/o Korba Road-Champa, Tahsil- Champa, District- Janjgir-Champa, Chhattisgarh
- Pravir Agarwal S/o Shri Sajan Agarwal, Aged About 26 Years Resources Pvt. Ltd. Through Sajan Agarwal S/o Rudmal Agarwal, R/o Korba Road-Champa, Tahsil- Champa, District- Janjgir-Champa, Chhattisgarh

---- Respondents

For Appellant : Shri Laxmikumar Gahwai, Advocate

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board**Per Manindra Mohan Shrivastava, J.****16/08/2019**

This appeal is directed against impugned judgment and decree dated 16/09/2015 passed in Civil Suit No.6B/15 by the First Additional District Judge, Janjgir-Champa (CG) whereby the respondents / plaintiffs' suit has been decreed and plaintiffs have been held entitled for recovery of Rs.11 lakhs along with interest @ 18%.

2. The respondents / plaintiffs filed a suit seeking a relief of recovery of Rs.11 lakhs on the pleadings *inter alia* that the defendant entered into an agreement to get the sale deed in respect of the disputed properties executed in his favour. However,

later on, the defendant could not get those sale deeds executed except in respect of lands comprised in khasra no.1962/2 admeasuring 0.16 acres and khasra no.1965/2 admeasuring 0.44 acres. According to the plaintiffs, the sale deed was executed in favour of plaintiffs in respect of only two parcel of land towards which, Rs.2 lakhs were paid. The plaintiffs' case was that as the defendant had agreed to get the sale deed executed in favour of the plaintiffs in respect of the other land from the owners of the said land, which the defendant failed to do, plaintiffs were entitled to return of Rs.11 lakhs which were paid by him to the defendant.

3. The defendant / appellant without disputing that the title of the property in dispute was with respective owners and when the defendant had entered into agreement to get the sale deed executed in favour of the plaintiff vide Ex.P/1 on 30/06/2009, came out with a case that the plaintiff could not arrange for balance amount and to get the sale deed executed in respect of the lands described in para 3 of the plaint except the land situated in khasra no.1962/2 and khasra no.1965/2.

4. Learned Trial Court, after framing issues and allowing the parties to lead oral and documentary evidence, recorded a finding that the agreement dated 30/06/2009 was not enforceable in law as it was in respect of the property of which, the defendant admittedly was not the owner. Learned Trial Court, however, in view of the admitted position that the plaintiffs had paid Rs.11 lakhs to the defendant, directed return of the said money along with interest.

5. Learned counsel for the appellant would argue that the plaintiffs were not entitled to any amount because the amount of Rs.11 lakhs was paid under an agreement and it was for the plaintiffs to get all the sale deeds executed within the time stipulated. He would argue that if that property did not belong to the defendant, as the defendant cannot be held liable for failure of the plaintiffs to get the sale deed executed in respect of all the land except the land situated in khasra no.1962/2 and

khasra no.1965/2, the plaintiffs were not entitled to any repayment from the defendant and the entire money being an advance, could not be claimed by the plaintiffs.

6. Having heard learned counsel for the appellant, we find that the impugned judgment and decree passed by the learned Trial Court does not warrant any interference.

7. After going through the plaint allegations as contained in paragraphs 3, 4, 5, 6, 7 and 8, it is amply clear that the defendant was not the owner of the property but he was only acting as a middle man arranging for sale of certain property of which, he was not the owner. In the written statement, this factual position was not disputed. That means that the property did not belong to the defendant. If that be so, we find no fault with the judgment of the Trial Court that the so called agreement of sale dated 22/06/2009 itself was not enforceable in law. However, as the defendant admitted that he had received Rs.11 lakhs from the plaintiffs, the said amount, deducting Rs.2 lakhs which was part payment towards execution of sale deed of land comprised in khasra no.1962/2 and khasra no.1965/2, was liable to be returned to the plaintiffs. The amount having undisputedly being received by the defendant, is liable to be returned to the plaintiffs.

8. In the result, the appeal is partly allowed. The impugned judgment and decree is modified to the extent that the appellant is liable to repay Rs.9 lakhs to the plaintiffs along with interest as directed by the learned Trial Court.

Parties to bear their respective costs. Let appellate decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge