

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No.01 of 2007****Reserved on.17.08.2020****Pronounced on.24.08.2020**

Amal Kumar, aged about 40 years, S/o Shri Madhusudhan Vaisnav, R/o Kastakar Village Bharsaili (Raitwari), P.H.N. 7, R.Ni. Ma. Tahsil Baloda Bazar, District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Basant @ Deshpal Sahu, aged about 42 years, R/o Village Baloda Bazar, Police Station & Tahsil Baloda Bazar, District Raipur, Chhattisgarh.
2. Vimal Kumar, S/o Madhusudhan, aged about 45 years, R/o Kastakar Village Bharsaili (Raitwari), P.H.N. 7, R.Ni. Ma Tahsil Baloda Bazar, District Raipur, Chhattisgarh.
3. State of Chhattisgarh through: the Collector, District Raipur (C.G.)

---- Respondents

For Appellant:	: Shri B.P. Gupta, Advocate.
For Respondent No.1:	: None, though served.
For Respondent No.2:	: Shri Ram Kumar Tiwari, Advocate.
For the State/Respondent No.3:	: Shri Vimlesh Bajpai, G.A.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J
CAV Judgment/order

1. This appeal has been preferred by defendant No. 1/Aman Kumar, under Section 96 of the Code of Civil Procedure, 1908 questioning the legality and propriety of the judgment and decree dated 01.09.2006 passed by First Additional District Judge, Baloda Bazar District Raipur, Chhattisgarh in Civil Suit No. 13-A/2006, whereby the trial Court in a suit for specific performance of contract has granted a decree for the refund of earnest amount of Rs.80,000/- (Rupees Eighty Thousand Only) with 6% interest per annum from the date of passing of order till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that the plaintiff Basant Deshpal instituted a suit claiming a decree for the specific performance of contract by alleging *inter alia* that an agreement to sale dated 04.12.2003 was executed in his favour by Defendant No. 1 (Amal Kumar), whereby he had agreed to alienate the property in question bearing Khasra no.114/1, admeasuring 0.692 hectares situated at Village Bharsaili, Tahsil Baloda Bazar, District Raipur, which he obtained in partition from his bother, for a sale consideration of Rs.1,00,000/- (Rupees One Lakh Only) upon receiving an earnest amount of Rs. 80,000/-. According to the plaintiff, the sale deed was required to be executed by 04.03.2004 and the rest of the sale consideration was to be paid at the time of the registration. It is pleaded further that despite several requests being made, the said defendant was just avoiding to execute the same on one pretext or the other and instead trying to alienate the same to different persons. Therefore, a legal notice dated 15.03.2004 was issued to him demanding for execution of the sale, who failed to act upon the terms and conditions as stipulated in the alleged agreement, giving rise to the institution of the suit in the instant nature.
3. Upon service of summons of the suit, defendant No. 1 appeared alone, but his right for filing the written statement was closed on 21.03.2005, and who has also not produced any evidence and closed the same on 02.08.2006.
4. The trial Court after considering the evidence led by the plaintiff, has observed that the plaintiff was not ready and willing to get the sale deed executed in his favour and observed further that since the alleged amount of Rs.80,000/- was paid by him, therefore, he is entitled to

obtain the decree for its refund. In consequence, a decree for refund of the said earnest amount of Rs. 80,000/- has been awarded along with the interest at the rate of 6% per annum from the date of passing of the order till the date of actual payment, which has been impugned by way of this appeal.

5. Shri B.P. Gupta, learned counsel appearing for the Appellant, submits that the finding of the Court below holding that the plaintiff has paid the earnest amount of Rs. 80,000/- to defendant No. 1, even in absence of any receipt being filed and/or endorsement made in the alleged agreement, is apparently contrary to law. While inviting attention to the variation as made in the pleading of the plaintiff and of his evidence regarding the payment of earnest amount submits that the plaintiff has failed to specify the payment of the said earnest amount. However, without considering the evidence in its proper manner, the trial Court has committed an illegality in granting a decree for the refund of earnest amount along with its interest.
6. I have heard learned counsel for the Appellant and perused the entire record carefully.
7. A suit for specific performance of contract has been made by the plaintiff on the basis of an agreement to sale, dated 04.12.2003 (Ex. P-7), said to have been executed by defendant no. 1/Amal Kumar, with regard to the property in question for a sale consideration of Rs.1,00,000/-, upon receiving the earnest amount of Rs.80,000/-. According to the plaintiff, the said defendant has failed to execute the registered deed of sale in his favour despite several requests being made by him and based upon this premises, a suit was filed. The trial

Court after considering the evidence led by him held that he was not ready and willing to get the sale deed executed in his favour and in absence of any appeal or cross appeal being filed, the said finding has attained its finality and, thus, not required to be disturbed. In so far as the decree for refund of earnest money is concerned, that alone is required to be determined in this appeal.

8. In order to establish the fact that the earnest amount of Rs.80,000/- was made under the alleged agreement to sale was upon the plaintiff. It is required to be established by him that at the time of execution of alleged agreement to sale, it was paid to him (Amal Kumar). However, a bare perusal of his statement, who was examined as PW-1, it appears that he failed to state that it was paid in front of the attesting witness of the alleged agreement to sale. What is deposed by him is that the said amount was paid at his shop which, however, appears to be contrary to his own pleading.
9. That apart, Ganesh Ram (PW-3), who was the attesting witness of the alleged agreement to sale was, however, not aware that how much amount was paid by Basant (Plaintiff) to the said defendant/Amal Kumar, as reflected from para 3 of his statement. What has been deposed further by him at para 4 that if any amount had been paid at the time of execution of the alleged agreement to sale (Ex. P-1) then it would have been in his knowledge. Thus, this witness does not support the plaintiff's case regarding the payment of alleged earnest amount. That apart neither the receipt was submitted by the plaintiff in order to show that the payment of said earnest amount was paid by him, nor any endorsement as such was made in the alleged agreement (Ex. P-

1), so as to arrive at a conclusion that the alleged earnest money, as alleged by the plaintiff, was paid by him. In any case, in absence of any cogent and reliable evidence led by the Plaintiff, it cannot be held merely upon his bald statement that he paid the said earnest amount to defendant No. 1 (Amal Kumar). Consequently, the finding as recorded by the trial Court in this regard deserves to be and is hereby set aside.

10. In view of above, the appeal is allowed and the judgment and decree dated 01.09.2006 passed by First Additional District Judge, Baloda Bazar in Civil Suit No. 13-A/2006, is hereby quashed. No order as to costs.
11. A decree be drawn accordingly.

Sd/-

(Sanjay S.Agrawal)
JUDGE