

(2019) 08 CHH CK 0218

Chhattisgarh High Court

Case No: First Appeal No. 99 Of 2007

Deepchand

APPELLANT

Vs

Khileshwar And Ors

RESPONDENT

Date of Decision: Aug. 30, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Shashi Bhushan Tiwari, Aman Kesharwani

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree 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 Bharregao, 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 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 Laijaram 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 whichever is less.
- iv) A decree be drawn up accordingly.