

**(2018) 09 CHH CK 0101**

**Chhattisgarh High Court**

**Case No:** First Appeal No. 10 Of 2004

Vishaka Awadhiya And Ors

APPELLANT

Vs

Onkar Prasad Awadhiya

RESPONDENT

**Date of Decision:** Sept. 6, 2018

**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 96

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** B.P. Sharma, Prachi Agrawal, Sachin Nidhi

**Final Decision:** Dismissed

### **Judgement**

Ram Prasanna Sharma, J

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 21.11.2003 passed by 9 th

Additional District Judge (FTC), Raipur (C.G.) in Civil Suit No. 18-B/2003, wherein the said court decreed the suit of the respondent for repayment of

Rs. 90,000/-.

2. The respondent filed a suit against the original appellant (Late Baijnath Prasad Awadhiya) alleging that Rs. 90,000/- was given to him as loan for

construction of house. Loan was to be repaid upto March, 2001, but it was not repaid and notice was served on him for repayment.

3. As per case of the appellants, one land bearing Khasra No. 1180 area 2.90 hectares was sold to one Banaram Israni for a cash consideration of

Rs. 1,50,000/- and from that amount Rs. 90,000/- was paid to Baijnath Prasad Awadhiya as per promise of the respondent and the amount is not loan.

4. The core issue for consideration of this court is whether the amount was loan or it was given out of sale consideration of land as mentioned above.

5. Getting amount of Rs. 90,000/- from respondent is admitted. Story put-forth by the original appellant before the trial court regarding amount of sale

consideration for land is not mentioned in his written statement. Again there is no evidence that any document regarding sale was executed for cash

consideration of Rs. 1,50,000/- for the said land. Alleged purchaser of the land named Banaram Israni was not examined by the original appellant and

no document is produced before the trial court in this regard.

6. In absence of any evidence and in absence of pleadings to that effect, the trial court is right in holding that original appellant received amount of Rs.

90,000/- as loan and he is under obligation to repay the same.

7. The finding arrived at by the trial court is based on proper marshaling of oral and documentary evidence adduced by both side before the trial court

and this Court has no reason to interfere with the finding recorded by the trial court. The appeal without substance is liable to be dismissed.

8. Accordingly, the decree passed against the appellants and in favour of respondent on the following terms and conditions:

(i) The appeal is dismissed with cost.

(ii) The appellants shall bear cost of the respondent throughout.

(iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.

(iv) A decree be drawn accordingly.