

(2019) 02 CHH CK 0219
In the Chhattisgarh High Court
Case No : First Appeal No. 176 Of 2004

Ahmad Hasan And Ors

APPELLANT

Vs

Kamal Kumar Saraf

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Citation : (2019) 02 CHH CK 0219

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Malay Bhaduri

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

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 rebut 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:

Â (1)Â Â Â The appeal is dismissed with cost.

Â (2)Â Â Â The appellants to bear the cost of the suit throughout.

Â (3)Â Â Â Pleader's fee, if certified be calculated as per certificate or as per

schedule whichever is less.

Â (4)Â Â Â A decree be drawn up accordingly.