

(2025) 12 CHH CK 1682
In the Chhattisgarh High Court
Case No : FA No. 78 Of 2012

Satya Dev Pandey

APPELLANT

Vs

J.P. Singh

RESPONDENT

Date of Decision : 01-12-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 96

Citation : (2025) 12 CHH CK 1682

Hon'ble Judges : Ravindra Kumar Agrawal, J

Bench : Single Bench

Advocate : Veena Nair

Final Decision : Dismissed

Judgement

Ravindra Kumar Agrawal, J

1. The present appeal has been filed by the plaintiff/appellant under Section 96 of the code of Civil Procedure, 1908 (in short 'the CPC') against the impugned judgment and decree dated 30-01-2012 passed by the learned Fourth Additional District Judge Bilaspur in Civil Suit No.33-B/2011 whereby the civil suit filed by the plaintiff has been partly decreed and the decree for recovery of Rs.60,000/- has been passed in his favour against the defendants with an interest at the rate of 6% per annum.

2. The plaintiff has filed the civil suit for recovery of Rs.2,20,000/- from the defendants with the pleadings that the defendants have allured him to execute the sale deed in his favour with respect to the land of Khasra No.819/2 area 1.09 acre situated at village Khamtarai, Patwari Halka No.19, Tahsil and District Bilaspur which was owned by one Chamarinbai and executed an agreement on 30-01-2006 for the total consideration of Rs.12,50,000/-. Out of the total sale consideration, Rs. 1,00,000/- have been paid to the defendants in cash and Rs.51,000/- have also been paid through the cheque No.738038 which was of Bank of Baroda, Bilaspur Branch dated 06-02-2006, however, the said cheque

was not encashed by the defendants. It was the conditions of the agreement that the defendants were in agreement with one Smt. Chamarinbai to sale her land in their favour and thereafter the defendants will execute the sale deed in favour of the plaintiff. It is also the case of the plaintiff that he further paid Rs. 50,000/- in cash to the defendants on 20-02-2006 and Rs.1,00,000/- more in cash on 07-03-2006 and thus, they have paid total amount of Rs.2,50,000/- in cash to the defendants against the total sale consideration. Despite repeated request made by the plaintiff to the defendants for registration of the sale deed, he could not get the sale deed executed and registered and subsequently he came to know that there was no agreement between the defendants and said Chamarinbai and further came to know that Smt. Chamarinbai belongs to aboriginal tribe and her land cannot be alienated without prior permission of the District Collector and there is no possibility to transfer the land in favour of the plaintiff. Then the plaintiff lodged a report against the fraudulent activity of the defendants and a criminal case was also registered against them. Thereafter, the plaintiff served a legal demand notice for recovery of Rs.3,00,000/- from the defendants i.e. Rs.2,50,000/- paid to them as an advance amount towards the sale agreement and Rs.50,000/- as compensation. After service of legal demand notice to the defendants, defendant No.1 have repaid an amount of Rs.1,40,000/- to the plaintiff on 01-05-2006, Rs. 30,000/- on 19-07-2007 and Rs.50,000/- on 20-08-2007 through cheque No.35528, Rs.20,000/- through Cheque No.355330 dated 20-09-2007 and Rs.20,000/- through Cheque No.35529 dated 28-08-2007 and thus, only remaining amount of Rs.40,000/- from defendant No.1 and Rs.1,80,000/- from defendant No.2 is outstanding for which the civil suit for recovery has been filed.

3. The defendants contested the claim of the plaintiff and denied the plaintiff's averment and submitted their written statement with the pleadings that they have not executed any sale agreement in favour of the plaintiff and have not obtained any amount towards the advance of the sale consideration and the case of the plaintiff is based on the fake document and the same is liable to be dismissed.

4. Based on the pleadings of the parties, the learned trial Court has framed the following issues:-

5. In support of claim of the plaintiff he examined himself as PW-1, Krishna Pratap Pandey (PW-2) and relied upon the document Ex.-P/1 copy of the agreement dated 30-01-2006, Ex.-P/2 another agreement dated 14-12-2004, Ex.-P/3 is another agreement dated 01-05-2006, Ex.-P/4 is a complaint to the police, Ex.-P/5 is cheque No.35528 dated 20-08-2007, Ex.-P/6 is another cheque dated 28-08-2007 bearing No.35529, Ex.-P/7 is the receipts executed by the plaintiff dated 19-07-2007 .

6. The defendants have examined J.P. Singh (DW-1), Shekhar Dighraskar (DW-2) and they have relied upon the document Ex.-D/1 copy of notice dated 10-03-2006, Ex.-D/2 is acknowledgment of the amount executed by the parties,

Ex.-D/3, D/4 and D/6 is the Vakalatnama Executed by the defendants, Ex.-D/6 is the registered address filed in the civil suit. The envelop Ex.-D/3 (DW-2), Ex.-D/4 (DW-2) is the copy of seizure memo, Ex.-D/5 (DW-2) copy of seizure memo, Ex.-D/6 (DW-2) is another seizure memo, D/7 (DW-2) is the arrest memo.

7. After considering the evidence led by the parties the learned trial Court has come into conclusion that there is evidence on record that the plaintiff paid only Rs.1,50,000/- towards the sale agreement, out of which Rs.1,40,000/- has already been refunded to the plaintiff by the defendants and there was clause in the agreement that failing party should pay the amount of compensation to the other side and considering the transaction between the parties, the learned trial Court has granted Rs.50,000/- towards compensation and thus, granted a decree of Rs.60,000/- against the defendants and partly allowed the suit which is under challenge in the present appeal.

8. Learned counsel appearing for the appellant would submit that the appellant has paid total Rs.2,50,000/- in cash and there was a condition that the failing party shall be liable to pay the compensation to the other party and thereby the defendants are liable to pay compensation to the plaintiff for which he was claiming Rs.55,000/- from each of the defendants and thus, the total claim of the plaintiff was Rs.3,60,000/-, out of which only Rs.1,40,000/- have been paid to the plaintiff and the remaining claim of the plaintiff was Rs.2,20,000/- for which the present civil suit has been filed. There is acknowledgment in the agreement itself with respect to receiving of the amount and some of the amount have also been paid to the defendants and therefore, instead of granting the decree of entire claim to the plaintiff the decree has been passed only for Rs.60,000/-, which suffers from perversity. She would further submit that the evidence of the plaintiff would clearly demonstrate the part payment of the sale consideration in various installments to the defendants and when the defendants could not get the sale deed registered in favour of the plaintiff for one or another reason, the plaintiff is entitled to refund his amount back along with the compensation as per the terms of the agreement. Yet, the evidence of the plaintiff and the documents produced by him have not been properly appreciated by the learned trial Court. Therefore, the impugned judgment and decree may be modified and the decree with respect to the entire claim may be passed in his favour.

9. Despite service of notice upon the respondents no one appeared on their behalf to support the claim of the defendants.

10. I have heard learned counsel for the plaintiff and perused the record of the trial Court.

11. The trial Court in its judgment after elaborate consideration of the evidence led by the parties comes into conclusion that there are evidence with respect to payment of Rs.1,50,000/- to the defendants which show from the document Ex.-P/1 which is the copy of the agreement dated 30-01-2006. From perusal of the document Ex.-P/1 it transpires that it is an agreement to sale between he parties

executed on 30-01-2006. In the said agreement it was mentioned that the land of Khasra No.819/2 area 1.09 acre was recorded in the names of Bhagirarthi, Bhagwat and Smt. Chamarinbai and an agreement was already executed in favour of the present defendants by the said land owners and it was the condition that the defendants will execute the sale deed in favour of the plaintiff for total consideration of 12,50,000/- within 15 days directly from the original owners. It was also the condition that if the conditions are violated by one party the other party is liable to pay the compensation to the first party. In the reverse side of the said agreement dated 30-01-2006, there was an endorsement/ acknowledgment that the defendants received Rs.1,00,000/- on 30-01-2006 (Rs.50,000/- by defendant No.1 and Rs.50,000/- by defendant No.2) and thereafter, there was another endorsement of receiving amount of Rs.50,000/- on 20-06-2006 against the said cheque No.738038, except these three amounts no other acknowledgment had been produced by the plaintiff with respect to the payment of sale consideration or any part thereof. The learned trial Court after considering these three entries in the document Ex.-P/1 and in view of the evidence of the PW-1 Satyadev Pandey considered that the plaintiff paid only Rs.1,50,000/- towards sale agreement to the defendants. Though the plaintiff was cross-examined in other aspects like, specific performance of the contract, ownership of the land and readiness and willingness to the execute the sale deed and agreement, but the overall consideration of evidence of PW-1 that he paid only Rs.1,50,000/- to the defendants as advance amount towards the sale agreement dated 30-01-2006. The learned trial Court has also considered the clause 7 of the said agreement dated 30-01-2006 with respect to the compensation clause and considering the nature of transaction between the parties, the learned trial Court has assessed the compensation of Rs.50,000/- which is payable to the plaintiff by the defendants on the ground that the defendants were at fault for not registering the sale deed in favour of the plaintiff as the said land belongs to one Chamarinbai with whom they are said to be under agreement to purchase it and subsequently to sale it to the plaintiff. The learned trial Court has also found that the agreement was executed between the parties and under the agreement advance amount has been paid to the defendants.

12. The learned trial Court has consequently held that since the plaintiff could not establish his claim with respect to payment of Rs.3,00,000/- to the defendants and also for compensation of Rs.55,000/- to each of the defendants, but the plaintiff could succeed in showing that he has paid Rs.1,50,000/- to the defendants and Rs.50,000/-, he is entitled to get as compensation for the fault of the defendants for not registering the sale deed of the land and thus, the liability upon the defendants would be fastened for Rs.2,00,000/- out of which Rs.1,40,000/- has been paid to the plaintiff by the defendants and only rs.60,000/- is remaining towards the liability of the defendants for which the plaintiff is entitled and has passed the decree for Rs.60,000/-.

13. From the overall consideration of the facts and circumstances of the case as

well as the evidence led by the parties in the case, I do not find any illegality or perversity in the consideration of the learned trial Court holding that the plaintiff is entitled to recover Rs.60,000/- from the defendants. Accordingly, the first appeal filed by the appellant does not find any merits and is hereby dismissed.

14. The parties shall bear their own cost(s).

15. The first appellate decree be drawn accordingly.