

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2226 of 2015 (O&M)
Date of Decision: May 21, 2015

Raj Pal

...Appellant

Versus

Jaswant Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vivek Khatri, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-defendant Raj Pal has filed this regular second appeal against Jaswant Singh respondent-plaintiff challenging the impugned judgment and decree dated 28.02.2013 passed by learned Addl. Civil Judge (Senior Division) Kapurthala vide which the suit filed by the plaintiff for mandatory injunction is decreed and also the judgment and decree dated 03.04.2015 passed by learned Addl. District Judge, Kapurthala vide which the appeal filed by the appellant was dismissed.

The brief facts of the case are that plaintiff-respondent Jaswant Singh filed a suit against Raj Pal for mandatory injunction directing the defendant to give possession of the mini bus bearing registration No.PB-09B-8236 to the plaintiff which is in illegal possession of the defendant and for transfer of the ownership of mini

bus in the name of the plaintiff and in the alternative, suit for recovery of ₹2 lacs as principal amount along with interest @ 18% per annum etc.

The case of the plaintiff in the suit is that defendant sold a mini bus bearing registration No.PB-09B-8236 to the plaintiff vide agreement dated 03.04.2007 for ₹4,70,000/-, out of which ₹2 lacs was paid by the plaintiff on 02.04.2007. On 07.04.2007, the defendant by way of deception, taken back the possession of the mini bus. Earlier the plaintiff filed a suit for permanent injunction at Jalandhar, however, learned court vide order dated 06.02.2008 ordered that the plaint is to be returned to the applicant to be presented at Kapurthala. The plaintiff in the alternative has asked for recovery of ₹2 lacs as principal amount and ₹33,000/- as interest.

In the written statement, the defendant mainly stated that earlier it was agreed that he would sell his vehicle to the plaintiff and agreement in question was drafted but the plaintiff could not arrange the money. On 05.04.2007, the parties cancelled the said agreement. It is further the case of the defendant that he was not owner of bus No.PB-09B-8237, rather, he was owner of bus No.PB-09B-8236. It is also stated that neither the possession of the bus was given nor ₹2 lacs was received.

Learned Addl. Civil Judge (Senior Division) Kapurthala, vide judgment and decree dated 28.02.2013, after appreciating the evidence decreed the suit in the alternative for recovery of ₹2 lacs from the defendant along with interest @ 12% per annum from the

date of receipt of earnest money till its realization. Defendant filed appeal before learned District Judge, Kapurthala and learned Addl. District Judge, Kapurthala, after re-appreciating the evidence, dismissed the appeal vide judgment and decree dated 03.04.2015. However, the interest @ 12% per annum was allowed w.e.f 03.04.2007 till filing of the suit and then interest was allowed @ 6% per annum till realization of the decretal amount.

Aggrieved from the above-said judgments and decrees, present appeal has been filed by the appellant-defendant.

At the time of arguments, learned counsel for the appellant mainly argued that findings given by the Courts below are incorrect and not as per law and the suit is barred under Order 2 Rule 2 CPC.

I have heard learned counsel for the appellant and have gone through the record.

The perusal of the record shows that judgments and decrees passed by the Courts below are concurrent and findings have been given by appreciating the evidence in right perspective. The law has already been discussed by learned Addl. District Judge, Kapurthala by citing so many judgments and held that the suit is not barred under Order 2 Rule 2 CPC. Not even a single case has been cited to rebut the findings of learned Addl. District Judge, on law point. As the plaint has been returned in the earlier case for want of jurisdiction, therefore, the suit cannot be held as barred under Order 2 Rule 2 CPC. Secondly, though in the written statement the defendant admitted the agreement to sell the mini bus but he contested this fact

that ₹2 lacs was not paid by the plaintiff to him. It is also the case of the defendant that parties have cancelled the agreement on 05.04.2007. Learned Addl. Civil Judge has dealt with this point regarding cancellation. It is admittedly not signed by the parties, therefore, the recital in the cancellation deed that now nothing is due payable by the defendant, firstly shows that defendant by relying upon this cancellation agreement admitted receipt of ₹2 lacs as earnest money. There is no document on record to show that ₹2 lacs has been returned by the defendant to the plaintiff. The cancellation deed has not been signed by the parties and specially by the plaintiff, therefore, the recital in the cancellation deed, in no way, is binding upon the plaintiff as he has not signed the document. There is no explanation as to why the parties have not signed the cancellation deed. This type of document can be prepared by a party at any time but it will not serve any purpose and this document cannot be relied upon.

Keeping in view the above discussion, I find that the findings given by both the Courts below are correct, as per evidence and law and do not require any interference from this Court. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 21, 2015
Vgulati

(INDERJIT SINGH)
JUDGE