

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No. 2365 of 2015 (O&M)
DECIDED ON : 26.08.2015**

Vikas Punia

...Appellant

Versus

Harsh Vardhan Sharma and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Ashwani Bhardwaj, Advocate.

K. C. PURI, J.

CM No. 6203-C of 2015

For the reasons mentioned in the application, the same is allowed and the delay of 3 days in filing the appeal stands condoned.

Main case

Challenge in this appeal is to the judgment and decree dated 07.01.2015 passed by Shri Basruddin, Additional District Judge, Hisar, vide which the appeal preferred by the defendants/appellants against the judgment and decree dated 04.10.2011 passed by Shri Vijay James, Civil Judge (Junior Division), Hisar, was dismissed.

Briefly stated, plaintiff Harsh Vardhan Sharma filed a suit for recovery against the defendants alleging that defendant No.1

entered into an agreement to sell dated 16.08.2005 with the plaintiff in respect of plot No. 2069 measuring 258.33 square yards situated at Sector 14-P, Hisar, for a sum of Rs.13,30,400/- i.e Rs.5150/- per square yard. The outstanding dues of HUDA was to be cleared by the defendants, meaning thereby, they had to pay a sum of Rs.8,00,000/-. At the time of agreement to sell, the plaintiff paid Rs.2,00,000/- as earnest money to defendant No.1 in the presence of witnesses. The last date for transfer was fixed as 07.10.2005. Defendant No.1 introduced defendants No.2 and 3, who were owners of the plot in question and defendant No.3 assured the plaintiff that she will get the plot in question transferred in his name and as such, the plaintiff made the entire payment to defendant No.2. A receipt dated 07.09.2005 was also executed by defendant No.2 in this regard. The plaintiff moved application dated 06.10.2005 for transfer of the plot in question in his name as well as in the name of one Inderjeet. He also gave draft of Rs.8650/- in the name of HUDA. Thereafter, defendants No.1 and 2 requested the plaintiff that due to some dispute with defendant No.3 they are unable to get the plot transferred in favour of plaintiff and offered Rs.10 lacs to the plaintiff. The plaintiff, in order to avoid litigation, received Rs.7 lacs out of the said amount on 20.12.2005. It was assured that the remaining amount of Rs.3 lacs would be given to the plaintiff within six months. Thereafter the plaintiff came to know that defendants have played fraud upon him and he moved application before the S.P. Hisar in this regard. Since the defendants have failed to

make the payment of balance amount, the suit was filed.

Upon put to notice, defendant No.1 appeared and filed written statement taking preliminary objections regarding cause of action; locus standi and limitation. On merits, it was submitted that the plaintiff himself got cancelled the agreement to sell and necessary documents were submitted in the office of HUDA. The other averments were denied.

Defendant No.2 filed separate written statement taking similar stand as taken by defendant No.1 in the written statement.

Defendant No.3 filed written statement taking preliminary objections regarding cause of action; estoppel; non-joinder and mis-joinder of necessary parties. On merits, it was pleaded that the suit was filed by the plaintiff in collusion with defendants No.1 and 2 just to blackmail her and grab money from her. However, it was admitted that plaintiff and defendant No.1 entered into an agreement to sell regarding the plot in question and Rs.2 lacs were paid. The sale was to be completed on 7.10.2005. On 7.10.2005 the defendant No.1 told defendant No.3 to wait upto 4 PM but during whole working hours neither the defendant No.1 made the payment of balance sale consideration nor he contacted the defendant No.3 for getting the plot transferred nor any message was received from his side. It was further pleaded that defendant No.1 has misused the blank signed form of transfer of plot and defendant No.3 does not know the plaintiff. The

other averments were denied.

Replication was not filed. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled to a decree for recovery of Rs.3 lac ? OPP
2. Whether the plaintiff has no cause of action to file the present suit ?OPD
3. Whether the suit is not maintainable in the present form ?OPD
4. Relief.

Both the parties led their evidence. After appraisal of evidence, learned trial Court decreed the suit of the plaintiff for recovery of amount of Rs.3 lacs against defendants No.1 & 2 only vide judgment and decree dated 4.10.2011 passed by Sh. Vijay James, Civil Judge (Junior Division), Hisar.

Feeling dis-satisfied with the judgment and decree dated 4.10.2011, the defendants No.1 & 2 filed appeal which was dismissed vide judgment and decree dated 7.1.2015 passed by Sh. Basruddin, Additional District Judge, Hisar.

Still feeling dis-satisfied with the aforesaid judgments and decrees dated 4.10.2011 and 7.1.2015, the defendant No.2 appellant has filed the present regular second appeal.

Learned counsel for the appellants has mentioned in

para No.9 of the grounds of appeal that following substantial questions

of law have arisen in the present appeal:-

- a) Whether in view of the contradictory stands taken by the plaintiff any particular stand of the plaintiff can be believed to grant the relief of suit for recovery to the plaintiff from the appellant (defendant No.2) ?
- b) Whether mere putting of the signatures on the agreement to sale as a witness is liable to pay the amount of contract to the plaintiff ?
- c) Whether the finding of the Courts below is perverse as the material evidence has been misread and has also been ignored ?
- d) Whether the finding of the Courts below is otherwise illegal, wrong, perverse against the law and facts on record ?

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

Although, a number of substantial questions of law are mentioned by the appellant in para No.9 of the grounds of appeal but during the course of arguments, the only point urged by learned counsel for the appellant is that the appellant cannot be held liable as he has been simply a witness to the agreement.

The argument looks attractive but without any legal force. The defendant No.3 owner of the plot is not a signatory to the agreement and the receipt of consideration regarding amount of the

agreement has been given by the appellant. Since defendant No.3 is not a signatory and as such suit has not been decreed against her and suit has been decreed against defendants No.1 & 2 only. Out of the amount of Rs.10 lacs paid by the plaintiff, Rs.7 lacs have been repaid so, the defendants including appellant are liable to pay the said amount. The concurrent finding of fact recorded by both the Courts below does not call for any interference. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. Consequently, the appeal is without any merit and the same stands dismissed.

26.8.2015.
SN

(K.C.PURI)
JUDGE