

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

**RSA No. 500 of 2014 (O&M)
Decided on : 20.08.2015**

Avtar Singh

...Appellant

Versus

Bhupinder Singh

...Respondent

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

Present : Mr. Ashish Gupta, Advocate,
for the appellant.

K. C. PURI, J.

CM No. 1220-21-C of 2014

For the reasons mentioned in the applications, the same are allowed and the delay of 29 days in re-filing and that of 144 days in filing the appeal stands condoned.

Main case

The defendant has directed this appeal against the judgment and decree dated 29.1.2013 passed by Sh. Nirbhow Singh Gill, Additional District Judge, Patiala vide which the appeal preferred by the defendant was dismissed and the judgment and decree 16.7.2011

passed by Mr. K.S. Dhaliwal, PCS, Civil Judge (Junior Division), Nabha were upheld and the suit of the plaintiff remained decreed.

Brief facts of the case are that the plaintiff filed a suit for recovery of Rs.78,880/-. It was pleaded that on 28.6.2006 the defendant entered into an agreement to sell his harvester combine bearing No. PB-11-A-2081 to the plaintiff for a total consideration of Rs.1,58,000/- and defendant received Rs.58,000/- as earnest money in the presence of marginal witness. The defendant further agreed to receive the balance amount on 30.11.2006 and also agreed to deliver possession of the combine to the plaintiff on 30.11.2006 after completing all other necessary formalities. It was recited in the agreement that original registration certificate is attached with the agreement but actually it was not done so. Original registration certificate remained with the defendant. It was further pleaded that the plaintiff came to know that the defendant has further sold the combine to some unknown person. Thus, the plaintiff was left with no other remedy except to file suit for recovery of Rs.78,880/- i.e. Rs.58,000/- as principal amount and Rs.20,880/- as interest. Hence, the present suit.

On put to notice, the defendant appeared and filed written statement. It was pleaded by the defendant that whole story put forward by the plaintiff is totally false and concocted one. The real facts are that witness of the alleged agreement, namely, Lachhman Singh was running shop of spare parts of combines at Nabha and plaintiff Bhupinder Singh is his close relative. Defendant used to

purchase spare parts from Lachhman Singh and defendant was debtor of Lachhman Singh of Rs.15,000/- in the year 2005. Defendant has repaid the said amount in the presence of Ram Lal in the month of January, 2006. Thereafter above said Lachhman Singh in connivance with police of Police Station Amargarh called the defendant in the Police Station on 27.6.2006 by moving false application against defendant. In the Police Station at the instance of Lachhman Singh police threatened the defendant to pay Rs.58,000/- to said Lachhman Singh or to sign the alleged agreement for sale of his combine. In fact, the defendant never executed the alleged agreement. Same is result of undue influence and fraud played by the plaintiff in connivance with the Police and Lachhman Singh. Defendant also took some additional pleas to the effect that suit is not maintainable and plaintiff has not come to the Court with clean hands and is also estopped from filing the present suit by his act and conduct. Rest of the averments were denied.

Replication was filed controverting the pleas of the written statement and re-iterating those of plaint.

From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiff is entitled to suit for recovery of Rs.78,880/- at the rate of Rs.1% per month ? OPP
- 2) Whether the suit is not maintainable nor competent in its present form? OPD

- 3) Whether the plaintiff is estopped from his own act and conduct from filing the present suit ? OPD
- 4) Whether the plaintiff has filed the present suit for harassing the defendant ? OPD
- 5) Whether the plaintiff has not come to the Court with clean hands and suppressed the material fact from Court ?OPD
- 6) Relief.

Both the parties led their respective evidence. The learned trial court, after appraisal of the evidence, decreed the suit of the plaintiff vide judgment and decree dated 16.7.2011 passed by Sh. K.S. Dhaliwal, PCS, Civil Judge (Junior Division), Nabha.

Feeling dissatisfied with the above said judgment and decree dated 16.7.2011, the defendant filed appeal which was dismissed vide judgment and decree dated 29.1.2013 passed by Sh. Nirbhow Singh Gill, Additional District Judge, Patiala.

Still feeling aggrieved, with the aforesaid judgments and decrees dated 16.7.2011 and 29.1.2013, the defendant-appellant has preferred the instant regular second appeal.

Learned counsel for the appellant, in para no.14 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether the findings of the Ld. Courts below are suffering from any apparent perversity on the face of it being contrary to law and facts on record ?
- 2) Whether the judgment and decree of ld. Courts below suffer from perversity of approach and misreading of evidence because of ignoring the material piece of evidence having direct impact on decision of the case ?
- 3) Whether impugned judgments and decrees are legally justifiable ?
- 4) Whether the sufficient evidence is available on the file in order to prove due execution of the agreement to sell in question ?

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

Learned counsel for the appellant has submitted that the plaintiff has failed to prove the execution of the agreement. The said agreement is the result of fraud committed by the defendant.

It is settled law that regular second appeal lies only if there is any substantial question of law. There is concurrent finding of fact regarding execution of agreement and passing of consideration. The stand taken by the defendant-appellant did not found favour with both the Courts below. There is nothing on the record that judgments of both the Courts below are the result of misreading or misinterpreting

the evidence on the file and suffering from any perversity. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. The questions of law framed by the appellant do not exist in the present appeal. Consequently, the present appeal stands dismissed.

20.8.2015
SN

(K.C.PURI)
JUDGE