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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2934-2012 [O&M]

Date of Decision : March 16th, 2016

Ramesh Kumar Bansal

.... Appellant

Versus

Sanjeev Kumar Kalyan

.. Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present Mr. Aditya Kumar Sharma, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby, suit filed by the appellant-plaintiff for recovery of Rs.2,00,000/- alongwith interest was dismissed by the Court of first Instance vide judgment and decree dated 14.9.2009. The appeal filed by appellant was also dismissed by learned Additional District Judge, Panckula vide judgment and decree dated 21.12.2011.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

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3. Relevant facts of the case for the purpose of decision of this appeal; that the defendant approached the plaintiff in August, 2000 and asked him to purchase his Maruti Zen car bearing registration No. HR-44-D-0018 for a sum of Rs.2,20,000/-. On 7.9.2000, the defendant visited the house of the plaintiff and received a sum of Rs.2,00,000/- from the plaintiff against receipt of the same date. The said receipt was duly attested by two witnesses, namely, Manohar Lal and Jagtar Singh. Later on, the plaintiff informed the defendant that there was some defect in the car and with the plea of getting the engine repaired, the defendant took the car from the plaintiff with the assurance to return the same in the evening. The balance payment of Rs. 20,000/- was to be made after removal of the defect in the engine. However, when the defendant did not turn up and the plaintiff tried to take up the matter with the defendant, but he was not available. Father of the defendant informed the plaintiff that he would inform the defendant on his return and the matter continued for some days. Later on, the plaintiff approached CIA Staff, Panchkula and it was informed to him that the car in question was a stolen vehicle and the earlier registration number of the car was CH-03-C-0938. The plaintiff visited the house of registered owner of the car in question and it was found that no person with the name of Rajesh Kumar was available at the given address. The plaintiff continued to enquire about the defendant, but the father of the defendant again assured that the car was purchased by the defendant for consideration. However, neither the money nor the car was returned to the plaintiff and a complaint was filed and on the basis of the same, FIR No. 38 was registered on 15.4.2001 at Police Station, Sector 19, Panchkula.

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However, when money was not returned, the plaintiff filed the present suit seeking refund of Rs.2,00,000/- along with interest.

4. The defendant contested the suit, *inter alia*, taking the plea that he never visited the house of the plaintiff for sale of car bearing registration No.CH-01-C-0938, rather took the plea that the car was sold by the plaintiff to the defendant. The plaintiff misused the blank receipt which was got signed by him for the transfer of the registration certificate of the car in the name of Rajneesh Jain. Defendant denied that he had ever received payment of Rs.2,00,000/- from the plaintiff. As per the defendant, a sum of Rs.1,10,000/- out of Rs.1,50,000/- was paid by him to the plaintiff for purchasing the car in question. After receiving the refund of the sale consideration, the defendant returned the car to the plaintiff. As per the defendant, the plaintiff had put an advertisement in the news paper for the sale of the car in question. As the plaintiff was working in C.M. Office, he had obtained signatures of the defendant on some blank papers in order to complete the formalities of the transfer of car. The said car was involved in an accident and the same required maintenance. On 15.7.2000, an advertisement was issued in the news paper for sale of the car and the defendant was informed that one Rajneesh Jain was interested in purchasing the car. A sum of Rs.1,45,000/- was given by Rajneesh Jain to the plaintiff against receipt. Plaintiff informed the defendant that new registration number of the car was HR-44-D-0018. The defendant received the Registration Certificate from the plaintiff, but did not take the car believing that the same would be returned by the plaintiff. Request made to the plaintiff was of no use, rather later on, the defendant came to know

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about filing of the complaint by the plaintiff and prayed that the suit be dismissed.

5. On the pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance returned the finding that the present suit was filed by the plaintiff on 3.9.2003 after registration of the FIR dated 13.3.2001. The chain of events clearly shows that the car was not purchased by the plaintiff from the defendant, but the same was other way and the plaintiff who was in possession of the car in question was keen to dispose of the same by changing registration number of the said car. The Court of first instance returned the finding that the plaintiff failed to prove his case and dismissed the suit. The appeal filed before the Court of first Appeal was also dismissed. As such, the present Regular Second Appeal.

6. Learned counsel for the appellant mainly submitted that as per receipt Ex. P1, payment of Rs.2.00 lakhs was received by Sanjeev Kumar, defendant, in the present of witnesses, namely, Manohar Lal and Jagtar Singh. The defendant himself admitted in the cross-examination that receipt, Ex. P1, bears his signatures, but the Court below completely ignored this fact while returning the findings and the said findings result into injustice to the appellant. The said findings be reversed and the present appeal be accepted.

7. Having considered the submissions made by learned counsel for the appellant and after going through the records, this Court is of the considered view that both the Courts below have already appreciated the

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entire evidence and recorded concurrent findings of fact. The Courts below have correctly recorded the finding that as per the appellant, the car was purchased vide receipt Ex. P1 and the same is dated 7.9.2000 whereas, the case of the appellant is that he had purchased the same from the respondent in the last week of August, 2000. More so, as per receipt Mark -A dated 16.7.2000, the appellant had received earnest money of Rs.10,000/- for the sale of vehicle in question from Rajneesh Jain. The said fact was admitted by the appellant. Both the Courts below have returned the finding that the appellant-plaintiff has not approached the Court with clean hands and had taken different stands at different stages. Undisputedly, the car was found to be stolen one at a later stage and the appellant was arrayed as an accused and is facing the trial. The said concurrent findings of fact do not call for any interference by this Court.

8. As per view taken by Hon`ble Supreme Court in **Deity Pattabhiramaswamy Vs. S. Hanymayya and others, AIR 1959 SC 57**, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact. As per view taken by Hon`ble Supreme Court in **Commissioner Hindu Religious & Charitable Endowment Vs. P.Shanmugama & Ors., JT 2005 (1) SC 201** and **Biswanath Ghosh [Dead] by LRs and Ors. Vs. Gobinda Ghosh alias Gobindha Chandra Ghosh & Ors. AIR 2014 SC 1582**, second appeal cannot be entertained if there is no substantial question of law involved therein.

9. In the present second appeal, there is no substantial question of law involved, rather both the Courts below have already appreciated the

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entire evidence. Hence, the present appeal is not maintainable as per provisions of Section 100 of the Code of Civil Procedure, 1908.

10. In view of the above, the present Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

March 16th, 2016
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