

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

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**RSA No.1836 of 2018 (O&M)
Date of Decision : 22.05.2018**

Surjit Singh and another

..... Appellants

Versus

Rajiv Kumar and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Ramesh Sharma, Advocate
for the appellants.

Mr. Jaswinder Singh Grewal, Advocate
for respondents No.1 & 2.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit for recovery of earnest money filed by the respondents No.1 & 2.

The brief facts are that the brother-in-law of the appellant No.1- Bhupinder Singh represented himself to be the attorney of both these appellants (even though in reality he was attorney of only of the appellant No.1) and entered into negotiation with respondents No.1 & 2 to sell their joint land approximately 14 acres of land belonging to the appellants to respondents No.1 & 2 for a total consideration of about Rs.18 crores.

A preliminary document was signed by Bhupinder Singh in which apart from the details of the land and the consideration it was

mentioned that respondents No.1 & 2 had paid a sum of Rs.10.00 lakhs to Bhupinder Singh. It was further stipulated that out of the remaining consideration a further sum of Rs.3 crores and 15 lakhs would be paid by the respondents No.1 & 2 to the appellants (original defendants No.1 & 2) on their arrival at Abohar (since they are both Non-Resident Indians). It was further stipulated that at the time of the receipt of that Rs.3 crores and 15 lakhs a formal agreement to sell would be executed between the principal parties themselves. However, admittedly the originally defendant No.2 never came to India. However, the original defendant No.1 took another amount of Rs.15.00 lakhs from respondents No.1 & 2 thus making the total payment paid to be Rs.25.00 lakhs. After about a year and a half the instant suit was filed by the respondents No.1 & 2 in which they claimed refund of double the payment made. Strangely only defendant No.1-i.e. appellant No.1 and his brother-in-law Bhupinder Singh, defendant No.3 appeared and the brother of the defendant-appellant No.1 i.e. co-owner Kulwinder Singh neither appeared in the Court nor took any interest in the proceedings and was proceeded against ex-parte. The case set up by the two appellants was that infact it was respondents No.1 & 2 who were at fault and who wanted to back out of the bargain and that even on the date of filing of written statement they were ready to sell the property. Both the courts having decreed the suit this appeal has been filed before this Court.

Counsel for the appellants has vehemently argued that respondents No.1 & 2 had actually developed cold feet and that is why they did not make the remaining payment of Rs.3.00 crores and once they were themselves not ready and willing to complete the contract the Courts below

have erred in ordering refund.

On the other hand the counsel for respondents No.1 & 2 has argued that this is a very strange case where the half share holder has never even bothered to contest the case. As per the learned counsel, actually the two appellants i.e. Surjit Singh and his brother-in-law Bhupinder Singh were trying to defraud respondents No.1 & 2 because Bhupinder Singh claimed that he was an attorney of the other brother whereas he was not so and even when Surjit Singh came he had no authority from Kulwinder Singh to either accept any payment or to enter into an agreement.

Learned counsel for the appellants is not in a position to deny that Kulwinder Singh never came to India. Once that was so, the condition that the respondents No.1 & 2 were to pay Rs.3.00 crores and 15.00 lakhs could obviously be not fulfilled because that payment was to be made to both the owners. It seems that Surjit Singh and Bhupinder Singh have unauthorizedly taken Rs.25.00 lacs from respondents No.1 & 2 without being in a capacity to even execute the sale deed.

Resultantly, no fault can be found with the judgments of the Courts below.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

22.05.2018

Pooja sharma-I

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No