

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

RSA No. 1820 of 2019 (O&M)

Date of decision : May 03, 2019

Hanuman

.....Appellant

Versus

Jai Parkash and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sunny Bhardwaj, Advocate
for the appellant.

Ms. Neha Rana, Advocate for
Mr. Abhimanyu Singh, Advocate
for the caveator/respondent.

LISA GILL, J.

This appeal has been filed by the appellant arrayed as defendant No. 1 in the suit for recovery filed by the plaintiff arrayed as respondent No. 1 in the present appeal. Appellant – defendant No. 1 is aggrieved of judgment and decree dated 03.03.2015 passed by the learned Additional Civil Judge (Senior Division), Bhiwani as well as judgment and decree dated 26.02.2019 passed by the learned Additional District Judge, Bhiwani.

Brief facts necessary for adjudication of the case are that the plaintiff purchased a Scorpio vehicle on 23.05.2009 from the appellant. It is pleaded that defendants No. 2 to 4 were the middle men, who facilitated the sale/purchase and ₹5,000/- was given to them as commission by the plaintiff. It is pleaded that defendants No. 2 to 4 assured the plaintiff that Scorpio vehicle is in good condition and untainted. It is further pleaded that defendant No. 5, who was the then Secretary of RTO office also assured the plaintiff about the ownership of defendant No. 1. It is alleged that

registration certificate ('RC' – for short) of the vehicle was transferred in his name but thereafter Rajasthan police took away the vehicle as well as the related documents from him. Later, the plaintiff came to know that the defendants in conspiracy with each other, played fraud upon him and manipulated the RC of one tractor registered at Panipat while wrongly representing to him that the RC is of the vehicle in question. Scorpio vehicle, it is pleaded, was of a different registration number and was required in a criminal case at Rajasthan. The plaintiff suffered a loss of Rs. 4 lakhs. Hence, the suit was filed.

Defendants contested the suit while denying all the averments in the plaint. In his separate written statement, defendant No. 1 (present appellant) specifically pleaded that defendant No. 1, himself purchased the said vehicle from one Manoj through defendants No. 2 to 4 and thereafter sold the vehicle in question to the plaintiff. It is stated that he does not know about any defect in the title of the vehicle and sold the same in the same position as purchased by him from Manoj. Defendants No. 2 to 4 (respondents No. 2 to 5 in this appeal) in their written statement denied to have facilitated any sale or purchase of the vehicle in question. Dismissal of the suit was prayed for.

Replication was not filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiff is entitled for recovery of the amount of ₹4,00,000/- alongwith interest as mentioned in the head note of the plaint?OPP.
- ii) Whether the suit is not maintainable? OPD.
- iii) Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD.

iv) Whether the plaintiff has not come to the court with clean hands and suppressed true and material facts from the court? OPD

v) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the facts and circumstances of the case decreed the suit filed by the plaintiff. Appeal filed by the appellant was dismissed by the learned Additional District Judge, Bhiwani vide judgment dated 26.02.2019. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant has vehemently argued that it is the appellant, who has been victimised in this case. He had purchased the Scorpio vehicle in question in a bonafide manner from one Manoj. Appellant thereafter sold the said Scorpio vehicle to Jai Parkash – plaintiff for consideration of Rs. 4 lakhs. Present appellant, it is submitted, was wrongly involved in FIR No. 111 dated 09.05.2009 registered at Rajasthan and has since been acquitted by the learned trial Court in the said case vide judgment dated 30.05.2013 (Ex.D1). It is vehemently argued that Scorpio vehicle recovered by the Rajasthan police is not proved to be the vehicle which the present appellant had sold to the plaintiff. The appellant has been exonerated of the charges of any kind of tampering etc. with the engine and chassis number of the vehicle in question. Moreover, the plaintiff did not take the Scorpio vehicle recovered by the Rajasthan police on superdari. Therefore, it is apparent that the vehicle recovered by the Rajasthan police was not the Scorpio vehicle sold by the present appellant. The appellant has also been exonerated in the complaint filed by the plaintiff under Sections 471, 420 IPC by the learned Judicial Magistrate First Class, Bhiwani on

22.03.2017. Thus, it is proved that the present appellant has not deliberately transferred any vehicle involved in the commission of any crime. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 03.03.2015 passed by the learned Additional Civil Judge (Senior Division), Bhiwani as well as judgment and decree dated 26.02.2019 passed by the learned Additional District Judge, Bhiwani be set aside.

Learned counsel for the caveator-respondent refutes the said averments while submitting that the vehicle in question was sold by the appellant on the basis of forged and fabricated papers. Notice in this regard was issued to the appellant as well as to the plaintiff. Reference is made to Ex. P2 dated 02.07.2009 and Ex. P10 dated 19.06.2009. It is submitted that acquittal of the appellant in the criminal proceedings cannot discharge the liability which the appellant has towards the plaintiff. Furthermore, it is duly proved on record that the Scorpio vehicle in question was sold by the appellant to the plaintiff. Therefore, both the learned courts below have rightly decreed the suit. Dismissal of the appeal is, thus, prayed for.

I have heard learned counsel for the appellant as well as the caveator and have perused the file as well as a photocopy of the record.

The case set up by the plaintiff is that he purchased a Scorpio vehicle from defendant No. 1 – the present appellant. RC of the vehicle was transferred in his name. However, the Rajasthan police took away the vehicle from him alongwith the documents etc. and the plaintiff then came to know, that all the defendants in conspiracy with each other, played fraud upon him, by selling the said vehicle to him, while fabricating the chassis and engine numbers and manipulated the RC of one tractor registered at Panipat. Scorpio vehicle in fact bore a different registration number and was

required in a criminal case at Rajasthan. In this way a sum of Rs. 4 lakhs alongwith interest was claimed i.e. the consideration amount he had paid to the appellant for the vehicle in question. Plaintiff – Jai Parkash testified as PW1 and clearly narrated the position as pleaded. PW2 Krishan and PW3 Lila categorically stated that a sum of Rs. 4 lakhs was given to defendant No. 1 by the plaintiff as a price of the vehicle in question. It is thereafter that the vehicle was handed over to the plaintiff alongwith the documents. PW4 Harsh Kumar Registration Clerk of the RTO office, Bhiwani produced the documents (Exs. P1 and P2). Ex. P1 is the attested copy of the record of the RC in question, which is earlier reflected to be in the name of Manoj Kumar, then Hanuman Parshad and subsequently in the name of Jai Parkash - plaintiff. It is further endorsed thereon that the said RC was cancelled vide order dated 02.07.2009. PW4 Harsh Kumar, Registration Clerk from the RTO office, Bhiwani has specifically testified in this regard. PW5 Vijay Kumar, Administrative Officer of the Oriental Insurance Company, Bhiwani proved the insurance policy (Ex.P3) and the endorsement (Ex.P4). PW5 specifically stated that the insurance policy (Ex.P3) in the name of Hanuman Prashad (appellant) was thereafter endorsed in favour of the plaintiff – Jai Parkash (Ex.P4). The said policy, it is further stated, was cancelled vide Ex.P5. It borne out from the record that the vehicle in question was sold by the appellant to Jai Parkash on 23.05.2009. Incident in which the Scorpio vehicle was involved and which gave rise to FIR No. 111 dated 09.05.2009 took place on 05.05.2009.

A perusal of the written statement of defendant No. 1/present appellant, reveals that the appellant has taken a specific stand that he purchased the vehicle in question from one Manoj through defendants No. 2

to 4 and it is upon the asking of defendants No. 2 to 4 that he sold the vehicle in question to the plaintiff. The appellant claimed ignorance about any defect in the title of the vehicle and claimed to have sold the same in the same position as purchased by him from Manoj. Argument raised by learned counsel for the appellant that the identity of the vehicle is not established and neither did the plaintiff take the said vehicle on superdari, therefore, suit filed by the plaintiff should be dismissed, is devoid of any merit and merely a futile attempt to wriggle out of his liability.

The appellant has admitted the sale of vehicle in question to the plaintiff. It is a matter of record that the RC in respect to the vehicle stood cancelled. The appellant while testifying as DW1 has admitted that he had purchased the Scorpio from Manoj Kumar son of Rajpal for a sum of ₹3,90,000/- but in fact he had not paid anything to Manoj Kumar in lieu of vehicle except earnest money of ₹5,000/-. He further admitted that even on the day the vehicle was transferred to his name as reflected in the RC, no other amount except ₹5,000/- was paid to Manoj Kumar. The appellant volunteered that the remaining amount out of the agreed price of ₹3,90,000/- had been given to Manoj Kumar after the Scorpio was sold to the plaintiff by him. A sum of ₹4 lakhs was received by him from the plaintiff. DW1 further admitted that he did not obtain the RC of the vehicle from Manoj Kumar to verify the genuineness of the documents. He could not even reveal the approximate age or particulars about the identity or appearance of Manoj Kumar.

Similarly, acquittal of the present appellant in the criminal proceedings as reflected in judgement dated 30.05.2013 (Ex.D1) is of no avail to the appellant in the present proceedings which are not dependent

upon his acquittal or conviction in FIR under Sections 120B, 364, 394, 302, 201, 467, 468, 471 IPC. Neither is the exoneration of the appellant in complaint under Sections 420, 471 IPC filed by the plaintiff against him relevant. This is so for the reason that the sale of the vehicle in question is duly admitted by the appellant. Merely because the plaintiff did not take the vehicle on superdari from Rajasthan police does not mean that the plaintiff has to be non-suited on that ground. The plaintiff while testifying as PW1 has clearly explained that as the vehicle was stolen from one Jagdish Parshad Sharma he did not take the vehicle on superdari. There is no evidence on record to indicate that the vehicle in question was not the one sold by the appellant to the plaintiff.

Learned Additional Civil Judge (Senior Division) Bhiwani has rightly held that even if the plaintiff failed to prove any malafide on the part of defendant No. 1, it is borne out from the record that the appellant – defendant No. 1 Hanuman, sold the vehicle in question to the plaintiff without having a valid title to the same. Receipt of ₹4 lakhs, is duly admitted in the written statement filed by the present appellant. Plaintiff having proved receipt of ₹4 lakhs by defendant No. 1/appellant, for the said vehicle, was rightly held entitled to recovery of the same from the present appellant. Complicity of the appellant alongwith Manoj or defendants No. 2 to 4 in the commission of the crime leading to registration of FIR No. 111 or fabricating the documents of the vehicle in question is not a pre-requisite to grant of relief claimed by the plaintiff. It was open to the appellant to take action in accordance with law against Manoj and defendants No. 2 to 4 in case he himself was defrauded by them, as claimed by the appellant.

Both the learned courts below have rendered concurrent

findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law, much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated judgment and decree dated 03.03.2015 passed by the learned Additional Civil Judge (Senior Division), Bhiwani as well as judgment and decree dated 26.02.2019 passed by the learned Additional District Judge, Bhiwani, which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

May 03, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No