

RSA No.3468 of 2019 (O&M)

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

RSA No.3468 of 2019 (O&M)
Date of decision: 18.09.2019

Baldev Singh

.....Appellant

versus

Sukhwinder Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. N.K. Vadehra, Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful defendant has filed this Regular Second Appeal, laying challenge to judgment and decree of the lower appellate Court dated 19.01.2019, dismissing his appeal, thereby affirming judgment and decree of the trial Court dated 04.04.2018, whereby suit of the respondents-plaintiff for recovery against him was partially decreed for ₹4.70 lakh along with interest @ 9% per annum from 10.06.2012 i.e. the date on which the amount was paid as per compromise Ex.P2 till the date of decree and future interest @ 6% per annum from the date of decree till realization.

Briefly, appellant vide agreement dated 24.06.2011, agreeing to sell his possessory rights over land measuring 102 kanlas 17 marlas being in cultivation, out of land measuring 205 kanals 14 marlas situated in Village Rajpur Rajputan, Tehsil and District Pathankot as per jamabandi for the year 2007-08, owned by Central Government at the rate of ₹3,25,000/- per acre to respondents. ₹10,00,000/- was paid as earnest money to the appellant by

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the respondents and possession was agreed to be delivered on receipt of balance sale consideration upto 31.12.2011. However, when deal could not materialise between the parties, respondents lodged FIR No.15 dated 03.03.2012 against appellant under Section 420 IPC at Police Station Behrampur. With the intervention of respectables, appellant paid ₹5,00,000/- to respondents and agreed to pay remaining ₹5,00,000/- on or before 10.06.2012, but did not pay the same. Therefore, respondents filed suit for recovery of ₹5,00,000/- along with interest @ 18% per annum from the date of execution of agreement till actual realization.

Upon notice, appellant contested the suit tooth and nail.

After holding trial, suit was partially decreed for ₹4,70,000/- in the manner as narrated above by the trial Court vide impugned judgment and decree dated 04.04.2018.

Being aggrieved, appellant approached the first appellate Court, but remained unsuccessful as his appeal too was dismissed vide judgment and decree dated 19.01.2019.

Learned counsel for the appellant *inter alia* contends that both the Courts below failed to appreciate that appellant had returned the entire amount as per compromise, but respondents with *mala fide* intention did not return the original compromise to the appellant, taking false plea that it has been torn out. Both the Courts below further failed to appreciate that original agreement was not produced in Court.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

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Original agreement to sell was not required to be produced on record, after its culmination into compromise Ex.P1 inasmuch as it had become a obsolete document losing its significance. Terms and conditions enumerated in the compromise Ex.P1 were never disputed by the appellant-defendant. Rather, he took the stand that he had returned the entire amount, but the respondents with dishonest intention on false pretext that compromise Ex.P1 was torn out, did not return the same to him on receipt of balance compromised amount. Above plea of the appellant is completely unbelievable, inasmuch as no sane person would pay money without taking original document mentioning his liability. More so, in case, respondents had disclosed to the appellant that original agreement to sell has been torn out, in that eventuality, it was very easy and bounden duty of the appellant to ask the respondents to execute some fresh writing in his favour about receipt of balance amount, so that in future no controversy arise between them. However, no such exercise was ever adopted. Even appellant did not issue any legal notice to the respondents-plaintiff.

That apart, appellant must have obtained some receipt from respondents in token of refund of balance compromised amount. Non-obtaining any receipt from the respondents requires to draw adverse inference against the appellant that he took false plea with dishonest intention to usurp the balance amount, which he never paid to the respondents.

I have gone through impugned judgments of the both the Courts below and find no illegality or perversity in the same.

No question of law much less substantial has been raised in this

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appeal. Therefore, same is held not maintainable.

Dismissed.

(Ramendra Jain)
Judge

September 18, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No