

RSA-5380-2017 (O&M)

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

RSA-5380-2017 (O&M)

Date of decision : 11.02.2019

Chamno Devi

... Appellant

Versus

M/s Vikram Electronic Equipment Pvt. Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kunal Dawar, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the respondent-plaintiff for recovery of ₹17,00,000/- along with interest @ 6% per annum, has been decreed by the trial Court and affirmed by the lower Appellate Court.

It was alleged that the appellant-defendant entered into an agreement to sell dated 01.08.2006 in respect of suit land measuring 29 kanals 16 marlas to the extent of 169/627th share, agreed to be sold for a total sale consideration of ₹1,70,00,000/- per acre, against the payment of ₹17,00,000/- as earnest money. The stipulated date for execution and registration of the sale deed was 16.08.2006. However, during the subsistence of the agreement to sell, vide sale deed dated 13.10.2006, sold the suit property. In such circumstances, the agreement to sell having been become incapable to perform, sought the recovery of the aforesaid amount by filing a suit, which was preceded by a legal notice dated 12.02.2007.

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The defendant opposed the suit by taking all possible preliminary objections qua *locus standi*, maintainability etc., and on merits, it was submitted that one Pravesh Kumar Sharma was a authorized dealer/broker and signatory employed in the plaintiff-company, who had settled three matters at a time on 01.08.2006, regarding the sale deed and purchase of the agricultural land of three sets of owners. The dispute had arisen between said Parvesh Kumkar and the plaintiff-company. The notice dated 07.09.2006 for cancellation of the agreement to sell, was sent. The plaintiff was not ready and willing to perform his part on the agreement to sell. The sale deed was executed due to need of money to purchase the land by the defendant.

The plaintiff in support of his case examined S.C. Ansal, duly authorized person of plaintiff company as PW1, Navjot Khanna as PW2, Dharam Pal Singh as PW3 and Jasmer Singh as PW4 and brought on record various documents (Ex.P1 to Ex.P13 and Ex.PA to Ex.PE). On the other hand, the defendant examined Balbir Singh Raghav Advocate as DW1, Vinita Ahlmad as DW2, Vijay Civil Ahlmad as DW3, Rajender as DW4, Vijay Kumar Rustogi, Handwriting and Fingerprint Expert as DW5 and tendered in evidence the numerous documents (Ex.D1, Ex.DA to Ex.DG), Mark DX to Mark DZ). The plaintiff in rebuttal examined Naresh Kataria Handwriting and Fingerprints Expert as PW5.

Mr. Kunal Dawar, learned counsel appearing on behalf of the appellant-defendant submitted that there was no privity of contract between the Company as Ex.P8, accounts statement, reflected that the amount of ₹17,00,000/- had come from the account of one Shivraj Singh Dabra. In a similar matter involving the recovery, an appeal bearing **RSA No.3037 of**

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2015, preferred by the defendant against the concurrent findings, is pending consideration. Once the agreement to sell was cancelled, the suit in the absence of specific performance, was not maintainable. In the replication the plaintiff came out with the plea of power of attorney in favour of one Dharam Pal |Singh-PW3.

I have heard learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Dawar, for, notice of motion order dated 07.01.2016 in RSA No.3037 of 2015, pertained to an argument that there was some property dealing with some Ishayu Builders. Be that as it may, in the instant case, the agreement to sell (Ex.P7) shown to this Court, revealed that it was entered into between the respondent-plaintiff/Company. Before filing the suit, the appellant-defendant was served with a legal notice dated 12.02.2007 (Ex.P9), which was sent through registered post and under postal certificates and its receipt, in dispute. For the sake of brevity, the relevant para No.2 of the same reads as under:-

"2. That you had requested Mr. Shiraj Singh Dabra, who was acting on behalf of my client to purchase the aforesaid land. My client upon your request had agreed to purchase the land referred to above. Agreement to sale dated 1.8.2006 was got prepared by you and was executed by you pertaining to land hereinbefore described."

The agreement to sell, in view of the creation of third party rights, was incapable of performance. The vendor cannot be permitted to pocket the money and sell/alienate the land, during the subsistence of the agreement to sell. In such circumstances, the simpliciter suit for recovery was maintainable. Another notice dated 16.01.2008 (Ex.P12) was also

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served by the plaintiff, which was answered vide Ex.P13. The technical plea taken by the defendant was to avoid the liability to refund the money despite the fact that the suit property had already been sold to the third party.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Dawar to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present second appeal is dismissed.

11.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**