

107

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

**RSA-1800-2017 (O&M)
Date of decision : 06.05.2019**

Yashpal

... Appellant

Versus

Harshvir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Singla, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is, at the instance of the plaintiff, directed against the concurrent findings of fact, whereby the suit for damages on the basis of malicious prosecution, having been roped in FIR No.206 dated 23.07.2005, alleged to have commission of offence under Sections 420, 465, 467, 120-B of the Indian Penal Code, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff alleged that he was successful bidder in an auction conducted by the Settlement Commissioner on 24.01.1980 and deposited the amount as required. The suit was filed by the plaintiff titled as Yashpal V/s Vinod Kumar Gupta, Karamvir Singh, Harshvir Singh and Ravinder Singh, by arraying the State of Punjab, for declaration to be owner in possession with consequential relief of injunction in respect of land

RSA-1800-2017 (O&M)

measuring 10 marlas bearing Kharsa No.16584/1659, resulting into, judgment dated 05.01.2003 (Ex.P5).

The defendants opposed the suit and stated that the decree obtained by them was on the basis of misrepresentation and fraud, much less, forged and fabricated document/receipt. It was also disclosed that they had filed the suit challenging the aforementioned decree, which was decreed by the trial Court, vide judgment and decree (Ex.D13) and the appeal, at the instance of the appellant-plaintiff, is pending.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that the plaintiff, on 05.02.2008, was discharged by the Court. The suit was filed on 19.08.2008 as as there was no criminal trial. At the best, they had the remedy of civil court and could not have been non-suited for damages as he had to undergo rigmarole of protecting his life and liberty under Article 21 of the Constitution of India by seeking anticipatory bail.

I am afraid the aforementioned argument is not sustainable as the auction proceedings had concededly been dismissed by the trial Court, vide judgment (Ex.D13) and the appeal preferred thereto is also pending. Mr. Singla, expresses handicappedness with regard to availing the remedy, in accordance with law. In such circumstances, it cannot be a case of malicious prosecution as it was only a civil dispute nor had undergone the trial.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees, under challenge, much less, no substantial question of law arises for determination. No

ground is made out for interference. Accordingly, the second appeal is dismissed.

06.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**