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

RSA-207 of 2019 (O&M)
Date of decision: 20.09.2023

Sukhwinder Singh

......Appellant

Versus

Sandeep Sharma and another

......Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Chanakya Batta, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 15.05.2018 passed by the Court of learned District Judge, Jalandhar, whereby appeal filed by respondent No.1-plaintiff against the judgment and decree dated 03.08.2017 passed by the Court of learned Civil Judge (Junior Division), Phillaur, has been accepted and judgment and decree dated 03.08.2017, whereby suit of respondent No.1-plaintiff was dismissed, has been set aside.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit for recovery of Rs.2,00,000/- detailed as Rs.1,00,000/- paid by the plaintiff to defendant as earnest money along with an amount of Rs.1,00,000/- by way of stipulated damages as well as breach of agreement to sell/contract dated 19.04.2011 executed by

defendant in favour of the plaintiff. Plaintiff pleaded that defendant no.1 is the resident of village Gumtala, Tehsil Phillaur and defendant no.2 is his brother, who was owner of land measuring 2 kanals bearing Khasra No. 45 in village Batura, Tehsil Phillaur. Defendant no.1 agreed to sell said khasra number on behalf of defendant no.2 vide written agreement to sell dated 19.04.2011 after receiving a cheque of Rs.1,00,000/- as earnest money in the name of his brother Sukhwinder Singh. The cheque bearing No. 913331 dated 19.04.2011 was drawn from the account of the plaintiff in Punjab National Bank, Rama Mandi, Jalandhar. Said cheque was duly credited in the account of Sukhwinder Singh on 20.04.2011. The sale deed was to be executed on or before 18.10.2011. The total sale price was fixed as Rs. 10,00,000/-. Plaintiff was always ready and willing to perform his part of the agreement and he approached defendant no.1 many times to get general power of attorney from his brother and to get the sale deed executed in terms of the agreement in question or to bring his brother for the purpose of executing the sale deed on or before 18.10.2011. But he resiled from the agreement to sell and ultimately he flatly refused to abide by the terms of the agreement to sell dated 19.04.2011, though plaintiff was ready and willing to pay the remaining sale consideration of Rs. 9,00,000/-. Lastly plaintiff got recorded his presence before Sub Registrar, Nurmahal on 19.10.2011 because 18.10.2011 was not a working day. Defendants have, thus, duped the plaintiff for a sum of Rs. 1,00,000/-. Both the defendants are equally liable to return the amount in question, along with damages as per terms of the agreement.

3. Despite service of notice through publication, defendant No.1 did not appear and he was proceeded against *ex parte*. Defendant no.2 appeared and filed written statement denying the execution of the agreement to sell in question. It was pleaded that father of the plaintiff, namely, Joginder Pal, since deceased, in collusion and connivance with the BSNL company has illegally installed a mobile tower in his land comprised in Khasra No. 46 (2-8). He started legal proceedings against BSNL for removing the tower and for compensation etc. and one FIR was also got registered against Joginder Pal and employees of BSNL company and in order to escape from the clutches of law and to save themselves from said FIR, plaintiff, his father and BSNL employees illegally fabricated the agreement to sell in question and they deposited one cheque of Rs. 1,00,000/- in the account of defendant no.2, whereas he was in foreign country on that date. Even defendant no.1 was also in foreign country on that date. So, alleged cheque was deposited by plaintiff himself or through his agent in the account of defendant no.2 in order to save themselves from the FIR. When defendant no.2 came to know about this fact, he immediately requested the plaintiff to get back his amount of Rs.1,00,000/-, which he had illegally deposited in his account and to give receipt to this effect but the plaintiff refused to get back his amount. Even now defendant no.2 is ready to give Rs. 1,00,000/- to plaintiff, which he had illegally deposited in his account.

4. In the replication filed by the plaintiff, the averments contained in the written statement were controverted and those of the plaint were reiterated.

5. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff entered into an agreement to sell dated 19.04.2011 with the defendants? OPP
2. If issue no.1 is proved, then the plaintiff is entitled to the relief of recovery of Rs. 2 lacs, as prayed for? OPP
3. Whether the agreement to sell dated 19.04.11 is a result of fraud and misrepresentation or is a forged and fabricated document? OPD
4. Whether the suit is insufficiently stamped? OPD
5. Relief.

6. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record vide judgment and decree dated 03.08.2017 dismissed the suit filed by the plaintiff.

7. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been accepted vide judgment and decree dated 15.05.2018.

8. Learned counsel for the appellant contended that the lower Appellate Court has erred in reversing the well-reasoned judgment and decree passed by the trial Court. He further contended that the lower appellate Court has failed to appreciate that respondent No.1-plaintiff failed to prove the alleged agreement to sell. He also contended that rate of interest imposed upon the recovered amount is on higher side.

9. Perusal of the record shows that Ex.P.1 is the agreement to sell dated 19.04.2011, executed by defendant no.1 on behalf of defendant no.2 being his brother, vide which he agreed to sell land

measuring 2 kanals bearing Khasra No. 45 for a sum of Rs. 10,00,000/- after receiving a cheque No. 919331 of Rs. 1,00,000/- in the name of appellant/defendant No.1-Sukhwinder Singh. Respondent No.1-plaintiff has further proved on record the statement of account as Ex.P2, which shows withdrawal of Rs. 1,00,000/- from his account and its credit in the account of Sukhwinder Singh. Ex.P.3 is the application of the appellant, upon which he got his presence marked in the office of Joint Sub Registrar, Nurmahal on 19.10.2011. Agreement Ex.P1 bears the thumb impression of defendant no.1, who is none else but real brother of appellant/defendant no.2. Defendant No.1 did not contest the suit and was proceeded against *exparte*. It is the pleaded case of the appellant himself that on coming to know about the deposit of the cheque of Rs. 1,00,000/- by the plaintiff in his account, he immediately requested the plaintiff to get back his amount but he refused to get back the amount. It is further pleaded by the appellant in his written statement that "even now he is ready to give Rs. 1,00,000/- to the plaintiff, which he had illegally deposited in his account before the Hon'ble Court". Thus, receipt of Rs,.1,00,000/- has been admitted by the appellant. The suit was only for recovery, which has rightly been decreed by the lower appellate Court.

10. Learned counsel for the appellant has failed to show that the findings recorded by lower appellate Court are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

11. In view of above, no question of law, muchless substantial question of law arises for consideration in the present appeal. No other point has been urged.

12. Dismissed.

13. Pending application(s), if any, stand disposed of accordingly.

(NAMIT KUMAR)
20.09.2023 **JUDGE**
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No