



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Sr. No.113

RSA No.1941-2023(O&M)

Date of Decision : 27.02.2024

Sukhwinder Singh

.... Appellant

vs.

Archi Gondi

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Vineet Chaudhary, Advocate
for the appellant.

* * *

GURBIR SINGH, J. :

1. Challenge in the present regular second appeal is to the judgment and decree dated 17.07.2017 passed by Additional District Judge (Sr. Division) Naraingarh hereinafter referred to as trial Court and also against the judgment and decree dated 14.09.2022 passed by learned Additional District Judge, Ambala herein after referred to as Lower Appellate Court.
2. Parties hereinafter shall be referred to as per their original status in the suit.
3. Brief facts of the case are that defendant vide agreement to sell dated 15.05.2013, agreed to sell his land situated at Village Karasan to the father of plaintiff namely Archi Gondi (being minor) and after receiving earnest money amounting to Rs.3,47,000/-, last for execution and registration of the sale deed was fixed for 15.09.2013. later, the defendant



showed his inability to execute the sale deed and promised to refund the earnest money. However, he failed to return the same and issued a cheque dated 15.11.2013 in favour of Pooja Gondi (mother / natural guardian of the plaintiff). The said cheque was presented time and again before the concerned bank which was dishonored with remarks “ funds insufficient”. Hence suit for recovery of Rs. 3,47,000/- along with future interest was filed by the plaintiff.

4. The defendant contested the suit by filing written statement alleging therein that the agreement to sell dated 15.05.2013 was cancelled between the parties on request of plaintiff. In these circumstances, a post dated cheque was issued in the name of Archi Gondi and was handed over to her mother as a security till the return of earnest money. On 31.10.2013, the aforesaid earnest money was handed over to the parents of the plaintiff in the presence of witnesses with request to return the aforesaid cheque but the same was not returned and the defendant did not insist for the same due to friendly relations.

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

1. Whether the plaintiff is entitled to a decree for recovery of Rs.3,47,000/- along with future interest @ 18% per annum as prayed for? OPP
2. Whether suit of the plaintiff is not maintainable in the present form?
3. Whether plaintiff has no locus standi to file the present suit? OPD
4. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD



5. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD

6. Whether the suit of the plaintiff is without any cause of action? OPD

7. Whether the suit of the plaintiff is hopelessly barred by time? OPD

8. Relief.

6. After hearing learned counsel for the parties and appreciating the evidence on record, both the Courts below observed that there is no denial about execution of agreement in question. However the deal could not be finalized between the parties and a post dated cheque amounting to Rs. 3,447,000/- was issued by the defendant in favour of the plaintiff. The said cheque was dishonored. It was the case of the defendant that the amount in question was returned by him in the presence of witnesses but the plaintiff is denying the same. To prove his case, the defendant relied upon a writing dated 15.01.2024 (Ex.D-3) made on the back of the agreement but the same was not signed by plaintiff or her parents and without any sign on the said writing or issuance of any receipt it cannot be said that the defendant had actually made the payment. The said writing also does not bear signatures of alleged witness Naresh Kumar.

7. Learned counsel for the appellant has argued that the cheque in question which has become the basis for the lis in hand, was nothing but a security till the period the earnest money was not returned. Since the agreement in question could not be finalized between the parties the earnest money amounting to Rs. 3,47,000/- was handed over to the parents of the



plaintiff in presence of the witnesses. It has further been submitted that the only mistake on the part of the defendant is that he did not insist for the receipt in lieu of the payment made by him because of having friendly relations with the plaintiff due to this reason, the cheque was later misused by the plaintiff party. The statement of Ashok Kumar (PW-4) was recorded but vide order dated 19.05.2017, passed by the trial Court, which was ordered not to be read in evidence.

8. Learned counsel for the appellant has also submitted that the judgments are based on conjectures and surmises and the suit filed by the plaintiff is not maintainable as she was minor and the suit could have been filed only by the vendee i.e. her father and not the plaintiff herself. It has further submitted that Pooja Gondi (mother of the plaintiff) was never party to the agreement in question so she was not a proper party to file the suit. Moreover, the plaintiff herself has not paid any money to the defendant so the suit on her behalf was not maintainable.

9. I have heard the submissions made by the learned counsel for the appellant and perused the case file.

10. It is the admitted fact that agreement to sell dated 15.05.2013 executed between parties but the same was not finalized and was cancelled on 29.08.2013. In order to refund the earnest money the cheque dated 15.11.2013 was issued but the same was dishonored. The case of the defendant is that he had returned the amount of earnest money, whereas, the defendant is denying the same. There is no evidence on the record to show that the defendant had actually returned the amount of earnest money. On



the other hand, dishonoring of cheque not only once but 2-3 times goes against him. The writing, relied upon by the defendant, to show that he had returned the amount of Rs.3,47,000/- in presence of witness is of no help to the defendant's case. The said writing does not bear signatures of witness and is not on a proper stamp paper. It has also not been signed by anyone from the plaintiff's side in lieu of token of receipt of earnest money. In these circumstances, refund of earnest money is not proved to be paid. Had such money been paid then cheque would have been received back or there should be separate receipt for the return of the amount. No reliance can be placed on the oral statement of defendant that amount of earnest money was returned.

11. In view of above discussion, this Court is of the view that the concurrent findings recorded by both the Courts below are based upon appropriate appreciation of evidence and did not suffer from any perversity, infirmity or illegality so as to warrant interference at the hands of this Court. No question of law, much less substantial question of law, arises in the present appeal. So, the present appeal, being devoid of merit, is hereby dismissed.

27.02.2024
renu

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.