



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

RSA-374-2019 (O&M)
Date of Decision: -**20.05.2024**

Gyarsa Ram Saini

... Appellant

Versus

Ram Chander

... Respondent

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Argued by :- Mr. Sushil Sheoran, Advocate
for the appellant.

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RITU TAGORE, J.

1. This appeal is against judgment and decree dated 16.10.2018, passed by learned District Judge, Rewari affirming the judgment dated 23.09.2016, passed by learned Additional Civil Judge (Senior Division), Rewari.

2. For the sake of convenience, parties shall be referred as per their status before the learned trial Court.

3. Facts relevant for this appeal are that, according to plaintiff, defendant approached him for purchase of 32 kanals of agricultural land @ ₹35,00,000/- per acre belonging to Suresh Kumar and others. The plaintiff agreed for it, and an agreement to sell dated 04.07.2013 was executed between him and Suresh Kumar etc., with defendant mediating. The plaintiff



gave ₹20,00,000/- as earnest money to Suresh Kumar etc. 22nd day of July 2013 was fixed as the date for execution of the sale deed.

4. Further, according to plaintiff, defendant retained the original agreement to sell and threatened the plaintiff to give ₹20,00,000/- for his own personal use, lest the earnest money paid by him would be forfeited. Under the threat of loss of earnest money, he gave a bearer cheque dated 08.07.2013 for an amount of ₹20,00,000/- to the defendant. Thereafter, the defendant returned the original agreement to sell to him. It is alleged that defendant 'encashed' the cheque and also agreed to pay interest @ 1% per annum on the said amount. The sale deed was executed in favour of defendant based on the agreement to sell on 15.07.2013 vide sale deed No.726. The plaintiff also paid ₹1,40,000/- as brokerage to the defendant vide cheque dated 28.10.2013. The plaintiff, pleaded that he demanded ₹20,00,000/- from defendant, but he refused to repay the same, that necessitated him to file the suit.

5. Upon being put to notice, by the learned trial Court, the defendant appeared, filed the written statement and controverted the allegations of payment of ₹20,00,000/- as loan. The defendant pleaded that plaintiff gave a bearer cheque to him to withdraw the amount for payment of stamp charges etc. for execution of sale deed. He withdrew the amount and after payment of ancillary expenses for execution of sale deed, and he returned remaining amount to plaintiff. He refuted having retained any original agreement to sell or took any amount as loan. He stated that he took



brokerage ₹1,40,000/- from the plaintiff for the deal got struck by him to purchase the land. With above material averment, prayed for dismissal of suit of plaintiff, being devoid of merits.

6. Plaintiff filed replication, controverted the averments of the defendant by re-asserting his stand. Since, parties were at variance, the learned trial Court framed following issues:-

1. Whether the plaintiff is entitled to a decree for recovery of ₹21,60,000/- with future interest as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
4. Relief.

7. The parties led the evidence before the learned trial Court, as detailed in the judgment of the learned trial Court. On appraisal of facts, pleadings and evidence, learned trial Court came to conclusion that plaintiff failed to substantiate his version and dismissed his suit. The first appeal preferred by the plaintiff also met with the fate of its dismissal, that led to filing of this Regular Second Appeal (for short 'RSA').

8. Learned counsel for the appellant contends that learned Courts below failed to appreciate the evidence in correct manner and ignored the documentary evidence, which establishes that defendant had encashed the cheque in question and presented no evidence to establish that he repaid the



amount to the plaintiff. Learned counsel further urges that defendant's failure to reply to the legal notice given by the plaintiff demanding the money back substantiates his version.

9. Learned counsel states that original agreement was with the defendant, and plaintiff could not afford to lose the money and deal. Therefore, under coercion, he paid the money to the defendant by way of cheque. When defendant, despite assurance and demand, did not return the amount, plaintiff filed the suit. The learned counsel argues that learned Courts below misinterpreted and misunderstood the evidence, and erred in discarding the version of the plaintiff. It is asserted that findings of the learned Courts below are based on surmises and conjectures and are liable to be set aside. A prayer is made to allow the appeal by setting aside the illegal findings of the Courts below.

10. I have heard learned counsel for the appellant and have gone through the record, and the conclusions drawn by the learned Courts below, and hold that same are well reasoned and based on sound appreciation of the evidence for reasons narrated below.

- (i) There is no dispute that parties shared a good relation prior to the present *lis*. The version of the plaintiff that earlier also, defendant helped in sale of the land and again mediated in the current deal for the purchase of 32 kanals land from Suresh etc. is not in controversy.



- (ii) The plaintiff's claim that defendant took original agreement to sell and threatened him to give him ₹20,00,000/- or else he would not return the original agreement to sell, and further that he agreed to pay interest @ 1% p. a to the defendant, is supported by no evidence except the self pleading statement of the plaintiff. On the contrary, the plaintiff has demolished his own version by stating that he made no police complaint against the defendant and he paid ₹1,40,000/- as brokerage to defendant vide cheque dated 28.10.2013. If there had been any outstanding amount owed by the defendant, as claimed by plaintiff, there would have been no reason for the plaintiff to pay ₹1,40,000/- as brokerage to the defendant. Still further, it is not plaintiff's case that the defendant issued any additional threats to him. Under such circumstances, any prudent person would have adjusted the amount of brokerage with the alleged outstanding payment. Therefore, all these factors and circumstances makes the plaintiff's version highly unbelievable and completely improbable. The learned Courts below have rightly noted these material infirmities in the case of the plaintiff.
- (iii) On the other hand, original sale deed (Ex.P-1), adduced on record shows that stamp paper was purchased by plaintiff through defendant. This piece of evidence remained



unrebutted and substantiated the defendant's version that, after withdrawing the amount of the cheque (Ex.P-2), he purchased stamp paper for the execution of sale deed, covered other miscellaneous expenses, and paid remaining amount to the plaintiff. The plaintiff presented no evidence that any additional or separate amount was given by him to defendant, to purchase the stamp papers and cover other ancillary expenses of the sale deed.

- (iv) If defendant did not reply to legal notice of the plaintiff, it does not mean that he admits the plaintiff's claim. The averment of plaintiff that defendant agreed to pay interest @1% p.a. inherently contradicts his claim that defendant extracted the cheque of ₹20,00,000/- (Ex.P2) from him through threats. Since plaintiff came with the plea that defendant obtained this amount by threatening not to return the original agreement to sell and forfeiture of agreement and the earnest amount, the burden was upon plaintiff to prove these allegations. However, except for his oral testimony, the appellant-plaintiff, presented no other evidence to support his version of events. The admission of payment of brokerage amount further undermines his pleaded version. Additionally, the plaintiff's account of the possession and custody of original agreement to sell is inconsistent. In plaint, he pleaded that after original



agreement was given to him by the defendant, he handed over the cheque. However, in the replication, he stated that the original agreement was still with defendant.

11. For the reasons stated above, the plaintiff-appellant failed to bring on record sufficient and satisfactory evidence to support his case. After considering all relevant factors together, I find no illegality or perversity in the concurrent findings, which are based on application of oral and documentary evidence. There is no justification for forming a different opinion so as to bring the findings of the learned Courts below within the realm of perversity. I, affirm the findings and find no ground for interference much less involvement of any substantial question of law.

12. Ex-Consequenti, there is no merit in the appeal and is, hereby, dismissed.

13. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

20.05.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

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