



RSA-2742-2024 (O&M)

Sr.No.132

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

**RSA No.2742 of 2024 (O&M)
Decided on : 11.03.2025**

Bakshish Singh Kooner

...Appellant

Versus

Joga Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Karan Nehra, Advocate and
Ms. Nisha Rana, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

Defendant No.1 is in appeal. For convenience, the parties are being referred to by their original position in the suit i.e. the appellant as defendant No.1, respondent No.1 as plaintiff and respondent No.2 as defendant No.2.

2. Plaintiff filed suit for recovery of Rs.29,76,000/- including Rs.24 lakhs as principal amount and Rs.5,76,000/- as interest calculated @ 18% per annum. Plaintiff claimed that he sold land measuring 78 kanals 10 marlas @ Rs.28,10,000/- per acre to defendant No.2 and his family members. Plaintiff was approached by one Jaswinderpal Singh Walia, his relative's family friend, who further introduced him to one Harmeet Singh son of Sh. Ravel Singh for

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further purchase of land. Plaintiff believing Jaswinderpal Singh Walia become interested in purchasing property in Tamil Nadu and Andhra Pradesh. After his land was sold, plaintiff started transferring money in the account of Jaswinderpal Singh Walia, Harmeet Singh and Ritika Oberoi wife of Jaswinderpal Singh Walia to facilitate the purchase of land in Tamil Nadu and Andhra Pradesh. Plaintiff claims that he was approached by defendant No.1. Defendant No.1 informed plaintiff that Jaswinderpal Singh Walia was purchasing property in Tamil Nadu through him and if plaintiff was interested, the defendant No.1 can make arrangement for purchase of the same at a reasonable price.

2.1. Plaintiff claims that he believed defendant No.1 after Jaswinderpal Singh Walia telephonically assured him of credentials of defendant No.1. Plaintiff transferred money to defendant No.1 to purchase land and executed Power of Attorney dated 27.04.2012. Plaintiff further asserts that on his direction, the defendant No.2 to whom he had sold land, transferred amount of Rs.24 lakhs in the account of defendant No.1 for purchasing land in the name of plaintiff. The amount of Rs.24 lakhs was transferred from the account of defendant No.2 bearing A/c No.2115101005769 at Canara Bank, Branch Amritsar to the account of defendant No.1 bearing A/c No.3970002100012489 at Punjab National Bank. Plaintiff further claimed that neither defendant No.1 purchased any land for him nor returned the money which led to filing of the present suit.

3. Suit was contested by defendant No.1. Defendant No.1 pleaded that he owns land in Tamil Nadu and is residing there. Jaswinderpal Singh

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Walia contacted him and expressed his intention to purchase land. Jaswinderpal Singh Walia appointed him as his Attorney for purchase of the said land. It was Jaswinderpal Singh Walia who transferred amount of Rs.24 lakhs in his account. Land stands purchased in the name of Jaswinderpal Singh Walia. Original sale deed in the name of Jaswinderpal Singh Walia was handed over by defendant No.1 to him. Plaintiff never contacted defendant No.1 at any point of time. Money in this account was transferred by Jaswinderpal Singh Walia from his Bank, Ferozepur Branch. Plaintiff never transferred any amount in the account of defendant No.1 and he was not the agent of plaintiff.

4. Suit filed by plaintiff was put to trial and the Trial Court framed following issues:-

- 1) *Whether the plaintiff is entitled to recover the suit amount alongwith interest as prayed for? OPP*
- 1-A) *Whether there was any agency between plaintiff and defendant No.1 as alleged in para No.9 of the plaint. What is the date and year of the same and terms and conditions of the same? OPP*
- 1-B) *Whether this Court has territorial jurisdiction to entertain and try the present suit ?OPP*
- 1-C) *Whether the plaintiff has no locus standi to file the present suit? OPD*
- 1-D) *Whether present suit is misuse of process of law?OPD*
- 2) *Whether the suit is not maintainable? OPD*
- 3) *Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
- 4) *Whether the plaintiff has no cause of action to file the present suit? OPD*
- 5) *Whether the plaintiff has not come to the Court with clean*



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*hands and has suppressed the material facts from this Court?
OPD*

*6) Whether the suit of the plaintiff is bad for misjoinder and
nonjoinder of necessary parties? OPD*

7) Relief."

5. Court of the First Instance found plaintiff successfully proved payment of Rs.24 lakhs through RTGS from the account of defendant No.2 to the account of defendant No.1. As per the pleadings raised in the written statement, defendant No.1 claimed that it is Jaswinderpal Singh Walia who transferred amount of Rs.24 lakhs in the account of defendant No.1. When defendant No.1 appeared in the witness box, specific direction was given to him to bring his account statement. He failed to bring the same. Thus, he having withheld the best piece of evidence, adverse inference needs to be drawn against him. Court the First Instance, thus, decreed the suit filed by plaintiff holding him entitled to recover an amount of Rs.24 lakhs along with pendente lite interest @ 9% per annum simple interest and future interest @ 6% per annum simple interest from the date of decree till its actual realization.

6. The aforesaid findings stand affirmed by the Lower Appellate Court.

7. Counsel for the appellant has vehemently assailed the findings recorded by the Courts below claiming that the plaintiff being the one who approached the Court was required to stand on his own legs. Even as per the case of plaintiff, he was induced by Jaswinderpal Singh Walia and Naunihal Singh. He deposited money in the account of Jaswinderpal Singh Walia, Harmeet Singh and Ritika Oberoi and not to the account of

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appellant/defendant No.1. There is not an iota of evidence in whose presence the money was handed over to appellant by the plaintiff. There are no terms and conditions of the agreement, whereby agency was created by the plaintiff in favour of appellant/defendant No.1. Plaintiff, despite having failed to discharge initial onus, his suit has been decreed by the Courts below. In order to hammer-forth his contention, he relies upon ratio of law laid down by this Court in ***Gurbachan Singh and others vs. Swaran Singh and others, passed in RSA No.60 of 1993, decided on 04.11.2024***, wherein this Court held that the terms and conditions of oral agreement need to be certain and only then the same can be held to be proved.

8. I have heard counsel for the appellant and have carefully gone through records of the case.

9. Instant suit filed by plaintiff is a suit for recovery claiming that he transferred an amount of Rs.24 lakhs to the appellant/defendant No.1 through defendant No.2 for purchase of land. Defendant No.1/appellant has neither returned the money nor has purchased the land in plaintiff's name. In order to substantiate his plea, the plaintiff successfully proved transfer of amount of Rs.24 lakhs from the account of defendant No.2 to the account of defendant No.1 by examining PW2 – Mukesh Khanna, officer of Canara Bank. PW2 proved that on 27.04.2012, an amount of Rs.24 lakhs was debited from the account of defendant No.2-Satnam Singh and was by way of RTGS in the account of defendant No.1 – Bakshish Singh Kooner. Thus, plaintiff proved transfer of amount of Rs.24 lakhs to defendant No.1 as claimed in the plaint. Defendant No.1 specifically pleaded in his written statement that no

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amount was transferred to his account by defendant No.2 on behalf of plaintiff but was transferred by Jaswinderpal Singh Walia. In order to prove the same, defendant No.1 was required to lead evidence to demonstrate that the amount of Rs.24 lakhs received in his account was transferred by Jaswinderpal Singh Walia and not by defendant No.2. During his cross-examination, the defendant No.1 sought time to produce bank account statement. However, on the next date, he opted not to bring his account statement. Thus, defendant No.1 failed to prove his defence miserably. On the other hand, the plaintiff proved transfer of amount of Rs.24 lakhs from the account of defendant No.2 to the account of defendant No.1. Section 119 of Bharatiya Sakshya Adhiniyam, 2023 governs the situation as arisen in the present case. The same reads as under:-

"119. Court may presume existence of certain facts.—

(1) The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume that—

(a) a man who is in possession of stolen goods soon, after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) an accomplice is unworthy of credit, unless he is corroborated in material particulars;

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(c) a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;

(e) judicial and official acts have been regularly performed;

(f) the common course of business has been followed in particular cases;

(g) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i) when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

(2) The Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it.—

(i) as to Illustration (a)—a shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

(ii) as to Illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes

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precisely what was done, and admits and explains the common carelessness of A and himself;

(iii) as to Illustration (b)—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

(iv) as to Illustration (c)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence;

(v) as to Illustration (d)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

(vi) as to Illustration (e)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

(vii) as to Illustration (f)—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

(viii) as to Illustration (g)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;

(ix) as to Illustration (h)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;



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(x) as to Illustration (i)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it."

Illustration 1(g) fully addresses the situation in hand. Defendant No.1 deliberately withheld the best piece of evidence and thus the Courts below have rightly drawn adverse inference against defendant No.1/appellant.

10. The Courts below have returned pure findings of fact after appreciating the pleadings and evidence in its true and correct perspective. No question of law is involved, this Court does not find any reason to interfere in the findings recorded by the Courts below. I am guided by ratio of law laid down by Supreme Court in ***Randhir Kaur Versus Prithvi Pal Singh & Ors.*** 2019(17) SCC 71, wherein it was held as under :-

*"14. The Division Bench of Punjab and Haryana High Court in a judgment reported in **Sadhu v. Mst. Kishni**, 1980 AIR (Punjab) 85 set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:*

*"12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanymayya** [AIR 1959 Supreme Court 57.], **Madamanchi Ramappa v. Muthaluru Bojjappa** [AIR 1963 Supreme Court 1633.], **Bithal Dass Khanna v. Hafiz Abdul Hai** [1969 S.C. Notes 481.] and **Afsar Shaikh v. Soleman Bibi** [(1976) 2 SCC*



142 : AIR 1976 Supreme Court 163.J. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.

xx xx xx

14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by the District Judge. The parties are, however left to bear their own costs.

15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”



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11. The said dictum was further elaborately echoed by three Judges Bench in *Satyender and Ors. Versus Saroj and Ors. 2022 AIR (Supreme Court) 4732* as under :-

“XXXX XXXX XXXX

17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

12. As a sequel of discussion held herein above, finding no merit in the present appeal, the same is ordered to be dismissed.

13. Pending application(s), if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

March 11, 2025
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No