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

RSA-5745-2016 (O&M)

Reserved on:- 04.09.2025

Date of Pronouncement: 10.09.2025

Baljinder Singh

.....Appellant

Versus

Bhupinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.A.K. Arora, Advocate
for the appellant.

Mr. Abhay Gupta, Advocate
for respondent No.1.

HARKESH MANUJA, J. (ORAL)

Defendant No.4 is in appeal against the judgments and decrees dated 28.02.2013 and 01.08.2016 passed by the Courts below; whereby the suit for recovery of Rs.13,50,000/- including Rs.3,00,000/- as compensation besides claim towards interest @ 12% per annum came to be partly decreed in favour of respondent No.1/ plaintiff while holding him entitled for recovery of Rs.7,50,000/- from the appellant/ defendant No.4 along with interest @ 9% p.a. from the date of execution of the sale deed till the date of institution of



suit and further *pendente lite* and future interest @ 6% per annum till actual realization of amount.

2. Brief facts of the case are that respondent No.1/ plaintiff filed a suit for recovery against the defendants-appellant alleging that on 13.12.2002/21.12.2002, defendant No.1 through his attorneys defendants No.2 & 3 agreed to sell 221.81 sq yards area out of Khasra Number 713 min, situated within the revenue estate of Tung Bala Urban, Abadi Basant Avenue, Amritsar on which Kothi bearing municipal No.472 was already existing, in favour of plaintiff/ respondent No.1 and defendant No.4 in equal shares against total sale consideration of Rs.33,00,000/-. It was pleaded that at the time of execution of agreement to sell, plaintiff and defendant No.4 advanced Rs.5,00,000/- in equal proportion and the sale deed was to be executed on or before 25.03.2003. Further, plaintiff handed over three cheques bearing Nos.759253, 759254 and 759255 and one cheque bearing No.759251 dated 17.03.2003 amounting to Rs.2 lakhs each of State Bank of India to defendant No.2 and defendant No.3, i.e. general attorneys of defendant No.1 vendor, which were encashed by them through their respective banks. Plaintiff been ready and willing to get the sale deed executed, handed over the balance sale consideration of his part to defendant No.4, who in order to deceive the plaintiff, joined hands with defendants No.1 to 3 and executed the sale deed of the whole area in his name while mentioning the sale consideration price as Rs.15,74,000/-. Hence



the suit filed for refund of the amount paid along with interest and compensation as well.

3. Upon notice, despite service, defendants No.1 & 2 as well as defendant No.3 failed to put in appearance and as such they were proceeded against *ex parte* on 04.05.2006 and 09.09.2005, respectively. However, defendant No.4 appeared and filed written statement alleging therein that the present suit was not maintainable; suit was bad for mis-joinder and non-joinder of necessary parties and the plaintiff was estopped by his own act and conduct as he was having no cause of action to file the same. It was admitted in the written statement that though the agreement to sell was executed by defendant No.1 through his attorneys jointly in favour of plaintiff as well as defendant No.4 in equal proportion; but later plaintiff showed his inability to get the same executed as he wanted to invest the money somewhere else and therefore, requested the attorneys of defendant No.1 to refund the amount. It is only thereafter, on account of mutual agreement, a sum of Rs.7.50 lakhs was paid by father of defendant No.4/appellant to the plaintiff on 28.07.2023 and the remaining amount of Rs.4 lakhs was paid by defendant No.4/appellant through a post-dated cheque bearing No.847884 dated 29.12.2003 drawn on Punjab and Sind Bank, Amritsar and as such, no amount was due and the suit filed by plaintiff-respondent No.1 was liable to be dismissed with costs.



4. To this, plaintiff filed replication wherein the stand taken by defendant No.4 in his written statement was controverted and the contents of the plaint were reiterated besides pleading that even the cheque issued by defendant No.4 was dishonoured and a complaint in this regard under Section 138 of the Negotiable Instruments Act, 1881 had to be filed.

5. Upon pleadings of the parties, learned trial Court framed the following issues:-

- “1. *Whether the plaintiff is entitled to recovery of Rs.13,50,000/- along with interest? OPP*
 2. *Whether plaintiff is entitled to the compensation of Rs.3 lacs? OPP*
 3. *Whether the suit is not maintainable? OPD*
 4. *Whether the suit is bad for mis joinder and non joinder of necessary parties? OPD*
 5. *Whether plaintiff is estopped by his own act and conduct from filing the suit? OPD*
 6. *Whether the plaintiff has no action to file the present suit? OPD cause of*
 7. *Whether the plaintiff has concealed the material facts from the court? OPD*
- Relief.”*

6. After appreciation of evidence led by the parties, the learned trial Court partly decreed the suit in favour of respondent No.1/ plaintiff and he was held entitled for recovery of sum of Rs.7,50,000/- from the appellant/ defendant No.4 along with interest @ 9% p.a. from the date of execution of the sale deed till the date of



institution of suit and further *pendente lite* and future interest @ 6% per annum till actual realization of amount. However, the learned trial Court held that Rs.4 lakhs was paid to the plaintiff by defendant No.4. Aggrieved thereof, the appellant/ defendant No.4 preferred first appeal, however, the same was dismissed by the Court of learned District Judge, Ludhiana vide judgment and decree dated 01.08.2016. Importantly, against the rejection of his claim qua Rs.4 lakhs, separate appeal was filed by plaintiff, however, the same was also dismissed by the learned First Appellate Court vide same judgment and decree.

7. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for appellant/defendant No.4 submits that since plaintiff/ respondent No.1 himself resiled to perform his part of the contract, thus, the suit filed by him for recovery of Rs.13,50,000/- deserved to be dismissed. In the alternate, it was also pointed out that the appellant had already paid the amount due to the plaintiff and the same was duly proved on record from the deposition of defendant No.4 and his father having appeared as DW1 and DW4, respectively.

8. On the other hand, learned counsel for respondent No. 1- plaintiff submits that the Courts below have rightly decreed the suit of the plaintiff while holding him entitled to the recovery of Rs.7,50,000/- from defendant No. 4 alongwith interest and the present appeal is thus liable to be dismissed.



9. Having heard learned counsel for the parties and gone through the paper-book / records, I find no substance in the submission(s) made on behalf of the appellant-defendant No. 4.

10. In the considered opinion of this Court, once the sale deed was executed in favour of defendant No.4 regarding the entire land, and the factum of having received part consideration from plaintiff was admitted then burden to prove the factum of return of the amount contributed by the plaintiff shifted upon him. Except the oral deposition of defendant No.4 himself as DW1 and that of his father as DW4, no documentary evidence so as to establish the source of the money paid to the plaintiff was produced on record. Even no receipt of the amount paid to the plaintiff was produced in evidence. In such circumstances, the concurrent findings of fact based upon evidence available on record was recorded by the Courts below while holding that defendant No.4 failed to prove the cash payment of Rs.7.50 lakhs to the plaintiff after getting the sale deed dated 01.01.2004 (Ex.P11) executed in his absence, thus, there being no misreading or misinterpretation of the statements of defendant No.4 and his father- Dalbir Singh; no interference is called for on such finding of fact.

11. In view of the above, no question of law, much less substantial question of law is involved in the present appeal; as there is no illegality or irregularity warranting interference by this Court with the concurrent findings of fact recorded by the Courts below, the present appeal being devoid of merits is, therefore, dismissed.

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12. Pending misc. application(s), if any, shall also stand disposed of.

**10.09.2025
sanjay**

**(HARKESH MANUJA)
JUDGE**

Whether speaking/reasoned?
Whether Reportable?

Yes/No
Yes/No