

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

RSA-238-1989 (O&M)

Date of reserve : 20.11.2014

Date of pronouncement:21.2.2015

Sulakhan Singh

...Appellant

Versus

Didar Singh and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Argued by: Mr.JS Toor, Advocate for the appellant

Mr.FS Virk, Advocate for the respondents.

SNEH PRASHAR, J.

Assailing the judgment and decree dated 21.10.1988 passed by learned Additional District Judge, Patiala vide which the judgment and decree dated 23.1.1987 of learned Sub Judge 1st Class, Amloh, was partly allowed and the suit filed by Didar Singh and others, respondents-plaintiffs was partly decreed, Sulakhan Singh, defendant-appellant preferred the instant appeal.

2. The facts garnered from the record are as under:-

Didar Singh and his brothers sons of Harnek Singh (plaintiffs) filed a suit for recovery of Rs.11,000/- on the ground that defendant Sulakhan Singh borrowed a sum of Rs.8,000/- from

Ajmer Singh @ Bawa Singh s/o Dewa Singh of village Ghutind on 28.6.1981 and on receipt of money, executed thumb marked a pronote and receipt on the same day in favour of Ajmer Singh in the presence of witnesses. It was agreed that interest will be charged at the rate of 2% per month.

The plaintiffs averred that Ajmer Singh died leaving a Will executed by him during his life time in a sound and disposing mind on 5.1.1983. By virtue of the said Will, he bequeathed all his moveable and immoveable properties in their favour and hence entitled them to recover the loan amount from the defendant. The total amount recoverable was said to be Rs.11,000/- i.e. Rs.8000 being principal amount plus interest Rs.3000/- calculated at the rate of 12% per annum.

3. The suit was contested by the defendant. In the written statement filed by him, the preliminary objections raised were that the suit filed by the plaintiffs being legatees of Ajmer Singh was not maintainable without obtaining a succession certificate; the suit was bad for mis-joinder of parties as Ajmer Singh had three brothers namely Ajaib Singh, Chand Singh and Harnek Singh and all his legal representatives had not been impleaded as party to the suit.

Replying on facts, the defendant alleged that he had taken a loan of Rs.1500/- from Ajmer Singh on 7.9.1979 and a pronote for Rs.1800/- was got executed from him by adding

Rs.300/- as advance interest to keep a pressure on him. On 28.6.1981 he again felt necessity for some money and approached Ajmer Singh to advance Rs.1000/- more. Ajmer Singh paid the amount on the condition that the old amount would be added in the consideration amount of the pronote to be executed and the pronote would be written according to his wishes indicating the amount he wanted to be repaid. However, he assured that he would claim the amount what had actually been paid alongwith interest. It was agreed that the amount would be returned within one year. Accordingly, a pronote was written calculating the interest at the rate of 3% for three years.

It was further pleaded by the defendant that he paid Rs.7500/- to Ajmer Singh at the shop of Jeet Ram in Khanna in the presence of Ajmer Singh s/o Ram Karan. As he cleared the account, he asked Ajmer Singh to return the pronote, but saying that pronote was not immediately available with him, Ajmer Singh assured to return the same later. He had faith in Ajmer Singh and expected that he would keep up his promise. Unfortunately, some months later, Ajmer Singh died all of a sudden as a result of heart attack. The plaintiffs, who might have found the pronote from his belongings are misusing the same. The defendant offered to take special oath regarding what he stated and also called upon the plaintiffs to rebut by taking a special oath.

4. On the pleadings of the parties, the learned trial Court framed the following issues:-

1. *Whether the pronote Ex.P1 and receipt Ex.P2 were executed and the amount was returned to Ajmer Singh deceased as alleged in para 4 of the written statement?*
2. *Whether the plaintiffs are entitled to recover the amount in suit?*
3. *Relief.*

Both the parties led evidence to substantiate their respective contentions.

5. Considering the evidence of the parties and the submissions made on their behalf, learned trial Court came to the conclusion that the amount paid to the defendant vide pronote Ex.P1 and receipt Ex.P2 was returned by him to Ajmer Singh and decided issue No.1 against the plaintiffs. Accordingly, finding that the plaintiffs were not entitled to recover any amount from the defendant, dismiss the suit with costs.

The plaintiffs preferred an appeal against the judgment and decree dated 23.1.1987 of the learned trial Court. Their appeal was partly allowed by the learned Additional District Judge, Patiala vide impugned judgment and decree dated 21.10.1988 and it was held that the plaintiffs were entitled to recover a sum of Rs.8000/- as principal and Rs.2940/- as interest, total of which comes to Rs.10,940/- with proportionate costs from defendant Sulakhan

Singh. The suit of the plaintiffs pertaining to the remaining amount was dismissed with no order as to costs.

Feeling dissatisfied with the judgment and decree dated 21.10.1988 passed by learned Additional District Judge, Patiala, defendant Sulakhan Singh preferred this regular second appeal.

6. Mr.J.S.Toor, Advocate, learned counsel representing the defendant-appellant and Mr.F.S. Virk, learned counsel for the plaintiffs-respondents have been heard and the record has been perused.

7. Before going into the contentious issue, it is important to mention here that the learned trial Court as well as learned first appellate court had concurrently held and rightly so that defendant Sulakhan Singh admitted the execution of the pronote Ex.P1 and receipt Ex.P2 without any reservation. The defendant admitted that he had thumb marked a pronote and a receipt in favour of Ajmer Singh on 28.6.1981 on having borrowed money from him. It was not the contention of the defendant that amount of Rs.8000/- had been wrongly mentioned in the pronote Ex.P1 and receipt Ex.P2. He opted to stay silent about the amount written in the pronote and receipt which he had thumb marked.

8. Learned counsel for the appellant-defendant argued that DW3 Ram Karan was one of the attesting witnesses of receipt Ex.P2 and he specifically deposed that nothing was paid at the time of

execution of the pronote Ex.P1 and receipt Ex.P2. Plaintiff Didar Singh, who appeared as PW1 was not a witness to exchange of money between Ajmer Singh and defendant Sulakhan Singh and no other witness was examined by him who could prove actual payment of Rs.8000/- by Ajmer Singh to defendant Sulakhan Singh. The documents were thus proved to be without consideration.

9. The argument of the learned counsel for the defendant-appellant is not inconsonance with the pleadings of the defendant. In his written statement, defendant Sulakhan Singh admitted execution of the pronote Ex.P1 and receipt Ex.P2 and did not spell out a word to say that the amount written therein was not paid to him. Rather he pleaded that he paid Rs.7500/- to Ajmer Singh and cleared the amount. Therefore, neither payment of loan amount was disputed, nor the amount due from him was denied by the defendant. In the said circumstances, statement of DW2 Ram Karan was apparently false and non-examination of the attesting witness of receipt Ex.P2 namely Salig Ram, who had written in his own hand on the receipt that a sum of Rs.8000/- had been received by Sulakhan Singh in his presence, was of no consequence.

10. Importantly, the defendant pleaded and also deposed when he stepped in to the witness box as DW1 that on 7.9.1979, he borrowed a loan of Rs.1500/- from Ajmer Singh and on payment of the said amount Ajmer Singh got executed from him a pronote of

Rs.1800/- by adding Rs.300/- as advance interest in the principal amount to keep a pressure on him. He further testified that on 28.6.1981, when he needed more money, he asked Ajmer Singh to advance Rs.1000/- to him. Ajmer Singh agreed to do so on the consideration that the old amount would be added in the consideration of the pronote to be executed and the contents of the pronote will be written according to his choice, but he assured that he would charge only what had been actually paid by him alongwith interest and that amount would be returned within one year. The defendant added that the pronote was written by adding interest into the principal amount at the rate of 3% for 3 years. In that manner, the defendant admitted the execution of the pronote Ex.P1 and receipt Ex.P2 dated 28.6.1981 and also payment of loan amount to him which he had agreed to return with interest. His deposition is further to the effect that he had paid Rs.7500/- to Ajmer Singh and had cleared the account.

11. In the light of the story presented by the defendant, the short point that crops up for determination is whether the defendant had paid Rs.7500/- to Ajmer Singh at Khanna in the shop of Jeet Ram in the presence of Ajmer Singh s/o Ram Karan and cleared the account as stated by him. Needless to say that when the execution of the pronote and receipt as well as payment of loan amount by Ajmer Singh to the defendant was admitted by latter and it was the plea of

the defendant that he had repaid the loan amount to Ajmer Singh, which cleared the account, the onus was squarely on him to prove the factum of payment.

12. For proving his version, the defendant besides appearing in the witness box as DW1, examined DW2 Ajmer Singh and DW4 Jeet Singh. Both the witnesses supported his claim of repayment of the loan amount. Learned counsel for the defendant –appellant argued that repayment of loan amount by defendant Sulakhan Singh was in the personal knowledge of Ajmer Singh. Since, he was no more, the repayment could be proved only through the persons in the presence of whom the defendant had returned the money to Ajmer Singh. Since, DW2 Ajmer Singh and DW4 Jeet Singh unequivocally deposed that defendant Sulakhan Singh had paid Rs.7500/- to Ajmer Singh in their presence and no evidence to rebut their testimony could be produced by the plaintiffs, there is no reason why they should not be believed.

13. Apparently, the story of repayment of the loan amount of defendant Sulakhan Singh rested merely on ocular statements of two witnesses. Apart from the fact that a scrutiny of their statements would show that they were simply procured witnesses, it is also worthwhile to note that neither the defendant nor any of the witnesses examined by him stated the date of repayment.

Surprisingly, defendant Sulakhan Singh remembered the date i.e.

7.9.1979, on which he alleged that he had borrowed a loan of Rs.1500/- from Ajmer Singh and he also remembered the date i.e. 28.6.1981 when he approached Ajmer Singh for additional loan of Rs.1000/- and executed the pronote Ex.P1 and receipt Ex.P2, but for the reasons unexplained, he did not remember the date on which he had repaid Rs.7500/- to Ajmer Singh to clear his loan account.

14. Further, the defendant could not produce any receipt of payment of Rs.7500/- to Ajmer Singh. It again does not appeal to a prudent mind that he knew that he had executed and thumb marked a pronote and receipt when the loan amount was advanced to him by Ajmer Singh, but at the time of repayment of the loan amount, he did not ask for any receipt from Ajmer Singh. There may have been a relationship of faith between him and Ajmer Singh, but when Ajmer Singh had got signed a pronote and receipt from him there was no reason for him to not obtain a receipt from Ajmer Singh.

15. As far as the ocular evidence of the defendant is concerned that too is not trustworthy. In his written statement, he took the plea that he paid Rs.7500/- to Ajmer Singh at the shop of Jeet Ram in Khanna in the presence of Ajmer Singh son of Ram Karan. When he appeared in the witness box, he introduced another person named Surjit Singh s/o Bakhtawar Singh of Nawa Pind, who he stated was also present at the shop of Jeet Ram when he paid the amount to Ajmer Singh but could not examined Surjit Singh. He

further stated that he asked Ajmer Singh to return the pronote but Ajmer Singh told him that the papers were with Didar Singh, who used to reside in village Jatana in his house and he would return the same as soon as Didar Singh would be available. This was not the explanation of defendant Sulakhan Singh in his written statement. There he had pleaded that Ajmer Singh told him that the pronote was not immediately available with him, but he had assured to return the same.

Contrary to the above, DW4 Jeet Singh deposed that when Sulakhan Singh demanded the pronote back, Ajmer Singh replied that pronote was lying in the village and that he would hand over after he reaches the village.

16. The pleadings of the defendant in the written statement indicate that some months after the repayment Ajmer Singh died, but according to DW2 Ajmer Singh the repayment was made by Sulakhan Singh around *Lohari* in the year 1983, which means before or after 13.1.1983. Ajmer Singh died on 5.2.1983 as mentioned in the application Ex.DX. Meaning thereby that Ajmer Singh died after less than one month of Lohri. This was another fact which falsified the plea of repayment of the defendant.

17. The above discrepancies in the pleadings and evidence led by the defendant clearly prove that the story of repayment was concocted by the defendant because Ajmer Singh was no more. The

witnesses he produced were procured witnesses. Since Ajmer Singh had died and the defendants alleged the repayment of the loan amount to him, it was necessary for the defendant to produce substantive and reliable evidence. In fact, payment without obtaining a receipt by itself is a fact which cannot be reconciled and accepted. More so, there is no material to prove that the defendant ever made any effort to take back the pronote and receipt from Ajmer Singh after he had repaid the loan amount till he was alive. By simply saying that the amount had been paid that too which was secured by way of a pronote and receipt, was not enough and the factum of repayment does not inspire confidence.

18. The learned first appellate court calculated the amount of which the plaintiffs were entitled as Rs.10,940/-. No appeal was preferred by the plaintiffs to challenge the said findings. Thus, the judgment and decree passed by the learned first appellate Court are upheld and the appeal is dismissed.

21.2.2015
gsv

(SNEH PRASHAR)
JUDGE

Note: Whether to be referred to the Reporter? Yes/No