

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

RSA No.2278 of 2011 (O&M)

Date of decision : 09.10.2015

Kuldeep Singh and another

...Appellants

Versus

Avtar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sunil Chadha, Sr. Advocate with
Ms. Pallavi Singh, Advocate for appellants.

Mr. H.S. Dhandi, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellants-defendants are in Regular Second Appeal against the judgment and decree of the lower Appellate Court dated 05.02.2011, whereby suit for recovery of amount of ₹3,75,000/- alongwith interest at the rate of 8% p.a. w.e.f. 08.06.2004 till the institution of the suit and further rate of 6% p.a. till realisation of the decretal amount, has been decreed.

Mr. Sunil Chadha, learned Senior Counsel, assisted by Ms. Pallavi Singh, appearing on behalf of appellants submits, that trial Court by

relying upon oral and documentary evidence dismissed the suit. However, during the appellate stage, the respondent-plaintiff sought permission of the Court to examine an expert, who compared the signatures of the deceased Avtar Singh s/o Bir Singh, alleged executant of the pronote and receipt and after comparison, gave the report that disputed signatures on the pronote and receipt tallied with the admitted signatures.

He further submits that though lower Appellate Court did not believe the statement of the witness aforementioned, on the premise that experts toe to the line of the parties who engages them, but relied upon the testimony of PW1 to PW3 and arrived at a erroneous finding while reversing the well-reasoned judgment and decree of the trial Court.

In support of his contentions, he has relied upon judgment of Hon'ble Supreme Court in *Lalit Popli Vs. Canara Bank & ors. JT 2003(5) SC 494* to contend that as per Sections 45, 47 and 73 of the Indian Evidence Act, the scientific comparison is not a perfect science, *Jang Bahadur and ors. Vs. Manjit Kaur, 2009(3) RCR (Civil) 25* to contend that Court can make an opinion itself from material available on record with regard to the genuineness of the disputed signatures, *Thiruvengada Pillai Vs. Navaneethammal and another, 2008(2) RCR (Civil) 262* to contend that Court has a power to compare the disputed signatures with the admitted signatures in order to arrive at a conclusion while adjudicating dispute between the parties to the lis and *Murari Lal Vs. State of Madhya Pradesh (1980) 1 Supreme Court Cases 704*.

He further submits that since lower Appellate Court has committed illegality and perversity, therefore, the appeal involves

substantial questions of law for determination.

Mr. H.S. Dhandi, learned counsel appearing on behalf of respondent-plaintiff submits, that both the parties to lis are relatives. Avtar Singh s/o Santokh Singh and appellant were real Sadu (brother-in-law), though Avtar Singh son of Bir Singh, died, after execution of the pronote and receipt.

He further submits that on juxta posing of the pronote, receipt and the admitted signatures on the sale deed, the signatures are of none else but of Avtar Singh son of Bir Singh, the predecessor-in-interest of the defendants. The Lower Appellate Court, being last Court of fact and law, after appreciating the oral and documentary evidence decreed the suit, though, there is no illegality and perversity, much less, no substantial question of law arises.

I have heard learned counsel for the parties and appraised the paper book as well as record of the Courts below.

There is no dispute to the ratio decidendi culled out in the aforementioned judgments. I have examined the signatures of Avtar Singh son of Bir Singh on pronote and receipt vis-a-vis the sale deed. There is a difference of 5 years between the execution of the aforementioned documents. Over a period of certain years, there is always a slight change in the signatures. The witnesses of the respondent-plaintiff had been candid and coherent with regard to the execution of pronote and receipt, much less, advancement of the loan.

It is also settled law that Handwriting Expert toe to the line in favour of the parties who engages him, but the fact remains that parties in

order to prove the case have to lead evidence in affirmative to discharge the burden. The lower Appellate Court in para No.21 found that trial Court heavily relied upon testimony of DW1 and DW2 who are none else but interested witnesses and DW2 is respondent No.2.

I have gone through the statements of Harbans and Bant Singh, who are attesting witnesses to the pronote and receipt. From their cross-examination, it is reveals that the appellants-defendants have not been able to cause any dent and rather they withstood the wrath of the cross-examination. It is common practice amongst the relatives to extend the private loans. Had Avtar Singh not executed the pronote and receipt, his LRs and respondent would have raised hue and cry by lodging the complaint to the police, but no such efforts have been made.

However, lower Appellate Court has granted 8% p.a. interest, whereas respondent-plaintiff has not been able to lead any evidence vis-a-vis interest as claimed. Since in my view lower Appellate Court has awarded interest at the rate of 8% p.a. without there being any evidence brought on record at the instance of respondent-plaintiff and the respondent-plaintiff has not been able to lead evidence, I deem it appropriate to accept the plea of Mr. Chadha, Sr. Advocate vis-a-vis reduction of rate of interest, accordingly in my view by answering following substantial questions of law in favour of appellants-defendants and against respondent-plaintiff vis-a-vis rate of interest only:-

- 1) Whether in the absence of evidence, Lower Appellate Court could have awarded interest at the rate of 8% p.a.?

Keeping in view of aforementioned reasons, I do not intend to

differ the findings rendered by the lower Appellate Court decreeing the suit vis-a-vis execution of the pronote and receipt and advancement of principle amount except interest part @ 8% p.a..

Judgment and decree of the lower Appellate Court is accordingly modified. The respondent-plaintiff shall be entitled to the principle amount along with flat 6% p.a. interest from the date when amount become due till actual realization.

Accordingly, appeal is partly allowed.

09.10.2015

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**(AMIT RAWAL)
JUDGE**