

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 3602 of 2011 (O&M)

Date of Decision: -31.8.2015

Hardish Kaur and others

.....Appellants

versus

Krishna Devi and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE ARUN PALLI

Present: - Mr. Rajesh Bhateja, Advocate for the appellants.

Mr. Ravish Bansal, Advocate for respondents No. 1 to 8.

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Arun Palli, J (oral)

Suit filed by the plaintiffs-respondents was decreed by the learned trial Court vide judgment and decree dated 08.06.2009. Appeal preferred against the said decree failed and was dismissed on 15.1.2011. This is how, defendants are before this Court in this regular second appeal. Parties to the lis, hereinafter, would be referred by their original positions in the suit.

In a suit filed by the plaintiffs, they prayed for recovery of Rs. 5,10,000/- i.e. Rs. 300000/- as principal and Rs. 210000/- as interest on the basis of pronote and receipt dated 15.2.2001.

Learned Courts below on a comprehensive consideration of the matter in issue concurrently concluded that Kewal Krishan (PW-1) who happened to be the attesting witness of the pronote and receipt (Ex. P-1 and P-2) categorically deposed that Gurtej Singh (since deceased), the predecessor-in-interest of the defendants had approached the plaintiff- Babu Ram on 15.2.2001 to obtain the cash loan of Rs. 3.00 lacs

and executed a pronote and receipt dated 15.2.2001. He categorically stated that plaintiff-Babu Ram after scribing the said pronote and receipt read over the contents thereof to Gurtej Singh, who after admitting the same to be correct and receiving a sum of Rs. 3.00 lacs in cash, in the presence of the plaintiffs and other marginal witness i.e. Naresh Kumar son of Nihal affixed his signatures. And thereafter, he and other marginal witnesses also attested the pronote and receipt. The defendants failed to put any suggestion to Kewal Krishan (PW-1) in sync with their defence that the signatures of Gurtej Singh were in fact obtained on a blank proforma of pronote and receipt. Further the contention of learned counsel for the defendants that Kewal Krishan (PW-1) had admitted in his cross-examination that the executant had in fact died a year before the date of execution of pronote and receipt also carried no force as the further cross-examination of the said witness revealed that he had testified that Gurtej Singh has died 6-1/2 years ago i.e., when he made his statement on 15.8.2008. That being so, He died some where in the year 2002 whereas the pronote and receipt in question was executed on 15.2.2001. In any case, this was never the case set out in defence by the defendants that Gurtej Singh had indeed died prior to execution of the pronote and receipt. Still further no cogent evidence was brought on record to prove that Gurtej Singh died prior to 15.2.2001. The testimony of Pritpal Singh Sukhija (PW-4) further prove the affidavit tendered in evidence by the plaintiff - Babu Ram (Ex. PW-2/A). The contents thereof fully corroborated the case set out by Babu Ram (since deceased) in the plaint but as before he could be cross-examined he

unfortunately died. Thus, it could not be said that the plaintiff i.e. Babu Ram never turned up for cross-examination and no adverse inference could be drawn against the plaintiff. Further, LRs of the deceased-Babu Ram i.e., Ashwani Kumar (PW-3) fully proved the claim set out in the plaint. Once, the execution of the pronote and receipt was proved, the wake of Section 118 of the Negotiable Instruments Act, the presumption that could be drawn was that the documents were indeed executed for consideration. No cogent or credible evidence was led by the defendants to rebut the said presumption. Defendants failed to lead any evidence to show that the documents in question were indeed forged and fabricated. That being so, the mere testimony of Kewal Krishan (PW 1) was hardly of any consequence.

Learned counsel for defendants could not point out as to how the conclusions arrived at by the learned Courts below were either contrary to the position or suffered from any material illegality.

In the wake of the position, as sketched out above, and the conclusions that have currently been recorded by both the courts below, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly, dismissed.

(Arun Palli)
Judge

31.8.2015
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