

In the High Court of Punjab and Haryana at Chandigarh

RSA No.1871 of 2012 (O&M)

Date of decision: September 11, 2015

Rajinder Singh

..... Appellant

Versus

Kulwinder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Rattan, Advocate for the appellant-defendant.

Mr. Anuj Kohli, Advocate for the respondent-plaintiff.

AMIT RAWAL, J.

The challenge in the present appeal is to the impugned judgment and decree dated 24.02.2012 passed by the District Judge, Rupnagar, whereby, the appeal filed by the appellant-defendant against the judgment and decree dated 15.03.2011 dismissing the suit for recovery of ₹70,000/- as principal amount along with interest, had been allowed.

Mr. S.K. Rattan, learned counsel appearing on behalf of the appellant-defendant vehemently submits that the respondent-plaintiff had filed the suit for recovery of aforementioned amount on the basis of the receipt, which had

allegedly been sought to be proved, but the signatures on the receipt have not been

proved through testimony of hand-writing expert. He further submits that he has no friendship with the respondent-plaintiff, therefore, no occasion arose to obtain the loan, as alleged in the plaint. Even the witness to the receipt Mohinder Singh son of Kehar Singh of village Boor Majra is not from the area where, both appellant and respondent were residing. He further submits that witness Sat Pal Singh in connivance with the respondent-plaintiff and other witness Mohinder Singh procured report of the handwriting expert which is not a perfect science to ascertain the genuineness of the expert's opinion. Therefore, the Appellate Court has committed illegality and perversity in setting aside the well reasoned judgment of the trial Court. Therefore, the following substantial questions of law arises for determination of this Court:

1. Whether the action of the learned Appellate Court not relying upon the un-rebutted report/witness of Handwriting Expert with regard to the comparison on signatures of appellant/defendant is valid and legal?
2. Whether the impugned judgment and decree dated 24.02.2012 passed by the Court of learned District Judge, Rupnagar is sustainable in the eyes of law?
3. Whether the findings recorded by the learned Appellate Court based upon surmises and conjectures, mis-reading and non-reading of important evidence is sustainable in the eyes of law?
4. Whether the conclusions drawn by the learned Appellate

Court are erroneous, being arrived at without evidence/inadmissible evidence?

5. Whether the learned Lower Appellate Court has failed to consider the vital pieces of evidence?

Mr. Anuj Kohli, learned counsel on behalf of the respondent-plaintiff submits that as per provisions of Section 47 of the Indian Evidence Act, 1872, the report of the hand-writing expert cannot be looked into for the reason that handwriting expert toe to the line of person, who engages him. In support of his contention, he has placed reliance on the judgment rendered by this Court in **Naresh Kumar Vs. Sukhdev Singh**, 2012(5) RCR(Civil) 8. He further submits that the receipt has been proved through the testimony of Mohinder Singh and there is no illegality or perversity in the order passed and no substantial questions of law arises.

I have heard learned counsel for the parties and appraised the paper-book and case law cited at bar.

No doubt that the handwriting expert has given report in favour of the appellant as the same has not been rebutted by the respondent-plaintiff and only one of the witnesses, namely, Mohinder Singh r/o Boor Majra has been examined, who is stated to have witnessed the alleged receipt. The witness would not carry any weightage to the genuineness and authenticity of the receipt. Moreover, the handwriting expert examined by the appellant-defendant has

submitted that receipt did not bear his signatures. Had the respondent-plaintiff examined handwriting expert, things would have been, reported, in favour of plaintiff. Both the Courts rendered a finding on preponderance of the evidence. Since the witness to the receipt, is resident of far of area, it demolishes the case of the respondent-plaintiff, as no evidence has come on record to show that Mohinder Singh's residence was known to both the parties. The common friend would be obviously of the local area in respect of a loan transaction, if any, entered into between the residents of same area. The findings of Lower Appellate Court in my view is not sustainable as the report of expert of defendant has not been rebutted. For the reasons stated above, the ratio culled out in **Naresh Kumar's case (supra)** is not applicable to the facts of the case as the respondent-plaintiff has failed to rebut the report of the handwriting expert by leading cogent evidence.

In view of the above, substantial questions of law noticed above are answered in favour of the appellant-defendant and against the respondent-plaintiff. Accordingly, the impugned judgment and decree of the Lower Appellate Court is set aside. Resultantly, appeal is allowed. Decree sheet be prepared.

(AMIT RAWAL)

JUDGE

September 11, 2015