

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 842 of 2011(O&M)
Date of decision :February 20, 2015

Darshan Singh(deceased) through L.Rs

..... Appellant

Versus

Rajinder Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V. K. Shukla, Advocate
for the appellant.

None for the respondents.

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

Amit Rawal, J (oral).

This Regular Second Appeal at the instance of the appellant-defendant is directed against the judgment and decree dated 7.11.2006 of the trial court whereby the suit of the respondents for recovery of ₹1,48,770/- along with interest @ of 6% from the date of filing of the suit till realization has been decreed and the appeal filed against the same was also dismissed. Even during the pendency of the appeal application under Order 41 Rule 27 CPC was filed to bring on record the affidavit dated 28.7.2006 of Surinder Kumar Sharma-Deed writer by way of additional evidence was also dismissed by a separate order.

Learned counsel appearing on behalf of the

appellant-defendant in support of his grounds of appeal submits that the respondents-plaintiffs have failed to prove the execution of the pronote and receipt, much less payment of ₹1,48,770/- and in this regard he referred to the statement of DW-2 Pavitar Singh, another attesting witness wherein he stated that no transaction had taken place between the parties. He further submitted that the lower appellate court had committed illegality and perversity in rejecting the application under Order 41 Rule 27 CPC by not taking the statement of Surinder Kumar Sharma-Deed writer who resiled from the previous statement and affirmed on oath the earlier statement was given under pressure. In order to lend support to his contention he further referred to the statement of respondent-plaintiff Rajinder Kaur to contend that even the plaintiff has not supported his case therefore the suit is liable to be dismissed. However, both the courts below have misread the oral and documentary evidence and therefore the present appeal involves substantial question of law to be adjudicated by this Court.

I am afraid that the aforementioned argument of the learned counsel for the appellant-defendant is devoid of merit for the following reasons.

Pavitar Singh-DW-2 in his cross examination admitted his signatures on the pronote and receipt Ex.P-1 and Ex.P-2. He also admitted his signatures on the register of the Deed writer which has been exhibited as Ex.P-6. In the opening line of the cross examination the said witness to a specific question answered that the pronote and receipt was scribed for ₹87,000/-. The

aforementioned statement of the attesting witness of the pronote who appeared as DW-2 leave no manner of doubt that the pronote and receipt was executed by appellant-defendant. The appellant-defendant did not lead any evidence to belie the stand of the respondent-plaintiff viz-a-viz signatures on the pronote and receipt by examining the hand writing and document expert, whereas, the respondent-plaintiff has discharged the burden by examining the Deed writer and the another attesting witness Ram Ji Dass. Both the aforementioned witnesses categorically stated that a sum of ₹87,000/- was advanced to the appellant-defendant and in lieu thereof the appellant-defendant executed the pronote and receipt.

The appellant-defendant had failed to cause any dent in the cross examination. The rejection of the application under Order 41 Rule 27 by the appellate court also do not suffer from illegality, much less perversity. The appellant-defendant during the pendency of the appeal appears to have prevailed upon the Deed writer to resile from his previous statement to make a statement in favour of the appellant-defendant. Such type of practice should not be encouraged and liable to be deprecated and was rightly dismissed by the lower appellate court as it did not think fit that such type of evidence would have been held the court in rendering the finding, much less adjudicating the controversy between the parties to the *lis*.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned

judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 20, 2015
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