

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

**RSA NO. 321 OF 2012 (O&M)
DECIDED ON : 30.04.2015**

Tarlok Singh

...Appellant

versus

Lakhwinder Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Pritam Saini, Advocate,
for the appellant.

K. C. PURI, J. (ORAL)

CM NO. 849-C OF 2012

There is delay of 42 days in filing the appeal. The same stands condoned on the grounds mentioned in the application.

MAIN CASE

Challenge in this appeal is to the judgment and decree dated 29.08.2011 passed by Shri G. C. Garg, Additional District Judge, Tarn Taran, vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 01.12.2009 passed by Shri Rajwinder Singh, Civil Judge (Junior Division), Patti, was dismissed.

Briefly stated, Lakhwinder Singh-plaintiff now respondent filed a suit for recovery of ₹3,17,500/- (₹2,50,00/- as principle amount and ₹67,500/- as interest from 15.05.2003 to 15.08.2005). It was pleaded in the plaint that defendant now appellant borrowed a sum of ₹2,50,000/- on 15.05.2003 from the plaintiff for house hold affairs and he executed pronote and receipt in this regard on the same day. The amount was not paid despite repeated requests. Hence, the suit was filed.

Upon put to notice, the defendant/appellant resisted the plaint by way of filing written statement wherein he has pleaded that Phoola singh and Gurdit Singh obtained the signatures/thumb impressions of the defendant by fraud and misrepresentation on some blank printed forms and blank papers. He further pleaded that one Pargat Singh son of Mohinder Singh got a loan of ₹8000/- from Phoola Singh who is running a shop of commission agent in the name of his wife Kashmir Kaur. Phoola Singh got the signatures of defendant on blank papers and later on prepared the forged pronote and receipt.

Replication was not filed.

From the pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiff is entitled to recover ₹3,17,500/- along with interest @ 12% per annum from the defendant ? OPP

2) Whether the pronote and receipt are forged and fabricated documents ? OPP

3) Relief.

In order to prove his case, the plaintiff examined Jaswinder Singh as PW-1, Baskshish Singh as PW-2, Resham Singh as PW-3, Ashok Kumar Vij as PW-4 and closed the evidence after tendering certain documents.

On the other hand, the defendant himself stepped into the witness box as DW-1 and examined Balbir Singh as DW-2 and closed the evidence.

The learned trial court after appreciating the evidence, decided both the issues in favour of the plaintiff and against the defendant. Consequently, the suit of the plaintiff was decreed for recovery of ₹2,50,000/- along with simple interest @ 9% per annum from the date of execution of pronote and receipt i.e 15.05.2003 and future interest @ 6% per annum from the date of decision till its realisation, vide judgment and decree dated 01.12.2009 passed by Shri Rajwinder Singh, Civil Judge (Junior Division), Patti.

Feeling dissatisfied with the above said judgment and decree dated 01.12.2009 passed by the Civil Judge (Junior Division), Patti, defendant/appellant preferred first appeal before the first Appellate Court. The said appeal was dismissed vide judgment and decree dated 29.08.2011 passed by Shri G. C.

Garg, Additional District Judge, Tarn Taran.

Still feeling aggrieved with the above said judgment and decree dated 01.12.2009 passed by Civil Judge (Junior Division), Patti and judgment and decree dated 29.08.2011 passed by Additional District Judge, Tarn Taran, the defendant/appellant has preferred the present regular second appeal.

Learned counsel for the appellant, in para no.10 of the grounds of appeal has mentioned that following questions of law have arisen in the present appeal :-

- 1) Whether in the facts and circumstances, it is apparent that a fraud has been played upon the appellant by Phoola Singh who happens to be scribe of the pronote and receipt and his nephew and sons are witnesses to the said pronote and receipt ?
- 2) Whether the courts below have committed a legal error while not considering the fact that a fraud has been played by Phoola Singh with the connivance of Lakhwinder Singh who happens to be close relatives of Phoola Singh ?
- 3) Whether a suit can be said to be instituted by the plaintiff himself when he was out of country on the said date ?
- 4) Whether in the facts and circumstances of the case it was necessary to record the statement of the plaintiff and evidence of attorney is

liable to be ignored as per the settled principle of law ?

- 5) Whether on mere proving the pronote and receipt can the civil court decree the suit when consideration of the amount has not been proved on record ?
- 6) Whether both the courts below have misinterpreted and misread the entire evidence produced on record by the plaintiff and wrongly and illegally decreed the suit ?

Learned counsel for the appellant has submitted that the judgments of both the courts below are the result of misreading and misinterpreting the evidence. The said judgments are based upon misconceived facts and unsubstantiated evidence and is bad in the eyes of law.

I have considered the said submissions but do not find any force in the same.

It is settled principle of law that second appeal lies against the concurrent finding in case both the judgments are the result of misreading and misinterpreting the evidence. However, learned counsel for the appellant could not point out which of the evidence has been misread and misinterpreted. The dispute is regarding execution of pronote and receipt and passing of consideration. Both the courts below have given definite finding regarding execution of pronote and receipt and passing of

consideration in favour of the plaintiff. There is nothing on file that the said findings are the result of misreading and misinterpreting the evidence on file. There is also nothing on record that the impugned judgments and decrees are perverse. Otherwise also, there is presumption under Section 118 of the Negotiable Instruments Act, in favour of the plaintiff regarding execution of pronote and receipt unless contrary to it, no convincing evidence has been produced by the defendant/appellant.

So, in view of the above, I have no hesitation in holding that no substantial question of law has arisen in the instant appeal. Consequently, the appeal is without any merit and the same stands dismissed.

APRIL 30, 2015
shalini

(K. C. PURI)
JUDGE