

RSA No.2591 of 2013

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

RSA No.2591 of 2013

Date of Decision: September 15, 2015

Chhotu Ram

...Appellant

Versus

Kulwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rakesh Nagpal, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Sirsa, dated 21.08.2012 by which the suit of the respondent-plaintiff was decreed with costs for recovery of ₹2,32,200/- alongwith pendente lite and future interest at the agreed rate of 2% per month on the principal amount of ₹1,35,000/- with effect from 19.08.2007 till realization of the amount, which judgment and decree stands affirmed by the Additional District Judge, Sirsa, on 11.02.2013 dismissing the appeal preferred by the appellant-defendant.

It is the contention of the counsel for the appellant-defendant that the pronote which is the basis for filing the present suit, according to which, the appellant-defendant had borrowed a sum of ₹1,35,000/- from the respondent-plaintiff on 19.08.2004 and

receipt to this effect issued in favour of the respondent-plaintiff, are not signed by him. He contends that the signatures having been disputed by the appellant-defendant, it was the requirement that the respondent-plaintiff should have examined an Expert to prove the fact that the said signature was his. He contends that the Court on its own could not have come to a conclusion, by itself comparing the signatures that they were of appellant-defendant. He places reliance upon the judgment of the Supreme Court in Ajay Kumar Parmar Vs. State of Rajasthan, AIR 2013 Supreme Court 633, to contend that the comparison of the signatures by the Court is not permissible.

The second contention which has been raised by the counsel for the appellant-defendant is that Shri Vinod Kumar Goyal, who appeared as PW-2 being a scribe of the document, has in his cross-examination, stated that the consideration was not handed-over to the appellant-defendant in his presence, whereas, the other three witnesses, namely, respondent-plaintiff (PW-1), Atma Ram (PW-3) and Tejinder Singh, Namberdar of village Nezadela Kalan, District Sirsa (PW-4) have stated that the consideration has exchanged hands, where the scribe was also present. He, therefore, contends that one of the witness having categorically denied the consideration having been paid to the appellant-defendant in his presence, the Court could not give the findings on the basis of such contradictory evidence with regard to the execution of the document and the consideration having been handed-over. He, thus, contends

that the judgments passed by the Courts below cannot sustain and deserve to be set aside.

I have considered the submissions made by the counsel for the appellant-defendant and with his assistance, have gone through the judgments passed by the Courts below.

The first contention which has been raised by the counsel for the appellant-defendant is with regard to the Court's inability and incompetence with regard to the comparison of the signatures which are disputed by the appellant-defendant, suffice it to say that there is no bar imposed upon the Court under the statute for comparing the signatures which have been produced before it for decision, rather, it is the conclusion of the Court which determines the signatures being that of the person on whom it is alleged to have been drawn. The judgment on which reliance has been placed by the counsel for the appellant-defendant i.e. *Ajay Kumar Parmar's* case (supra) does not support his assertion rather in para 23 of the said judgment, it has been held as follows:-

“23. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the Court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own

observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the Court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the Court may also not be conclusive. Therefore, when the Court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the Court must keep in mind the risk involved, as the opinion formed by the Court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The Court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the Court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.”

A perusal of the above would clearly show that it is the Court which is ultimate authority to decide with regard to the correctness or otherwise on the opinion of the expert witness. Mere

opinions would not be a conclusive factor with regard to the signatures being that of the person to whom it is alleged. Duty is cast upon the Court to give a finding in this regard and therefore, the contention of the counsel for the appellant-defendant cannot be accepted that the Court cannot on its own compare the signatures and give findings thereon especially when four plaintiff witnesses have in unison stated in this case that the appellant-defendant had signed the pronote and the receipt in their presence. It is not a case where there is no evidence of any witness. The concurrent findings recorded by the Courts below, thus, cannot be faulted with on this Count.

The second contention which has been raised by the counsel for the appellant-defendant is that there is discrepancy in the statements of the plaintiff's witnesses. Reference has been made to the cross-examination of Vinod Kumar Goyal (PW-2). Even if it is presumed that he has, in his statement, stated that the money was not paid in his presence, the other three witnesses, namely, respondent-plaintiff (PW-1), Atma Ram (PW-3) and Tejinder Singh, Namberdar of village Nezadela Kalan, District Sirsa (PW-4) who have put their signatures as attesting witnesses on the pronote and the receipt, have categorically stated that the money has exchanged hands in their presence. The findings, therefore, recorded by the Courts below that the amount has actually been paid to the appellant-defendant, cannot be faulted with.

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Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 15, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**