

105

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

**RSA No.3863 of 2013 (O&M)
Date of Decision: 16.11.2015**

**Bhan Singh and others
Vs
Jagir Singh**

**...Appellants
...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Chanan Singh, Advocate
for the appellants.

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?*

RAJ MOHAN SINGH, J.

[1]. Plaintiffs are in second appeal against concurrent judgments and decrees passed by the Courts below.

[2]. Suit for recovery of Rs.7,05,000/- along with interest @ 12% per annum was filed by the plaintiffs on the ground that the defendant assured the plaintiffs for appointing their sons in Merchant Navy. For this purpose, plaintiffs had to pay Rs.1,20,000/- for each appointment. On 09.08.2000, plaintiff No.1 Bhan Singh paid Rs.96,000/- and other plaintiffs also paid amount on various occasions to the defendant as detailed in the plaint, thereby making total tally of Rs.7,35,000/-. Remaining amount was to be paid by the plaintiffs after the appointment of their sons/wards in Merchant Navy.

[3]. Plaintiffs alleged that the promise was not fulfilled by the defendant and he kept on lingering the matter on one pretext or the other, nor made good return of the amount on demand. On

30.05.2001, meeting of Panchayat and respectables of the area was held in which defendant admitted that he had obtained the amount from the plaintiffs and has returned an amount of Rs.30,000/- to them. He also executed agreement on the same day in favour of plaintiffs in the presence of Panchayat members. Defendant agreed to return amount of Rs.6,85,000/- on 01.08.2001, although the balance amount was Rs.7,05,000/-.

[4]. On 01.08.2001, defendant failed to return the amount and requested for more time. Plaintiffs again demanded the amount on 23.09.2001, but the defendant promised to pay the amount on 30.10.2001. On 30.10.2001, also defendant did not make the payment, rather promised to return the same on 18.11.2001. However, on 18.11.2001 defendant again promised to return the amount of Rs.60,000/- in cash and to give 1½ acres of land. Neither the amount was paid, nor the land was given which ultimately prompted the plaintiffs to file the suit in question.

[5]. Suit was contested by the defendant on all customary pleas besides objecting that he has no concern with any alleged amount of the plaintiffs. Infact defendant and the plaintiffs sent their sons to one Gurmit Singh S/o Gurdass Ram, resident of Village Bairampur for getting training at Bombay. All the persons had their own contacts with aforesaid Gurmit Singh.

[6]. Defendant is a retired Army personnel and is running a business of fertilisers and hardware store. Defendant had nothing to do with the amount in question, rather he was victimised at the

hands of the plaintiffs when the plaintiffs got his signatures on some papers with Police help. Defendant had also issued a legal notice to the plaintiffs for return of the papers, but in vain. The suit filed by defendant was also statedly pending.

[7]. Replication was not filed. Both the parties were put to the following issues:-

“1. Whether the plaintiffs are entitled for the recovery of the amount as prayed for? OPP.

2. Whether the plaintiffs are entitled to interest, if yes, at what rate? OPP.

3. Whether the plaintiffs have no locus standi to file the present suit? OPD.

4. Whether the plaintiffs are estopped by their own acts and conducts too file the present suit? OPD.

5. Whether the suit of the plaintiffs is not maintainable? OPD.

6. Relief.”

[8]. Thereafter one more issue i.e. issue No.5-A was framed as under:-

“5-A. Whether the disputed agreements are illegal, void ab initio and not enforceable being violative of public policy and standing vitiated due to illegal consideration under Section 23 of the Contract Act, if so, its effect? OPD.”

[9]. Both the parties led their respective evidence on the aforesaid issues

[10]. Trial Court discussed issues No.1 and 2 together. The main argument of the plaintiffs/appellants is that the defendant had

received an amount of Rs.7,35,000/- from them for getting their sons/wards appointed in Merchant Navy. Failure to get appointment made the plaintiffs entitled to recover the amount in question.

[11]. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I**, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*."

[12]. The appellants framed the following substantial questions of law in para No.6 of grounds of appeal:-

- “1. Whether both the *Ld. Lower Courts* have rightly and legally appreciated the evidence produced by the appellants on record?
2. Whether the appellants/plaintiffs are entitled to receive and recover the disputed amount of Rs.7,05,000/- from the respondents-defendants?
3. Whether the agreements *Ex.P1 to P4 (Annexure A-1 to A-4)* are liable to be relied and acted upon under the peculiar facts and circumstances of this

case.

4. *Whether judgments and decrees passed by Ld. Courts below suffers from patent illegality, and glaring infirmities.”*

[13]. Question No.1 does not arise at all. The appreciation on the basis of evidence has done by the Courts below to arrive at the conclusion that the execution of agreement (Annexure P-1) is opposed public policy, the execution thereof is not proved in accordance with law. Recovery of amount given in bribe is sought to be recovered. Execution of agreement thereof which in considered opinion of this Court, is not covered within the ambit of questions No.1 and 2 framed in the grounds of appeal. Question No.2 is also answered accordingly.

[14]. Question No.3, on account of nature of agreement and for want of proof cannot be enforced. The amount alleged to have been paid has been denied by the defendant. Instrument with which the amount was allegedly paid has not been brought on record except the statement of PW-1 Anoop Singh that the agreement dated 05.02.2001 was scribed by him at the instance of defendant Jagir Singh and Jagir Singh has admitted that he took the amount from the plaintiffs for appointment of their sons/wards in Merchant Navy.

[15]. The aforesaid witness is not the one who actually witnesses the agreement in question, rather the witness has deposed that on 05.02.2001, an agreement was scribed in which defendant Jagir Singh had admitted the factum of receiving amount from the plaintiffs. It is only hearsay evidence, not supplemented by

any documentary piece of evidence. The defendant allegedly admitted receipt of Rs.7,35,000/- and had returned. Rs.30,000/- to the plaintiffs and further promised to pay the remaining amount on 01.08.2001. Another agreement dated 18.11.2001 remained as document wherein the defendant agreed to pay Rs.60,000/- and also to transfer 1½ acres of land. Since the agreement is only a mark document, the execution of which could not be proved on record.

[16]. Statement of Narinder Singh PW-2 has also been relied upon by the plaintiffs/appellants wherein the witness had deposed that the defendant had executed an agreement vide which he agreed to return the amount of Rs.6,85,000/- to the plaintiffs till 01.08.2001. Promise to pay Rs.60,000/- in cash and transfer of 1½ acres of land were projected as a promise by the defendant in discharge of his obligation arising out of ransom amount for appointment of sons/wards of the plaintiffs in Merchant Navy.

[17]. The agreements dated 23.09.2001 and 30.10.2001 have also been projected in the context of promise made by the defendant to discharge his obligation to pay back the ransom amount allegedly received by him.

[18]. Defendant has also appeared as DW-1 and has deposed on oath before the Courts below that he had also paid an amount of Rs.1,40,000/- to said Gurmit Singh for appointment of his son in Indian Navy. Plaintiffs also approached said Gurmit Singh with similar request for appointing their sons in Indian Navy.

[19]. In view of that, the story propounded by the

plaintiffs/appellants has no legs to stand. The entire controversy hinges upon factum of payment of amount to the defendant. The mode of payment is not forthcoming by way of any instrument or followed by any receipt thereof issued by the defendant except the bald statement. No such amount can be presumed to have been paid to the defendant. Moreover, the cause for which the amount was allegedly paid is opposed to public policy and the agreement even if alleged (execution not proved and the same being opposed to public policy cannot be enforced with the process of the Court), the Court cannot be made party to such unholy alliance based on offensive background. Therefore question No.3 does not arise at all.

[20]. Question No.4 is equally unfounded inasmuch as that the findings recorded by both the Courts below cannot be found to be suffering from any infirmities or misreading of evidence or having suffered with any perversity.

[21]. In view of concurrent findings of fact recorded by both the Courts below, this Court does not feel like to interfere in the finding recorded by the both the Courts below. Resultantly, this appeal is dismissed in *limine*.

November 16, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE