

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2536 of 2015 (O&M)

Date of Decision.26.08.2015

Baljit Singh

.....Appellant

Versus

Gurwinder Singh and another

.....Respondents

Present: Mr. Ishan Gupta, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

C.M. No.6585-C of 2015

For the reasons stated in the application, delay of 3 days in
filing the second appeal is condoned.

Application is allowed.

C.M. No.6586-C of 2015

For the reasons stated in the application, the prayer for
granting permission to file the second appeal as an indigent person is
accorded but in view of the dismissal of the appeal, the court fee due and
payable shall be collected in accordance with law.

Application is disposed of as above.

RSA No.2536 of 2015 (O&M)

1. The plaintiff's suit for specific performance brought on a
condition that the defendant had executed an agreement of sale in his
favour on 27.5.2005 after receiving ₹ 13 lacs in advance was decreed.

The defence was that the agreement was a forgery and the signature found in the document was not of his.

2. At the trial, of the two plaintiffs, 1st plaintiff examined himself and two witnesses in the agreement had also spoken about the same. The two witnesses spoke about the fact that ₹ 13 lacs had been paid on that day and one of the witnesses, however, admitted that he did not know who the scribe was, for, it was a typed one and he did not know the person who typed the document. There was, apart from the signature of the party, a separate note appended at the foot of the recitals in agreement that he had received ₹ 13 lacs on that day. There was a signature beneath the note. The witness spoke about the signature of the defendant beneath the note and the receipt of ₹ 13 lacs. The cross-examination proceeded on the lines of whether the plaintiff had enough money at that time and he has stated that he had withdrawn ₹ 2 lacs from his fixed deposit and had taken money from his father-in-law and others. The further contention which was sought to be taken was that the defendant was only in the habit of signing in English and he never used to sign in Punjabi. He wanted to make a capital of the fact that the note for receipt of the amount has also been prepared in English and there was no reason for him to subscribe his signature in Punjabi instead of English. The principal focus was, therefore, to address whether the document had been duly executed and signed by the defendant. The Court found the evidence of two witnesses to be strong enough and that nothing was elicited in the cross-examination as to why they should depose against the defendant. When the signature of the defendant had been established and the receipt of ₹ 13 lacs had also

been spoken to by the witnesses, the Court found the source of how the plaintiff brought the money became irrelevant. On such finding the trial Court had decreed the suit.

3. In appeal, the defendant wanted also to bring an amendment to the written statement to contend that under the terms of the agreement ₹ 13 lacs had already been paid and if only ₹ 2 lacs was to be paid, there was no reason for taking six months time for completion of the agreement and the relationship between the parties was only that of a creditor and debtor and the agreement itself was actually only a loan transaction. This application for amendment was not considered by the Court but it proceeded to affirm the judgment of the trial Court reiterating the reasoning adopted by the trial Court that the evidence of witnesses brought by the plaintiff was sufficient to uphold the agreement. The defendant also brought the contention that even before the negotiations were complete, the plaintiff had paid ₹ 5,000/- and if ₹ 5,000/- had been paid, there was no reason for paying amount that should have been paid at the time when the agreement was written to make it appear as though ₹ 13 lacs had been paid, when it should have been only ₹ 12.95 lacs. This, the Court, found to be insignificant an issue for consideration as constituting any material difference. The Appellate Court also dismissed the appeal and the defendant is the appellant before this Court.

4. The counsel reiterates before me the contentions raised before the trial Court which have been rejected. I will not, therefore, repeat them, for, the findings adopted by the trial Court were upheld in the judgment of the Appellate Court and his contentions were not

accepted. Additionally, the defendant would contend that the scribe had not been examined and the witness did not know who the scribe was. He would also state that no expert had been examined to prove the signature of the document. The counsel would re-emphasize that the Court must have at least allowed for the amendment to the written statement to be brought on record and if at all, the plaintiff should have been granted only the relief of recovery of money and not allowed for specific enforcement.

5. I do think any of the contentions made before me are any better than how they were made before the Court below which were rejected. If the trial Court found the witnesses under the agreement to be worthy of acceptance, the non examination of scribe who had brought the typed material does not have any bearing. If the document had been brought with typed recitals and the defendant was signing the same and the witness spoke that he did not know who the scribe was, it was only a natural deposition that could cause no doubt in the veracity of such version. The Courts below specifically found that the signature found in the document was only that of the defendant as spoken to by the witnesses and it was best left there. Issue of whether an expert must be examined or not is invariably left to the parties to decide, for, it is again a notorious fact that a person who is brought as witness will only speak to his master who brings him to Court and we have at all times an experience of parties citing witnesses on the respective sides one affirming the signature and yet another person denying the same. The science of handwriting assessment itself is not perfect and not commended in Courts. While opinion on thumb impression by expert

witness could be conclusive with specific markers individualistic to each person, adroit effort of forging of signatures could never be easily busted even by an expert. I will not, therefore, take the non-examination of expert as of any significance.

6. The issue of whether alternative relief could be granted must be only in the context of Section 10 of the Specific Relief Act which lays down that in relation to movable property, specific performance alone is the appropriate remedy and not damages but there may be any circumstance which Section 20 of the Specific Relief Act delineates, such as when a plaintiff was trying to take undue advantage or when the defendant had an unfair bargain where the Court may intercede and relieve the party of oppression and grant only the relief of damages and not specific performance. I find no such special circumstances as provided under Section 20 of the Specific Relief Act operate in favour of defendant to deny plaintiff the relief of specific performance. The genuineness of the agreement of sale has been considered specifically and all the objections which have been brought before the Courts below, which I would reckon to be pure questions of fact that, would require no intervention in the second appeal.

7. I find that there is no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 26, 2015
Pankaj*