

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

RSA No. 2778 of 2015 (O&M)

Date of decision: November 2, 2015

Bharpur Singh

...Appellant

Versus

Parshotam Dass

...Respondent

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?**

Present: Mr. Jasbir Rattan, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The appeal is by the defendant, who resisted an action for recovery brought on a promissory note admittedly executed by the defendant on 26.11.2008 for ₹2.65 lakhs. His contention was that on the following year 2009, he executed an agreement of sale in favour of the plaintiff for ₹3 lakhs and six months later his son borrowed ₹1.50 lakhs on a promissory note dated 9.12.2009. The amounts specified as having been received on 9.12.2009 had been reported to be paid and the defendant and his son received back the agreement dated 9.12.2009 and the promissory note. As regards the pronote dated 26.11.2008, the plaintiff was said to have informed the defendant that he had torn the same. According to the defendant, the plaintiff had fraudulently sought enforcement of the

promissory note by taking advantage of the retention of the same.

2. The plaintiff had denied the contention raised by the defendant by a replication and stated that the agreement and the promissory pronote by the son were independent transactions and the defendant's son had paid the money and obtained return of the promissory note but as far as the agreement dated 24.6.2009 was concerned, the defendant had stealthily removed the same from the plaintiff's shop where he had kept the document in his drawer.

3. At the trial, the plaintiff was confronted with questions on whether he had taken any action against the defendant on the basis of the agreement dated 24.6.2009 and elicited a response that he had not taken any response. The defendant also wanted to confront to the plaintiff about earlier suits filed by the plaintiff's son against the third party when the court found that the suit filed by the plaintiff's son was not genuine and dismissed it. The plaintiff himself had filed a suit against yet another party and it was reported that the plaintiff's suit was dismissed finding that the instrument had been materially altered. The attempt of the defendant, therefore, was to show that the plaintiff's conduct was never above board and he was only taking advantage of an illiterate hapless farmer by fabricating document.

4. It was brought out at the trial that the plaintiff had also issued a notice prior to the suit and there was no reply by the defendant. The court held that the consideration for the promissory note as executed on 26.11.2008 was never in dispute and the defendant's only contention was that it was later superseded by an agreement dated 24.6.2009 and that agreement was also returned which must be taken as discharging the

liability under the promissory note itself. The court observed that such a plea of discharge was, in the circumstances pleaded by the defendant, was not possible and held that the plaintiff is entitled to the decree. The appellate court confirmed the same.

5. Learned counsel files the copies of the judgments rendered in other suits to point out to the conduct of the plaintiff and the members of his family and how their previous actions must be taken as relevant for testing the veracity of the plaintiff's case. I am afraid the argument is way off the mark. Section 52 of the Evidence Act (for short '**the Act**') refers to situation when the character is relevant in a civil case. It specifically lays down that the fact of a character as renders probable or improbable any conduct imputed to him is irrelevant in civil case. The exception is when such character is a point in issue in a suit. Section 54 of the Act is yet another provision that refers to a previous bad character which would not at all times be relevant in criminal proceedings, except in reply or when evidence is given that the person is of a good character and it is sought to be refuted by a document showing bad character. The dismissal of a suit filed by the plaintiff in yet another case or dismissal of a suit filed by himself would hardly be cited as instances which can run down or discredit the efficacy of the suit filed by the plaintiff on the basis of an admitted promissory note.

6. The learned counsel appearing for the appellant also argues that our courts have consistently taken a judicial view that in a transaction between a rich money lender or a commission agent with an illiterate or poor farmer, the courts must apply the scales of justice to lean in favour of the defendant and load the creditor or a commission agent with a burden to

prove his case. The proposition is more founded on the general rules of evidence and under the Contract Act but where a person who is in a domineering position or he holds a fiduciary capacity, the court can infer undue influence. Here I do not confront a situation of an instrument which is denied. On the other hand, the execution and the consideration of the promissory note is an accepted fact. The attempt was to plead a discharge by the fact of execution of an agreement that came about subsequently 24.6.2009. The subsequent agreement admittedly did not make reference to the promissory note. If the agreement had been treated as discharged and handed over, it is inconceivable as to how the defendant would have not pressed for return of the promissory note as discharged. If the contention were to be accepted that the plaintiff had given a false assurance that he had torn it, it cannot be merely a *ipsi dixit* of the defendant to hold that the plaintiff had committed a deliberate fraud by a false representation about the document as having been discharged. It will be too risky for a court of law examining a case for substantial question of law to be making inferences which are too artificial. It will be difficult for a court to say that a commission agent must be speaking untruth and a poor farmer is telling the truth. The truth is not a virtue of the poor man nor causality of the rich. It is more a fallibility that attaches to human conduct and that knows no boundaries of rich or poor. I will not, therefore, test the justification for a dismissal of the suit to be rested on the defendant's own illiteracy. There can be no virtue of a person being illiterate, the same way as there could be nothing suspicion about a commission agent to come with the suit for recovery of a promissory note.

7. I find nothing for interference in favour of the appellant in the second appeal and it is dismissed.

November 2, 2015
prem

(K.KANNAN)
JUDGE