

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

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CM No.9141-C of 2015 and
Regular Second Appeal No.3728 of 2015

Date of Decision: August 10, 2015

Anchal Singh son of Daya Ram, resident of Village Bhopar Saidan, Tehsil
and District Gurdaspur

...Appellant

Versus

Balwant Singh son of Daya Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anmol Partap Singh Mann, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

This is an appeal preferred by appellant-defendant No.1 against the judgments passed by the Courts below, which have gone against the appellant-defendant No.1.

2. The question of law, which is sought to be agitated by the counsel for the appellant, is that although the factum of an agreement Exhibit P-1, which was entered into between the plaintiff and defendants 1 and 2 during the pendency of the civil suit, is not disputed but the same was signed by the appellant under the influence of the police and it was not out of free will. Counsel for the appellant contends that as per Section 23 of the Indian Evidence Act, 1872, which deals with the admission in the civil cases and the relevance thereof, does not support the findings, which have been recorded on the basis of agreement Exhibit P-1. He contends that same could not have been taken into consideration to decree the suit of the

plaintiff-respondent No.1. He, on this basis, submits that the judgments and decrees of the Courts below cannot sustain and deserve to be set aside.

3. I have given my consideration to the submission, as has been made by the counsel for the appellant-defendant No.1 but am unable to accept the same.

4. Although the plea, with regard to the agreement Exhibit P-1 being under the influence of the police officials, which resulted in appending of the signatures by the appellant on it, was not dealt with (it may not have been raised before the trial Court) but in the judgment of the Appellate Court, this aspect has been properly appreciated and dealt with. The learned Appellate Court has rightly observed that had the agreement Exhibit P-1 been executed under the influence of the police officials, the first reaction of such a person would have been of filing a complaint against the same if he was not accepting the same. Nothing of this sort has been asserted or placed on record. Nothing has also come on record nor has any document been produced before the trial Court, which indicated that there was/were criminal proceedings going on between the appellant-defendant No.1 and respondent No.1. The findings, thus recorded on this aspect, with regard to execution of the agreement Exhibit P-1 by the lower Appellate Court, are fully justified and based upon the reasoning, as has been referred to above, which are found to be correct.

5. Section 23 of the Evidence Act, as has been relied upon by the counsel for the appellant-defendant No.1, would not be applicable to the present case as this was not made either under any express condition that the evidence was not to be given nor was under circumstances from which the

Court could infer that the parties agreed together that the evidence of it

should not have been given. The position appears to be otherwise.

6. In view of the above, finding no merit in the present appeal, specially in the light of the concurrent findings recorded by the Courts below, the present appeal stands dismissed.

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.9141-C of 2015, also stands dismissed.

August 10, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE