

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

RSA No. 1453 of 2014 (O&M)

DECIDED ON: DECEMBER 17, 2015

PRADEEP KUMAR VERMA & ANOTHER

.....APPELLANTS

VERSUS

SURINDER KUMARI

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the Local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or?**
- 3. Whether the judgment should be reported in the digest?**

Present:- Mr. M.L. Saini, Advocate
for the appellants.

JASPAL SINGH, J

Feeling dissatisfied with impugned judgments and decrees passed by both the courts below, appellant/defendant has filed the instant appeal.

2. Briefly, put the case of plaintiff-respondent is that defendants/appellants are running goldsmith shop under the name and style of R.K. Jewellers at village Ikolaha. On October 16, 2007

plaintiff/respondent handed over one gold necklace, four bangles and three

gold rings weighing 140 gms in all to defendants/appellants in the presence of Jasvir Kaur and Surjit Singh for the purpose of sale @ ₹9650/- per tola, totalling to ₹1,30,000/-. Defendant No.1-Pardeep Kumar Verma issued receipt in this regard to the plaintiff/respondent and promise to pay an amount of ₹1,30,000/- after 2/3 days. Thereafter, the defendants did not make the payment despite request as well as the issuance of notice dated December 05, 2007, which necessitated the filing of suit for recovery of an amount of ₹1,30,000/- alongwith interest @ ₹2% per month.

3. The suit was resisted by defendants. They filed written statement raising preliminary objections *inter-alia* on the ground that the suit is not maintainable in the present form and that no cause of action has arisen for plaintiff to file the present suit. On merits it has been alleged that neither any gold ornaments were handed over to them nor they issued any receipt and thus, they prayed for dismissal of suit. Thereafter, plaintiff filed replication controverting the averments raised in the written statement and reiterating those contained the plaint. From the pleadings of the parties, following issues were framed;

1. Whether the plaintiff is entitled to the recovery of amount as prayed for in the plaint?OPP
2. Whether the suit of plaintiff is not maintainable?OPD.
3. Whether the plaintiff has no cause of action to file the present

suit?OPD.

4. Whether the suit is liable to be dismissed with special costs?OPD.

5. Relief.

4. Both the courts have afforded ample opportunities to the parties to adduce their evidence in respect of their respective pleadings.

5. After hearing learned counsel for the parties and perusal of evidence the suit of the plaintiff/respondent was decreed for the recovery of an amount of ₹1,30,000/- along with interest @ ₹12% per month from the date of transaction till the date of decree with future interest @ 6% on the principle amount till actual realisation thereof, vide judgment and decree dated April 11, 2013. Aggrieved against the aforesaid judgment and decree, the defendants preferred an appeal, which was admitted for hearing by learned Appellate Court. The said appeal was resisted by plaintiff/respondent. The Appellate Court also dismissed the appeal vide judgment and decree dated November 08, 2013 affirming the judgment and decree dated April 11, 2013 passed by lower court. Thereafter, defendants approached this Court by way of filing instant regular second appeal.

6. While assailing the impugned judgments and decrees passed by both the courts below, it has been argued by learned counsel for the appellant that both the courts below have wrongly placed reliance upon

receipt Ex.P1 and Ex.P1/A as well as visiting card Ex.P7. In fact these

documents do not relate to the alleged transaction set up by plaintiff/respondent. The receipt Ex.P1 is in the name of Surinder Kaur and not in the name of Surinder Kumari. Similarly, an amount of ₹1,30,000/- also does not figure anywhere in the receipt or any other document.

7. It has further been contended by learned counsel for the appellant that even no reliance can be placed upon the statement of Surjit Singh. Presence of Jasbir Kaur is not established at the time and place of alleged transaction, especially in view of the fact that PW Surjit Singh has failed to unfold about the identity of Jasbir Kaur when subjected to cross-examination. It has been next argued by learned counsel for the appellant that no cogent and convincing evidence has been brought on record by plaintiff/respondent to prove that she entitled to sell gold ornaments or that the same were handed over to defendants/appellants. Thus, impugned judgment and decrees passed by both the courts of below are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of the instant appeal.

8. After bestowing due consideration to the submissions made by learned counsel for the appellant and scrutinizing the impugned judgments and decrees, this Court does not find any legal weight. Rather, this court is of the considered view that findings recorded by both the courts below are

absolutely in consonance with the evidence available on file and settled cannons of law.

9. Plaintiff-respondent has set up a specific case that she was in need of some money due to which she intended to sell her ornaments weighing 140 gms and she handed over the said items to defendants/appellants, who promised to pay a sum of ₹1,30,000/- within 2/3 days in the presence of Surjit Singh and Jasbir Kaur. At that time, defendants also issued receipts Ex.P1, P1/A and P/7. Though, it has been alleged by the appellant that these receipts do not bear the name, amount or the weight of gold ornaments but a glance at the aforesaid documents reveal that name, weight of gold ornaments as well as the amount have been fully mentioned that too, in the hands of defendants/appellants. By simple denial he cannot wriggle out of the contents of these documents, which have been fully proved by way of testimony of plaintiff/respondent as well as that of Surjit Singh who happened to be present at the time of said transaction. Here it would also be pertinent to mention that when an amount of ₹1,30, 000/- was not paid by the defendants/appellants within a period of 2/3 days or subsequent thereto, despite requests made by the appellants, plaintiff/respondent was constrained to serve a legal notice dated December 05, 2007 upon appellants/defendants through counsel whereby, they were

called upon to make payment but they did not opt to file any reply despite the fact that they were duly served. So in such circumstances, it can be said without any hesitation that non-payment of amount recited in the receipts necessitated the filing of suit by plaintiff/respondent.

10. The findings recorded by lower court and upheld by Appellate Court are absolutely in consonance with the evidence available on file and do not call for any interference by this Court. Appellants have failed to point out any legal flaw in the findings as well as decrees passed by both the courts below. There is no question of law what to say of any substantial question of law involved in the instant appeal.

9. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. As such the same is dismissed with costs.

(JASPAL SINGH)
JUDGE

DECEMBER 17, 2015

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