

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

RSA No.3521 of 2014 (O&M)
Date of Decision.07.12.2015

Nazar Singh son of Bhajan Singh

.....Appellant

Vs.

Major Singh son of Jit Singh

.....Respondents

Present: Mr. Vijay K. Jindal, 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)

1. The defendant is the appellant before this Court challenging the correctness of the findings of the Courts below granting decree on the basis of a promissory note said to have been executed in favour of the plaintiff. The execution of the promissory note was denied by the defendant but the signature in the instrument was admitted as having been taken from him by the plaintiff's brother-in-law with whom he used to have money dealings. The contention was that the plaintiff's brother-in-law brought the signature of the defendant on the pretext that it would be necessary for some income tax purpose. According to the defendant, he never had any dealings with the plaintiff and the plaintiff himself did not have the means to make such payment.

2. At the time of trial, it was elicited that the plaintiff had 12 acres of land and he used to earn about ₹6.50 lacs per year from paddy and wheat crops. He stated that he would sell his crops at Amarnath

Commission Agent at Sangrur. It was also elicited in the evidence that he had ₹1 lac at the bank but he would not be in a position to say whether he had any money on the relevant date of the promissory note between March 5th to 31st March of 2006. Pressed further about how he could advance the money, the plaintiff was stating that he had entered into an agreement of sale of his property with one Purshotam Lal son of Mohan Lal and had received the earnest money which he had at his disposal for payment of consideration under the pronote. The defendant's complaint was that the sale deed or the agreement in relation to the property which could have shown the best possible proof of the availability of ₹ 6 lacs with him was not produced before the Court.

3. The two Courts below found that the plaintiff had proved the execution of the promissory note through examination of the witnesses and the scribe. The Court, therefore, applied the presumption under Section 118 of the Indian Evidence Act and granted the decree in favour of the plaintiff.

4. The counsel for the appellant states that if presumption were to be drawn, it must be taken as rebuttable presumption and the Court will decide on preponderance of probabilities. The counsel would refer to me judgments of Supreme Court in Rev. Motherkutty Vs. Reni C. Kottaram and another 2013(1) SCC 327; K. Subramani Vs. K. Damodrara Naidu 2015(1) SCC 99 and John K. Abraham Vs. Simon C. Abraham and another 2014(2) SCC 236. All these decisions are with reference to prosecution for offences under Section 138 of the Negotiable Instruments Act where the criminal court proceedings were

sought to be initiated against persons who could not prove sufficient resources before they could secure a conviction on the basis of signatures found in the negotiable instruments. I do not think this judgment can any way be of any assistance to render the dismissal of the suit. What would have been standard of proof that may be necessary for securing a conviction and the passing of consideration may not be same at the Civil Court and if there was evidence that the promissory note was genuine then all that has to be seen was whether the resources as he has spoken to was possible for persons to advance the money. The counsel states that in Rev. Motherkutty's case (supra), the Supreme Court was actually considering a liability for Civil Court. It is undoubtedly a criminal case where the Court was making reference to the judgment of the Kerala High Court whose finding in civil case relating to the manner of of raising presumption under Section 118 was considered. Here was an agriculturist in Punjab who had 12 acres of land and to doubt his financial abilities to lend some money would be far fetched. If he was also earning about ₹6.5 lacs, it again shows that he had sufficient funds for making advances. He had volunteered an information about receipt of advance for sale of some property. It was not such a thing as would require in a criminal case to produce the sale deed that the money was there. This Court's adjudication will proceed on what was appropriate to the particular facts which are brought before the Court and there was sufficient evidence given by the plaintiff about his resources, its creditworthiness and how he had come by contact with the defendant to lend him money.

5. The decisions rendered by the Courts below are purely on

questions of fact and it would require no intervention and there is no perverse finding of fact even for reversal in second appeal. The second is dismissed as devoid of merit.

**(K. KANNAN)
JUDGE**

December 07, 2015
Pankaj*