

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 5294 of 2014 (O&M)
Date of decision 18.08.2015.

Chand Ram

..... Appellant.

versus

Bhagwat Dayal

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. Vivek Lamba, Advocate for the appellant.

K.C.PURI, J.

Chand Ram plaintiff-appellant has directed the present appeal against the judgment and decree dated 22.04.2014 passed by Shri J.R.Chauhan, learned District Judge, Bhiwani vide which the appeal preferred by plaintiff/appellant against the judgment and decree dated 14.03.2013 passed by Shri Narender Singh, the then learned Civil Judge (Junior Division), Charkhi Dadri was dismissed.

2. Brief facts of the present case are that on 13.05.2008 defendant borrowed a sum of Rs.22,000/- from the plaintiff along with interest @ 2% per month for house hold expenses and he undertook to return the said amount along with interest on demand. Defendant executed a Bahi entry in the Bahi of the plaintiff in his own hand writing to this effect and signed the

same across the revenue ticket in the presence of witnesses, but the defendant did not repay the said amount as agreed. Hence this suit.

3. On notice, defendants filed written statement and contested the suit on the grounds that neither he ever borrowed any amount from the plaintiff nor executed any alleged writing in the Bahi of the plaintiff and therefore, the question of returning any amount to the plaintiff does not arise at all. Denying other averments, defendant took preliminary objections regarding maintainability, cause of action, locus standi ; estoppel and concealment of material facts from the Court.

4. Rejoinder was filed by the plaintiff. From the pleadings of the parties following issues were framed :-

1. Whether the plaintiff is entitled to recover the suit amount of Rs.37,730/- (principal Rs.22,000/-+ interest Rs.15,730/-) along with pendente interest as prayed for ?OPP
2. Whether the plaintiff has no locus-standi to file the present suit ? OPP
3. Whether the present suit is not maintainable in the present form ? OPD
4. Whether the plaintiff has not come to the court with clean hands ?OPD
5. Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPD
6. Whether the plaintiff has concealed the true and material facts from the Court ?OPD
7. Relief.

5. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence dismissed the suit of the plaintiff vide judgment and decree dated 14.03.2013.

6. Feeling aggrieved, the plaintiff preferred first appeal against the judgment and decree dated 14.03.2013. The learned District Judge, Bhiwani vide judgment and decree dated 22.04.2014 dismissed the appeal of the plaintiff.

7. Still feeling dissatisfied with the aforesaid judgments and decrees, the present regular second appeal has been directed by the plaintiff/appellant.

8. In paragraph No.11 of the grounds of appeal, plaintiff/appellant has framed the following law point for adjudication by this Court :-

- (i) Whether the findings of the lower courts below are based on misreading of evidence resulting into perversity ?
- (ii) Whether the impugned judgments were passed without considering the evidence tendered by the parties to the suit ?

9. I have heard learned counsel for the appellant and has gone through the paper book.

10. Although counsel for the appellant has submitted that judgments and decrees passed by both the courts below is the result of misreading and misinterpreting evidence on the file but no special attention has been drawn during the course of arguments that which of the evidence is misinterpreted and misread by both the Courts below. Whole of the evidence has been considered by both the Courts below and reached to the conclusion that plaintiff has to prove the factum of advancement of loan of Rs.22,000/-. That being a finding of fact cannot be challenged in the regular second appeal, more-so, when the appellant has failed to prove that any substantial question of law has arisen in the present appeal.

11. Consequently, the appeal is without any merit and the same stands dismissed.

12. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

August 18, 2015
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