

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 110

Regular Second Appeal No.5381 of 2014 (O & M)

Date of Decision: *December 17, 2015*

Mewa Singh

..... APPELLANT

VERSUS

Pavittar Singh

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

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. Harsh Aggarwal, Advocate, for the appellant.

. . .

Jaspal Singh, J

1. Defendant Mewa Singh has filed the instant appeal challenging judgment and decree dated May 24, 2014 passed by the Additional District Judge, Sangrur whereby the appeal preferred by him against judgment and decree dated December 2, 2011 passed by the Civil Judge (Junior Division), Sunam was dismissed and findings returned by the lower court affirmed.

2. Brief facts of the case are that appellant – defendant Mewa Singh took a loan of ₹ 3,54,986/- from him and executed a pronote &

receipt in consideration thereof, which was scribed by Rohit Kaushik, Document Expert and was attested by witnesses. He agreed to repay the same alongwith interest @ 2% per month but he failed to pay either towards principal amount or interest despite several demands. Respondent – plaintiff Pavittar Singh, accordingly, instituted a suit for recovery of ₹ 3,54,986/- i.e. ₹ 3,00,000/- as principal amount and ₹ 54,986/- as interest @ 2% per month with future interest at the same rate. He also sought for permanent injunction restraining the defendant from alienating his share out of land measuring 7 kanal 13 marlas situated in village Mehlan – A, Tehsil Sunam.

3. Upon notice, defendant resisted the suit by filing written statement raising objections of maintainability, locus standi and estoppel etc. On merits, defendant admitted the factum of taking loan for domestic needs but pleaded that he repaid the entire amount to the plaintiff in the presence of Suresh Kumar of Sunam on July 15, 2007, who issued a receipt to defendant which was signed by both the parties. At that time, plaintiff stated that pronote was not traceable and he will return the same as and when traced. This fact was also mentioned in the receipt.

4. Plaintiff filed replication to the written statement denying the averments raised in the written statement and specifically alleged that the receipt was forged and fabricated, and further that he does not know Suresh Kumar.

5. From pleadings of the parties, following issues were framed:-

1. Whether plaintiff is entitled for the recovery of the suit amount alongwith interest as claimed for? OPP
2. Whether defendant has made the payment to the plaintiff alongwith interest vide writing dated 15.07.2007? OPD
3. Whether the plaintiff is entitled to the permanent injunction, as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether plaintiff has no cause of action to file the present suit? OPD
6. Whether the plaintiff has no locus-standi to file the present suit? OPD
7. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
8. Whether the plaintiff has concealed the material facts from the Court? If so its effect? OPD
9. Relief.

6. In order to prove their respective claims, parties were afforded ample opportunities to lead their evidence. Plaintiff examined himself as PW-1; Paramjit Singh, marginal witness, as PW-2; and Dr. Inderjit Singh, Handwriting Expert, as PW-3. Defendant examined himself as DW-2; Navdeep Gupta, Handwriting Expert as DW-1; and Suresh Kumar, Scribe of receipt, as DW-3.

7. The trial court, after hearing counsel for parties and on appraisal of evidence available on record, decreed the suit of plaintiff for

recovery of ₹ 3,54,986/- i.e. ₹ 3,00,000/- being principal amount and ₹ 54,986/- being interest @ 2% per month from March 7, 2007 to December 11, 2007 alongwith future interest @ 6% per annum from the date of filing the suit till realization of whole amount and defendant was restrained from alienating, transferring, selling or mortgaging his share out of land measuring 7 kanal 13 marlas situated in the revenue estate of village Mehlan – A, Tehsil Sunam.

8. Aggrieved by the aforesaid judgment and decree of trial court, defendant – Mewa Singh preferred an appeal before the lower appellate court but the same was dismissed vide judgment and decree dated May 24, 2014.

9. Still dis-satisfied, defendant has approached this Court impugning the judgments and decrees passed by both the courts below.

10. While assailing the findings recorded by both the courts below, it has been ebulliently argued by learned counsel for the appellant that same are absolutely against the evidence available on file and settled canons of law. Mis-appreciation of evidence as well as legal proposition has resulted into mis-carriage of justice. No doubt, it is an admitted case of the appellant – defendant that he obtained a loan of ₹ 3,00,000/- from the respondent – plaintiff and executed pronote & receipt. But the said amount alongwith interest has been repaid by the appellant – defendant on July 15, 2007 and receipt to this effect was reduced into writing which is Ex.DW-2/B. It was scribed by Suresh

Kumar who has been examined as DW-3. Though, Suresh Kumar as well as the defendant was subjected to thorough and lengthy cross examination but nothing could be extracted from the respective cross examinations, adverse to their interest. Even otherwise, an application under Section 35-B of the Indian Stamp Act, 1899 was also moved before the trial court for making deficiency of the court fee with regard to receipt Ex.DW-2/B good. But the lower appellate court, by misinterpreting the evidence, did not decide the said application. Thus, the impugned judgments and decrees are not sustainable in the eyes of law and deserve to be set aside and the case is liable to be remanded to the lower court for deciding it afresh.

11. It has further been argued by learned counsel that report of DW-1 Dr. Navdeep Gupta, Hand Writing & Finger Prints Expert, has also been ignored and dis-believed by the courts below without assigning any cogent reason whereas the report of Dr. Inderjit Singh, PW-3, has been accepted. Since there is no cogent and convincing evidence adduced by the appellant – defendant that on receipt of principal amount alongwith interest, respondent – plaintiff executed receipt Ex.DW-2/B, the entire case of the respondent – plaintiff falls to the ground and suit is liable to be dismissed.

12. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant but finds the same to be without any legal substance.

13. Admittedly, loan of ₹ 3,00,000/- was obtained by the appellant – defendant which was agreed to be repaid by him alongwith interest @ 2% per mensem on demand. When the appellant – defendant has taken up the plea that he has repaid the amount of loan alongwith interest vide receipt Ex.DW-2/B, the burden shifts upon him to prove that nothing is due or outstanding against him. Receipt Ex.DW-2/B has been ignored and dis-believed by both the courts below and there is concurrent finding in this regard. The said receipt has been held to be forged and fabricated. Though, both the parties have examined Hand Writing & Finger Prints Experts in support of their respective claims and Dr. Navdeep Gupta (DW-1), Hand Writing & finger Prints Expert, examined by the appellant – defendant has observed that the receipt bears the signatures of respondent – plaintiff but his statement as well as report stands falsified from the report of Dr. Inderjit Singh (PW-3), Hand Writing & Finger Prints Expert. Even otherwise, in such a situation, the court is competent to examine the genuineness of the signatures appearing on the disputed document as well as that of the admitted standard specimen signatures. Signatures appearing on receipt are absolutely different than that of the standard admitted signatures of the plaintiff. So, once receipt Ex.DW-2/B has been held to be a forged and fabricated document, question of making deficiency of the stamp fee does not arise at all. Even if such an application has not been dealt with and disposed of by the courts below, it has got no bearing on the merits

of the case. This court does not find any legal flaw in the impugned judgments and decrees, rather, is of the considered view that the judgments and decrees passed by both the courts below are absolutely in consonance with the evidence available on file as well as legal proposition of the facts & circumstances of the case in hand. As such, the same do not call for any interference by this Court.

14. In the light of what has been discussed above, the appeal is dismissed with costs whereby impugned judgments and decrees are upheld.

December 17, 2015
avin

(Jaspal Singh)
Judge