

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

C.R. No.791 of 2016 (O&M)
Date of Decision.04.02.2016

Mahinder Singh

.....Petitioner

Vs.

Naib Singh

.....Respondent

Present: Mr. Gian Singh, General power of attorney
for the petitioner.

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 leave sought for representing the case through power of attorney on behalf of petitioner Mahinder Singh is granted.
2. The revision is at the instance of a judgment debtor represented through a power of attorney/brother contending that the decree is invalid and not capable of being executed. According to him, the Court which lacked inherent jurisdiction cannot grant decree on the basis of promissory note and it has not properly appreciated the contention that the promissory note was a forgery.
3. At the time of suit when a defence of forgery was taken, it would appear that the plaintiff had examined a handwriting expert and brought evidence before the Court about genuineness of the document and the trial Court decreed the suit. This decision was confirmed in the Appellate Court and correctness of the decision which was brought in challenge before the High Court in Mohinder Singh Vs. Naib Singh in RSA

No.2237 of 2012 also failed by its final adjudication dated 03.10.2013.

4. If the decision regarding the genuineness of the promissory note has come to the finality through the decision of this Court, then the Executing Court will not be competent to reopen the issue and make available a defence by the judgment debtor that the promissory note was not valid and not enforceable. The petitioner states further that there was a compromise in the village where the persons who were said to be witnesses in the document had admitted that no money was given by the plaintiff to the defendant. I have examined the copy of the document filed along with revision petition. The petitioner explains that the advocate did not file the same. Assuming for the arguments sake that the document ought to have been filed and it could be acted upon, the reliance could not be only on an alleged statement by some witnesses that the document was not genuine. Any witness to document must give evidence at the time of trial and any statement made past decree cannot give any strength to the defence of the defendant. So long as the plaintiff himself has not signed the so-called compromise and he has still been prosecuting the case contending that no payment has been made, the Executing Court or this Court cannot examine the compromise as annulling a decree that has been passed. I see that there is no lawful compromise between the parties and it cannot, therefore, go to discharge the liability to the plaintiff.

5. The petitioner brings a whole volume of authorities to the effect that the Executing Court will still be competent to go into the validity of the decree. I have examined the decisions which he has submitted and they are all with reference to situations where there was

an inherent lack of jurisdiction by the Court which passed the decree.

The civil court that passed the decree for enforcement of promissory note has the jurisdiction to render an adjudication and the decisions cited by the petitioner cannot, therefore, apply.

6. There is no merit in the revision petition. The revision petition is dismissed.

(K. KANNAN)
JUDGE

February 04, 2016
Pankaj*