

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3837 of 2011
DATE OF DECISION: November 7,2016

Darshan Lal

...Appellant

versus

Saroj Rani

...Respondent

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Sahil Khunger, Advocate for the appellant.
Mr.Namit Gautam, Advocate for the respondent.

AMIT RAWAL, J.

The defendant is in regular second appeal against the judgment of reversal whereby the trial Court dismissed the suit for Rs.77,400/- i.e. Rs.45,000/- as principal amount and Rs.32,400/- as interest at the rate of 2% per annum with effect from 31.8.2000 to 30.8.2003 on the basis of pronote and receipt dated 31.8.2003.

Mr.Sahil Khunger, learned counsel appearing for the appellant-defendant submits that the aforementioned suit was filed on 30.8.2003, whereas, pronote and receipt were of 1.8.2000. In fact, the suit was barred by limitation.

The respondent-plaintiff inserted the word "3" before word "1" on the pronote-cum-receipt as well as on the revenue

stamp which is apparent from the naked eye. The trial Court dismissed the suit of the plaintiff-respondent but the learned First Appellate Court reversed the findings of the trial Court on the ground that the pronote and receipt had been written by the appellant. He submits that during the course of hearing of appeal, this Court was pleased to call for the original records. Apparently there is interpolation inserting figure 3 before 1 to bring the suit within the period of limitation.

Mr.Namit Gautam, learned counsel appearing for the respondent-plaintiff submits that the lower Appellate Court examined the pronote and receipt and found that the respondent-plaintiff did not tamper the pronote and receipt by writing figure 3 in front of figure 1 in respect of the dates appearing at four places, two on pronotes and two on receipts. The report of the hand-writing expert is not to be treated as perfect science. It is always subject to interpretation. In fact, the ink of digit "3" beneath both the signatures exactly tally with the ink of date i.e. 1.8.2000 as well as the ink of signatures of Darshan Lal. In fact, no different pen was used for the purpose of alleged insertion of figure "3" before "1" on the pronote and receipt and the suit was instituted within the period of limitation. The execution

of pronote and receipt was proved on record through the testimony of PW2-Ravi Kumar, marginal witness of the aforesaid document.

I have heard the learned counsel for the parties and am of the view that there is a clear cut insertion of figure "3" before figure "1" as figure "3" has been written in hand on the pronote as well as on the receipt. Even on the revenue stamp, the word "3" has been written not only once but it has been darkened by repeated user. It is in a slow motion than the actual flow/motion. This Court always assume role of the Hand-writing and Finger Print Expert under the provisions of Section 45 of the Indian Evidence Act. Once the insertion of figure "3" is proved, the suit was hopelessly time barred by limitation. This aspect of the matter has not been taken care of by the learned First Appellate Court.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in "Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213", wherein the proposition arose as to whether in view of the provisions of Section

97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in "Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

"Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled." [at paras 27 - 29]"

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come

into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force."

In view of the aforesaid discussion, the present appeal is allowed. The judgment and decree of the learned First Appellate Court is set aside. Accordingly, the suit of

the plaintiff-respondent is dismissed and as a result thereof,
the judgment and decree of the trial Court is restored.

November 7,2016
KD

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No