

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No. 411 of 2011 (O&M)
Date of Decision:- 21.04.2016**

MANOJ KUMAR SONI (deceased through LRs)Appellant(s)

VS.

KAMAL KISHORE DHIR & ANRRespondent(s)

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gurinder Pal Singh, Advocate,
for the appellant.

Mr. Vishal Aggarwal, Advocate,
for the respondents.

- 1. Whether Reporters of Local Newspapers 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 ?**

AMIT RAWAL, J. (Oral)

C.M. No.1109-C of 2011

This is an application for condonation of delay of 2 days in filing the present appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 2 days in filing the appeal is condoned.

Main Case.

Appellant-plaintiff is aggrieved of the judgment and decree dated 20.07.2010 passed by the Lower Appellate Court whereby appeal of the defendant has been allowed and suit of the plaintiff seeking recovery of

amount has been dismissed with costs and the judgment and decree of the trial Court has been set aside.

Mr. Gurinder Pal Singh, learned counsel appearing on behalf of the appellant-plaintiff submits that the Lower Appellate Court while setting aside the judgment of the trial Court wrongly observed that the contents of the agreement Ex. P-A dated 19.4.1997 were not pleaded in the plaint. He submits that Ved Parkash, an attesting witness of the agreement is related to both the parties who has proved the execution of the agreement Ex. P-A. The lower appellate Court non-suited the appellant only on the aforementioned ground, thus urges to this Court to formulate the substantial question of law as culled out in ground of appeal:-

“Whether the judgment and decree of the lower appellate Court suffers from any illegality or perversity in misreading or misdirecting the evidence and pleadings.”

Mr. Vishal Aggarwal, learned counsel appearing on behalf of the respondent-defendant submits that the judgment and decree rendered by the Lower Appellate Court is perfectly legal and justified based upon the appreciation of oral and documentary evidence. Suit was filed against the respondent-defendant and his wife defendant No.2 whereas there is no signature of defendant No.2 on the agreement. There is no averment in the agreement vis.-a-vis sending the plaintiff-appellant abroad, much less, the plaintiff does not have any passport and therefore question of her impleadment as one of the defendants did not arise.

I have heard learned counsel for the parties and appraised the paper book and am of the view that there is no force and substance in the

plea of Mr. Vishal Aggarwal, learned counsel for the respondent for the reason the respondent-defendant No.2 has not made any averment to rebut her signatures as per the requirement of Order 6 Rule 2 of the Code of Civil Procedure. The entire evidence is not required to be pleaded. Case is always proved by leading the evidence which is to be proved in accordance with law. Ved Parkash PW3 deposed in terms of the averments made in the agreement. It is a matter of record that Ved Parkash is related to both the parties. It is a normal practice that the parties want to introduce the witness(es) of their own choice much less closer.

Defendant, having failed to lead any corroborative evidence to belie the version of the plaintiff, I am of the view that the judgment and decree of the Lower Appellate Court deserves to be set aside.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the Lower Appellate Court is hereby set aside and that of the trial Court is restored and thereby suit stands decreed, qua defendant No.1 only.

The appeal stands allowed accordingly.

April 21, 2016
poonam

(AMIT RAWAL)
JUDGE