

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

**RSA-9-2011 (O&M)
Date of decision : 27.09.2016**

Sharda Devi

... Appellant

Versus

Ram Krishan Goyal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Abha Rathore, Advocate
for the appellant.

Mr. Alok Jain, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit for recovery of ₹ 5,63,500/- (Principal ₹ 4,00,000/- + interest ₹ 1,63,500/-) has been dismissed, in essence, the judgment and decree of the trial Court has been set aside.

Ms. Abha Rathore, learned counsel appearing on behalf of the appellant-plaintiff submits that respondent-defendant had taken a loan on 14.09.2000 for a sum of ₹ 4,00,000/- vide receipt (Ex.P-2). The aforementioned loan was extended by the plaintiff-Sharda Devi and it was extended in the presence of Dinesh Bagla and the husband, namely, Ram Avtar. The trial Court decreed the suit, but did not grant the interest. However, before the lower Appellate Court, two appeals were filed. The appeal filed by the appellant-plaintiff has been dismissed and that of the respondent-defendant has been allowed on the ground that the document was not sufficiently stamped, in essence, there was no compliance of the

provisions of Section 35 of the Indian Stamp Act, 1899 (for short 'the 1899 Act'). The suit was filed within a period of limitation as the defendant had to pay the loan after one year of the execution of the receipt and therefore, filing of suit on 23.12.2003 taking the date of the year 2001 was within the limitation. She submits that a similar dispute had been arisen out between the parties in the appeal bearing **RSA No.5125 of 2012** titled as **“Ram Krishan Goel V/s Ram Avtar Gupta”** and the same was disposed of.

She further submits that the findings of the lower Appellate Court viz-a-viz the document being un-stamped is neither here nor there, for, the respondent-defendant did not take the objection when the same was admitted in evidence, therefore, the lower Appellate Court ought to have taken the aid of the provisions of Section 36 of the 1899 Act. Non-appearance of the plaintiff in the witness-box would not be fatal as it is none-else, but Ram Avtar being husband of the plaintiff, was present in the Court. The writing expert has also proved that the receipt has been signed and written by the same very person. She submits that in a close-net family, the husband can also appear in place of the principal and relies upon the judgment of the Hon'ble Supreme Court in **“Man Kaur (Dead) by LRs V/s Hartar Singh Sangha” 2011 (1) RCR (Civil) 189**, thus, urges this Court for setting aside the findings under challenge.

Mr. Alok Jain, learned counsel appearing on behalf of the respondent-defendant submits that the receipt does not contain any signatures of the witnesses. The recital of the receipt reveals that the loan was extended in the presence of the aforementioned witnesses. In fact, PW-1, when tendered his affidavit along with document, objection, in this regard, was taken, but the same remained open and having failed to pay the

stamp duty, the document cannot be said to be admitted and therefore, the benefit of Section 36 of the 1899 Act cannot be given. Sharda Devi has not appeared in the witness box and therefore, the defendant has been prevented to put the question with regard to the transaction. The plaintiff has failed to prove the case that the receipt was signed with the same pen and by the same person. In this context, he has drawn the attention of this Court to the cross-examination of the PW-4 Deepak Jain, Finger and Hand-writing Expert which revealed that he did not examine physical condition of the document i.e. edges or examined ink used in the body writing and therefore, he could not tell whether the writing written as 'Karar Ak Saal Ka Kiya' was written along with the other body writing or not?. It is itself sufficient for the Court to discard the receipt. He further submits that the word 'Ek Saal' in the receipt has been inserted later on as there is very less gap viz-a-viz the other paragraphs of the receipt. The receipt has, thus, not been proved in accordance with law, even, if it has been admitted and prays for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mrs. Abha Rathore, for, it would be apt to reproduce the cross-examination of the PW-4 Deepak Jain, Finger and Hand-writing Expert, which reads thus:-

“It is correct that I have not examined any writing on the back of Ex.P-2. It is also correct that I have not examined the physical condition of the document (Ex.P-2) i.e. its edges etc. I have not examined the ink used in the body writing Ex.P-2. As such, I cannot tell off and whether the writing written as 'KARAR AK SALL KA KIYA' is written along with the other

body writing or not”

Even, I had a chance to examine the original receipt. The word “Karar Ak Saal” has been written later on as there is very minimum space viz-a-viz the other paragraphs of the receipt. The receipt does not bear the signatures of the alleged witnesses, therefore, it could not have been looked into as anybody can appear and support the version of the plaintiff that the loan was extended in his presence. I also had a chance to examine the receipt regarding ink used in the writing and as well as the signatures. Apparently, the signatures are of ball pen and the receipt is in fountain pen as the cutting has a edges of ink spread. The opening line of the cross-examination of PW-1 reveals that affidavit containing the document (Ex.P-2) was objected to. The objection has not been proved and therefore, the benefit of Section 36 of the 1899 Act cannot be given. The finding arrived at by the lower Appellate Court that the receipt was un-stamped, is perfect, legal and in consonance with the provisions of Section 35 of the 1899 Act.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

27.09.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No