

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 2977 of 2013 (O&M)

Date of Decision:21.3.2016

Gurmail Singh

---Appellant

vs.

Surinder Pal Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.I.K.Mehta, Senior Advocate
with Mr. R.K.Dogra, Advocate
for the appellant

Mr. H.S.Minhas, Advocate
for the respondent

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against the judgment and decree dated 19.11.2012 passed by the Additional District Judge, Hoshiarpur whereby appeal preferred by the respondent against the judgment and decree dated 10.3.2011 passed by the Additional Civil Judge (Senior Division), Garhshankar (hereinafter referred to as “trial court”) has

been allowed, the judgment and decree of the trial court has been set aside and the suit filed by the respondent-plaintiff for recovery has been decreed.

The facts relevant for disposal of the present appeal are that as per allegations, the appellant-defendant borrowed a sum of Rs. 45,000/- in cash on 14.5.2007 and executed a pronote and receipt in favour of the respondent in presence of the witnesses. The appellant failed to repay the loan amount alongwith interest despite repeated requests. The respondent claimed recovery of an amount of Rs. 48,150/- along with interest at the rate of 12% per annum from the date of advancement of loan till realization.

Upon notice, the appellant-defendant filed the written statement raising preliminary objections inter alia that the suit is not maintainable in the present form, the respondent has no locus standi and cause of action to file the suit and the respondent has not come to the Court with clean hands. It was averred that the pronote and receipt are inadmissible in evidence for want of proper stamps. On merits, he has denied taking of loan of Rs. 45,000/- from the plaintiff, execution of pronote and receipt dated 14.5.2007 in lieu thereof and his liability to pay the suit amount. It is averred that the appellant borrowed a sum of Rs. 25,000/- from the respondent in April 2004 and returned an amount of Rs. 20,000/- on 2.7.2004. At that time, the respondent took his thumb impressions on two blank pronotes taking advantage of his illiteracy and being rustic and in dire need of money.

The respondent filed the replication, re-asserted his stand taken in the plaint and controverted the allegations raised in the written statement.

The trial court framed the following issues for determination:-

- “1. Whether the defendant has executed pronote and receipt for consideration?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the plaintiff is estopped from his own acts and conduct from filing the present suit?OPD
4. Whether the plaintiff has no locus standi and cause of action for filing the present suit?OPD
5. Whether the plaintiff is a money lender?OPD
6. Whether the pronote and receipt are inadmissible in evidence for want of proper stamp?OPD
7. Relief.”

The parties were permitted to adduce evidence in support of their respective contentions. The respondent examined himself, Baldev Singh son of Kishan Singh PW2. In rebuttal, the appellant appeared as his own witness.

On consideration of disputed questions of fact and law formulated for determination in the light of materials on record and submissions made by counsel for the parties, the learned trial court determined issues No. 1 and 4 taken up together against the respondent-plaintiff whereas issues No. 2, 3, 5 and 6 were answered against the appellant-defendant. As a result, suit of the respondent was dismissed with costs.

The judgment and decree passed by the trial court became

subject matter of challenge in appeal filed at the instance of the respondent and the appellate court set aside the findings of the learned trial court on Issues No. 1 to 4 and eventually accepted the appeal and held the respondent entitled to recovery of Rs. 48,150/- with future interest at the rate of 6% per annum on the principal amount of Rs. 45,000/- from the date of filing of the suit till realization of the decretal amount with costs throughout.

Feeling aggrieved by the judgment and decree passed by the court in appeal, the instant regular second appeal has been preferred by Sh. Gurmail Singh defendant.

Counsel for the appellant has submitted that the learned trial court rightly refused to rely upon the pronote and receipt by holding that the documents Exs. P1 and P2 are shrouded by suspicious circumstance for the reasons recorded in paras 14 to 18. It is further argued that the first appellate court failed to take a correct view of the matter and did not deal with various suspicious circumstances taken note of by the learned trial court. The appellate court committed a grave error by holding that the appellant has admitted the pronote and receipt merely because he admitted his thumb impressions on the documents. The last submission made by counsel is that the mere fact that appellant admitted his thumb impressions on the pronote and receipt, in no circumstances, would make the documents admissible in evidence unless and until the same are proved in accordance with law.

Counsel for the respondent-plaintiff, on the contrary, has supported the judgment passed by the appellate court with the submission

that the learned trial court proceeded to decide the dispute in a manner as if it was dealing with a criminal case wherein culpability of the accused is required to be proved beyond shadow of reasonable doubt. Further dilating, it is submitted that it appears that the trial court was oblivious of the fact that a civil dispute is to be decided on the basis of balance of probabilities and in absence of any tangible and justifiable explanation by the appellant to put his thumb impressions on blank documents, there was no reason for the trial court to accept plea of the appellant. It is further argued that as the appellant has admitted his thumb impressions on the pronote and receipt, there was a heavy onus to be discharged by him that the pronote and receipt are the result of undue influence, fraud or misrepresentation. The bald statement of the appellant is not at all sufficient to prove the criminality attributed to the respondent-plaintiff.

I have heard counsel for the parties and perused the records.

A casual reading of the judgment passed by the trial court would support contention of the respondent that the trial court on a wrong assumption has proceeded to decide the matter as if it was dealing with a criminal case required to be proved beyond shadow of reasonable doubt by disregarding that in civil dispute, the matter is to be decided on the basis of preponderance of probabilities and the onus keeps on shifting at different stages of the case. The trial court has taken into consideration the following five suspicious circumstances:-

(1)The visual examination of the pronote and receipt Exs.

P1 and P2 with naked eyes reveals that body of the pronote and receipt are scribed with ball point pen

while names of the witnesses are scribed with gel pen but PWs 1 and 2 have categorically stated that pronote and receipt are scribed with one pen only.

(2)The pronote and receipt were scribed by Ranjit Singh son of Chanan Singh resident of village Isepur thus there is a very remote possibility of Ranjit Singh having made a mistake while writing his father's name at the place where he signed as a witness of the receipt Ex. P2.

(3)The plaintiff PW1, the scribe (Ranjit Singh) and the witness PW2 are residents of village Isepur and the defendant is resident of village Datta. PW2 claims that he was called by Gurmail Singh respondent to witness the receipt Ex. P2 but failed to disclose as to how Gurmel Singh was acquainted with him.

(4)The plaintiff is resident of village Isepur while the defendant is resident of village Datta. The plaintiff has failed to show that he had any relationship or other social dealing with the defendant other than giving medical treatment to wife of the defendant when she was suffering from fever. The onus was on the plaintiff to show that he has such a close relationship with the defendant so that he advanced loan of Rs. 45,000/- to him on his asking.

(5)There is a lot of difference in the statements of the

plaintiff PW1 and PW2 regarding the time taken in scribing the pronote and receipt, seating arrangement at the place where the pronote and receipt were scribed, denomination of currency notes as PW1 states that currency notes were of denomination of Rs. 50, 100 and 500 but PW2 states it to be of Rs. 50 and 100.

The learned trial court has not at all adverted to plea of the appellant admitting his thumb impressions on the documents and his failure to substantiate his stand that the pronote and receipt are the result of duress and fraud.

The first circumstance taken into consideration by the trial court is the result of non-application of mind. PW1 and PW2 have deposed that body of the pronote and receipt is scribed with same pen. The various columns in the pronote and receipt would not include the names and description of witnesses. The trial court has not pointed out any discrepancy in regard to blanks in the pronote and receipt being filled in with the same pen.

So far as cutting/overwriting in the father's name of Ranjit Singh (scribe), the said fact cannot be termed as a material interpolation/alteration. There is no difference in the ink in writing father's name as Kishan Singh which was later scored off and written as Chanan Singh. The trial court failed to take note that father's name of other attesting witness namely Baldev Singh is Kishan Singh therefore, the mistake committed by the scribe by initially mentioning his father's name as Kishan Singh is nothing unusual.

The appellant belongs to village Datta. Gurmel Singh PW2, attesting witness of the receipt has categorically deposed that he was called by the defendant to witness the receipt. It has also been proved that Ranjit Singh son of Chanan Singh, scribe is working as panchayat Secretary of village Datta. In these circumstances, no serious view can be taken of the receipt being attested by Baldev Singh and Ranjit Singh.

The fourth circumstance is contrary to the plea raised by the appellant himself as he pleaded that he had taken an amount of Rs. 25000/- as loan from the plaintiff. Once the appellant has admitted of taking loan from the plaintiff, lending of an amount of Rs. 45000/- which is not a very huge amount, in the circumstances, is of no consequence to entertain plea of the plaintiff with suspicion.

The trial court has taken into consideration minor discrepancies in statements of the witnesses without appreciating that minor contradictions are bound to occur in the statements of truthful witnesses particularly when they are examined after some gap. The transaction in question took place in May 2007 but the witnesses were admittedly cross examined in July 2009 more than two years thereafter. In this view of the matter, I find merit in contention of the respondent that the circumstances taken note of by the learned trial court are either not borne out from record or otherwise cannot be considered to be suspicious.

The trial court committed a serious error in failing to appreciate the plea taken by the appellant in regard to taking loan of Rs. 25,000/- affixing his thumb impressions on blank documents or return of an amount of Rs. 20,000/-. The appellate court has rightly held that once the appellant

has admitted his thumb impressions on the pronote and receipt, there was a heavy onus to be discharged by him to prove that he had taken a loan of Rs. 25,000/- from the plaintiff in 2004 and affixed his thumb impressions on blank documents.

Admittedly, the appellant has not produced any document in regard to repayment of Rs. 20,000/- out of the alleged loan of Rs. 25,000/-. It is difficult to accept to reason that a person would return a substantial amount of loan but would not insist for issuance of a receipt more particularly in the circumstances that he had already affixed his thumb impressions on documents creating a liability against him. The evidence adduced by the respondent coupled with an admission by the appellant that the documents bear his thumb impressions and his failure to substantiate his plea of blank thumb impressions, no error much less illegality can be found in the well considered and detailed judgment passed by the appellate court. In view of the above, neither any substantial question of law arises for adjudication nor there is any ground to differ with the findings recorded by the court in appeal.

As an upshot of the discussion made hereinbefore, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

21.3.2016
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