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

R.S.A No. 3836 of 2013 (O&M)
Date of decision : 05.04.2016

Sukhdev Singh and others

...... Appellants

Versus

Jagtar Singh

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.S.S.Salar, Advocate
for the appellants

Mr. Harmanjit Singh, Advocate
and Mr.Harpreet Singh Warring, Advocate
for the respondent.

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DARSHAN SINGH,J

The present appeal has been preferred by the appellant-defendants against the judgment and decree dated 30.05.2013 passed by the learned Additional District Judge, Sirsa, vide which the appeal filed by them against the judgment and decree dated 25.01.2013, passed by the learned Additional Civil Judge (Sr. Division), Mandi Dabwali, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The plaintiff-respondent has filed the suit for recovery of Rs. 3,54,000/- along with *pendente lite* and future interest at the rate of 12 % per annum by way of the sale of the mortgaged property i.e. land

measuring 19 Kanals 7 Marlas detailed and described in the head note of the plaint situated in the revenue estate of Village Takhatmal, Tehsil and District Sirsa. As per the averments of the plaint, defendants had borrowed a sum of Rs. 1,50,000/- from the plaintiff and in consideration thereof, he mortgaged the aforesaid property as a security to repay the loan amount along with interest at the rate of 24 % per annum. The mortgage deed without possession was executed and got registered at serial no. 1426 dated 25.02.1997 with the office of Sub-Registrar, Kalanwali in favour of the plaintiff. The plaintiff got issued the legal notice to the defendants to pay the loan amount, but of no avail. Hence, the suit.

4. Appellant-defendant no.2 Sukhdev Singh filed the written statement and has admitted the factum of taking loan of Rs. 1,50,000/- from the plaintiff and mortgage of the suit property as a security to repay the loan amount. But, it was further pleaded that the aforesaid amount of loan has already been repaid in the presence of Surjit Singh son of Gurdial Singh and Hargobind Singh son of Ranjit Singh. But, at that time, the original mortgage deed was not returned to him by stating that the same has been misplaced. It is further pleaded that the plaintiff has filed the false suit due to greed of money. The remaining defendants have also adopted the written statement filed by appellant-defendant no.2.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to recovery or Rs. 3,54,000/- from the defendant along with interest at the rate of 18 % per

annum?OPP

2. Whether the suit of the plaintiff is within limitation?OPP
3. Whether the suit has been properly valued for the purpose of Court fee & jurisdiction?OPP
4. Whether the suit of the plaintiff is not maintainable?OPD
5. Whether the plaintiff is estopped to file the present suit by his own act and conduct?OPD
6. Whether the plaintiff has no cause of action and *locus standi* to file the present suit?OPD
7. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff-respondent vide impugned judgment and decree dated 25.01.2013.

7. Aggrieved with the aforesaid judgment and decree dated 25.01.2013, the appellants-defendants preferred the appeal and the same was also dismissed by the learned Additional District Judge, Sirsa, vide impugned judgment and decree dated 30.05.2013. Hence this Regular Second Appeal.

8. I have heard Mr.S.S.Salar, Advocate, learned counsel for the appellants, Mr. Harmanjit Singh and Mr. Harpreet Singh Warring, Advocate, learned counsel for the respondent and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants contended that this fact is not disputed that appellants have taken a loan of Rs. 1,50,000/- from the plaintiff on 25.02.1997. But, the said loan amount was returned by them in presence of Surjit Singh son of Gurdial Singh and Hargobind Singh son of Ranjit Singh. Said Hargobind Singh

has appeared into the witness box as PW-2 and has fully corroborated the statement of appellant Sukhdev Singh with respect to the repayment of the loan amount. He further contended that the original mortgage deed could not be taken back as the plaintiff-respondent projected that the same has been misplaced.

10. He further contended that the appellants have taken the specific plea in the written statement with respect to the repayment of the loan. The plaintiff has not filed any replication to controvert that plea. It means, the plea raised in the written statement has been admitted by the plaintiff as it has gone unrebutted. Thus, the repayment of the loan is impliedly admitted and the Courts below were not justified to pass the decree. He further contended that even the conduct of the parties has proved the repayment of the loan amount as even thereafter, the plaintiff had been advancing the loan to the appellants. Thus, he contended that the impugned judgment and decrees are erroneous.

11. On the other hand, learned counsel for the plaintiff-respondent contended that the factum of loan and execution of the registered mortgage without possession as security of the said loan is not disputed. The plea of repayment of the loan is not established. He contended that the valuable piece of land of the appellant was mortgaged as a security of the loan. It is not believable that after the repayment of the loan, the appellants will not take any step to get the land redeemed in the revenue record and they will not obtain any receipt thereof. The oral evidence cannot prove the repayment of the loan. He further contended that non filing of the replication will not prove the plea raised by the

appellants, as they have filed the written statement in response to the plaint. The plea raised in the pleadings has to be proved. But, the appellants have utterly failed to establish the alleged repayment of the loan. Even, the date of repayment of the loan is not mentioned in the written statement. Thus, he contended that the impugned judgments and decrees do not suffer from any illegality.

12. I have duly considered the aforesaid contentions.

13. This Regular Second Appeal has been preferred against the concurrent findings recorded by the learned Courts below. The law is well settled that in the Regular Second Appeal, this Court has limited jurisdiction to interfere. It can only be possible if the approach of the Courts below is perverse. They have misdirected or misinterpreted the evidence on record. Apparently, the case in hand does not fall in that category.

14. The factum of the receipt of the loan of Rs. 1,50,000/- and execution of the registered mortgage deed of the land measuring 19 kanals 7 Marlas situated within revenue estate of village Takhatmal, Tehsil and District Sirsa as a security of the loan has been admitted by the appellants in the written statement itself. With the admissions of the receipt of the loan, the burden had shifted upon the appellants to prove its repayment. In the written statement, the appellants have pleaded that the loan amount of Rs. 1,50,000/- along with interest was repaid in the presence of Surjit Singh and Hargobind Singh (DW-2). Admittedly, no replication has been filed by the plaintiff-respondent. As per order 8 Rule 9 Code of Civil Procedure, 1908, no pleading subsequent to the written

statement of the defendant other than by way of defence to set-off or counter-claim shall be presented except with the leave of the Court. As per the aforesaid provisions, the replication could have been filed only with the leave of the Court. Thus, the non filing of the replication by plaintiff to the written statement filed by appellant-defendant no.2 adopted by other defendants will not amount to any admission on the part of the plaintiff-respondent with respect to the repayment of the loan. The findings can be recorded by the Court only when the admission is unequivocal and unambiguous. No judgment can be passed on the basis of drawing inference with respect to the implied admission of the plea raised in the written statement. The plea of repayment of loan raised in the written statement by the appellants was required to be proved like any other fact. So, the appellants were required to establish by cogent and convincing evidence that the loan amount has been repaid.

15. As already mentioned that the factum of loan and execution of the mortgage deed dated 25.02.1997 as a security thereof is not disputed. Even otherwise, the factum of taking loan by the appellants-defendants and the execution and registration of the mortgage deed as a security thereof is proved from the evidence adduced by the plaintiff in the shape of statement of PW-1 Sukhdev Singh, the marginal witness of the mortgage deed, PW-2 Karanjit Singh, the petition writer, who had scribed the mortgage deed Ex.P-1. Plaintiff-Jagtar Singh has also himself stepped into the witness box as PW-3.

16. In order to prove the plea with respect to the repayment of the loan, appellant-defendant Sukhdev Singh has himself stepped into the

witness box as DW-1. He also examined Hargobind Singh as DW-2. Thus, only oral evidence has been adduced by appellants, which is not corroborated from any documentary evidence. The oral evidence adduced by appellants with respect to the repayment of the loan lacks credibility and reliability in the face of various circumstances. The appellants have not mentioned any date in the written statement with respect to the repayment of the loan amount along with interest. It is also not mentioned as what amount of interest was paid along with the loan amount. The appellants have mortgaged the agriculture land measuring 19 Kanals 7 Marlas vide registered mortgage deed dated 25.02.1997 as a security to the loan. So, the charge was created on the valuable property of the appellants due to the aforesaid loan. It is not believable that after repayment of the loan amount along with interest, the appellants will remains satisfied only on the asking of the plaintiff-respondent that the mortgage deed has been misplaced somewhere and they will not take any step to set the revenue record right showing the redemption of the land in order to clear the charge or encumbrance created upon their valuable property. When the plaintiff-respondent is getting the registered mortgage deed with respect to the land belonging to the appellants as a security to the loan, it is not believable that the appellants will just return the loan amount without even getting a receipt thereof. In view of these circumstances, the oral evidence adduced by appellants-defendants with respect to the return of the loan amount, has no evidentiary value.

17. There is nothing to doubt the conduct of the plaintiff-respondent. The appellants-defendants have not placed on record any

material to show as to when the subsequent loan was advanced by the plaintiff to the appellants whether it was before or after the institution of the suit.

18. Thus, keeping in view my aforesaid discussion, appellants-defendants though have admitted the receipt of loan, execution and registration of the mortgage deed dated 25.02.1997, but have failed to prove the plea of repayment of the loan along with interest. Thus, the plaintiff-respondent was certainly entitled to recover the loan amount along with interest from the appellants. Consequently, I do not find any perversity in the concurrent findings recorded by the learned Courts below.

19. Resultantly, the present appeal having no merits is hereby dismissed with no orders as to costs.

April 05, 2016 **(DARSHAN SINGH)**
s.khan **JUDGE**