

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-4333-2016

Date of decision : 16.12.2016

Ranjeet Singh

... Appellant

Versus

Sudhir and others

... Respondents

RSA No. 4334 of 2016 (O&M)

Ranjeet Singh

... Appellant

Versus

Sudhir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Vinod S. Bhardwaj, Advocate
for the appellant.

AMOL RATTAN SINGH, J.

These are two appeals filed by the defendant in two separate suits (the same defendant), instituted against him by the same plaintiffs, each suit seeking recovery of money loaned to the appellant.

RSA No. 4333 of 2016, eventually arises out of Civil Suit no. 190 of 2012, seeking recovery of Rs. 1,52,500/-, which was decreed in favour of the plaintiffs by the learned Civil Judge (Junior Division), Mahendergarh and the first appeal filed by the present appellant, against that judgment and decree, was dismissed by the learned Additional District Judge, Narnaul.

RSA No. 4334 of 2016 eventually arises out of Civil suit no. 533 of 2012, seeking a recovery of Rs. 61,000/- by the same plaintiffs from the same defendant (now appellant). This suit was also decreed in favour of the

plaintiffs by the learned Civil Judge (Junior Division), Mohindergarh (different Court to the one which decided Civil Suit no. 190 of 2012) and the first appeal filed against that judgment and decree by the present appellant, was also dismissed by the learned Additional District Judge, Narnaul (the same court which decided the appeal out of which RSA No. 4333 of 2016 arises), though by two separate judgments. .

2. Since these appeals arise out of separate judgments but were listed together, arguments in each have been heard, but the cases are being dealt with separately within this judgment.

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3. The facts, as taken from the judgments of the courts below, are that the case of the respondents-plaintiffs (hereinafter referred to as the plaintiffs), was that they were the legal representatives of one Sumer Singh (being his widow, sons and daughters). Sumer Singh was stated to have given a loan of Rs. 1,00,000/- to the appellant on 10.08.2009, with it having been agreed that it would be repaid within one year by the appellant, along with the interest @ Rs.1.50 per month/per hundred (1.5% per month).

A writing was also stated to have been made in that regard on a piece of paper, in the presence of attesting witnesses, with both the parties having appended their signatures to the document.

Sumer Singh is stated to have, however, died on 05.09.2011 and despite requests made to the appellant herein to repay the amount, he did not do so. Hence, a legal notice was issued dated 28.05.2012, which was stated to have been served upon him, after which the suit was instituted on 31.07.2012.

4. Upon notice having been issued to him, the appellant-defendant

appeared and filed a written statement taking preliminary objections qua maintainability, *locus standi*, act and conduct of the plaintiffs and jurisdiction etc.

On merits, he admitted to having taken a loan on interest, as also reduction of the terms of the loan into writing, on 10.08.2009.

He submitted that two loans were taken, one of Rs. 1,00,000/- and another of Rs. 40,000/-, (taken on 05.12.2009), in village Santor, Rajasthan, as both Sumer Singh and the appellant were employed as teachers in the Government High School at Santor.

It was further stated by the appellant in his reply, that the terms of the loan were reduced to writing on 23.07.2011 also, (as given in the judgment of the learned Civil Judge), but the loan amount of Rs. 1,86,850/- was in fact re-paid to the plaintiffs, in the presence of another Sumer Singh and one Rajender, both residents of village Santor.

He further submitted that in fact Rs. 1,850/- was given up and that he had also been assured by the plaintiffs that the writing would be destroyed. However, it was now being allegedly misused for claiming the loan amount again.

Thus, the appellant alleged that the plaintiffs were perpetuating a fraud and were mis-representing and therefore, the suit should be dismissed.

5. No replication having been filed, the following issues were framed by the learned Civil Judge:-

“1. Whether the plaintiff is entitled to a decree of recovery of Rs. 1,52,500/- alongwith interest from the date of filing of the suit till realization of the suit? OPP

2. *Whether plaintiff has no locus standi and cause of action to file the present suit? OPD*

3. *Whether the suit of the plaintiff is not maintainable in the present form and also does not lie without affixing the revenue stamp? OPD*

4. *Whether the suit of the plaintiff is time barred? OPD*

5. *Relief.”*

6. The plaintiffs examined one Kanwar Singh, Ram Chander, and the first plaintiff, Sudhir, by way of oral evidence and also tendered the writing relied upon as Ex. PW-1/B, a sale deed Ex. PA, and an acknowledgment as Ex. PB. A copy of a legal notice, which was not an exhibited document but simply assigned Mark-A, was also tendered. A reply to the legal notice, was however, tendered as Ex. PC.

The present appellant examined himself as also Sumer Singh in whose presence he claimed to have returned the loan, but no documentary evidence was led by him.

7. Upon considering the pleadings and the arguments and appraising evidence led before him, the learned Civil Judge first found that three witnesses, including witnesses from village Santor, had deposed that the money transaction took place in village Sayana, Tehsil and District Mahendergarh, Haryana, (where the plaintiffs are shown to be residing in the memo of parties). Hence, as regards jurisdiction, it was held that the Court in Mahendergarh very much had jurisdiction to entertain the suit.

8. Thereafter, it was held that as per the deposition of the three witnesses for the plaintiffs and the admission of the defendant himself (present appellant) in his written statement, as also in his cross-examination, the loan of Rs. 1,00,000/- was actually proved to have been taken by him

from the late Sumer Singh.

However, with no document whatsoever showing the repayment of the loan, such repayment having been made could not be accepted simply on the basis of the oral testimony of two witnesses by the defendant, including himself.

9. On the aforesaid findings, the suit of the plaintiffs was decreed, entitling them to recover an amount of Rs. 1,52,500/- but with interest @ 6% per annum, running on the aforesaid amount from the date of the filing of the suit, till realization of the amount.

10. In the first appeal filed by the present appellant, the learned Additional District Judge first noticed the pleadings in detail, and thereafter the evidence led by the parties to the *lis*.

Thereafter, again coming to the same finding, that with loan given by deceased Sumer Singh to the appellant having been duly proved and in fact admitted, but with no documentary proof whatsoever that it had actually been returned, the findings of the learned lower court could not be interfered with.

Consequently, the first appeal filed by the present appellant was dismissed.

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11. The basic facts in this case are otherwise the same, except the loan stated to have been taken by the appellant from the late Sumer Singh was stated to be Rs. 40,000/- on 05.12.2009, which was sought to be recovered by the plaintiffs, along with interest amount of Rs. 21,000/-, thereby seeking a recovery of Rs. 61,000/-

12. As can be seen from the judgment of the learned Civil Judge

(Junior Division), Mohindergarh, dated 10.11.2014, the same rate of interest of 1.5% per month was sought in this case too, by the plaintiffs.

In this case also, the appellant admitted the amount of loan taken (as he had also admitted in the reply to the other suit where he stated that two loans were taken by him). Thus, completely the same stand as was taken by the appellant in his written statement filed in reply to the other suit, was taken in respect to this *lis* also.

13. From the aforesaid pleadings, the learned Civil Judge, framed the following issues:-

“1. Whether defendant had returned the borrowed sum of Rs. 40,000/- from Sumer Singh Predecessor in interest of the plaintiffs on 05.12.2009 and executed pronote and receipt in his favour in the presence of witnesses? OPP

2. If issue no. 1 is proved whether plaintiffs are entitled to recovery some of Rs. 61,000/- from defendant alongwith interest? OPP

3. Whether the defendant had returned the borrowed amount to Sumer Singh predecessor in interest of plaintiff on 23.07.2011 as alleged? OPD

4. Whether suit is not maintainable? OPD

5. Whether the suit is not maintainable? OPD

6. Relief.”

14. The plaintiffs, in this case also, examined Ram Chander other than plaintiff no. 1, Sudhir. (However, Kanwar Singh, who was PW-1 in the other *lis*, is not seen to have been examined in the suit in this *lis*).

By way of documentary evidence, the following documents were tendered:-

“1. Ex. PW1/B Original Writing;

2. *Ex. PW2/B Power of attorney;*
3. *Ex. PA legal notice dated 28.05.2012;*
4. *Ex. PB reply of Legal notice;*
5. *Ex. PC Acknowledgment.”*

The present appellant-defendant, in this case also examined himself and Sumer Singh of village Santor, Rajasthan as DWs 1 and 2 respectively.

He also tendered the following documents:-

- “1. *Ex. DW3/A reply of notice dated 28.05.2012;*
2. *Ex. DW3/B postal receipt;*
3. *Ex. DW3/C acknowledgment;*
4. *Mark D1 Statement of account of Ranjeet Singh.”*

15. Upon appraising the aforesaid evidence, and considering the pleadings and arguments, the learned Civil Judge in this case also eventually came to the same conclusion as the other Court had come to in Civil Suit No. 190 of 2012, pertaining to recovery of Rs. 1,52,500/-, that with no documentary evidence whatsoever led with regard to return of the loan and interest amount, the loan could not be stated to have been returned.

16. Though in the present case, the appellant is seen to have also produced his statement of account, but not as an exhibited document and only as Mark-B1, there is seen to be no discussion on it in the judgment of the learned Civil Judge. However, firstly, it is not seen to be an exhibited document and secondly, even if it is presumed that the appellant wished to show that he had withdrawn some money from his account to repay the loan to the late Sumer Singh, in the absence of any other documentary evidence with regard to such repayment actually having been effected, it would make no difference in the opinion of this Court.

17. In the first appeal filed by the appellant in this case also, the

learned Additional District Judge again referred to the pleadings and the evidence led and eventually again also came to the same finding, that in the absence of any documentary evidence with regard to return of the amount borrowed, the findings of the learned lower court could not be interfered with.

Thus, that appeal was also dismissed.

18. In these two 2nd appeals before this Court, Mr. Bhardwaj, learned counsel for the appellant, has submitted two things; firstly, that the witness, DW-2, duly testified to the loan amount having been returned on 23.07.2011 and in fact, the father of the appellant having withdrawn an appropriate amount for return of the loan on 12.07.2011.

He next submitted that in fact it was also averred before the courts below that a Panchayat had been convened during the life time of the father of the respondent-plaintiff, before which it had been proved that the loans had been actually returned.

However, on specific query as to whether any witness to the said Panchayat was examined (including DW-2), he fairly submitted that he could not say that.

On further query, he admitted that there was a gap of 11 days between the withdrawal from the bank and the alleged repayment on 23.07.2011.

19. Having considered the arguments, in view of the fact that there was a large delay between the withdrawal relied upon and the alleged return of the money, which has not been explained, and further, other than the appellant himself and one other witness examined, no documentary evidence was produced to show any return of the amount, in the form of a receipt etc.,

and with no member of the Panchayat allegedly convened also having been examined, I find no ground to interfere in the judgments of the courts below, in both these cases, and consequently, finding no merit in the appeal, it is dismissed in *limine* but with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

December 16, 2016.
Davinder Kumar/nitin

Whether speaking / reasoned	Yes
Whether reportable	Yes