

RSA-3096-2015(O&M)

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-3096-2015(O&M)

Date of decision : 04.02.2016

Rekha Aggarwal and others

... Appellants

Versus

Sushma Devi

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishal Aggarwal, Advocate
for the appellants.

REKHA MITTAL. J.(ORAL)

The present appeal has been directed against the concurrent findings recorded by the Courts below whereby the suit filed by the respondent/plaintiff for recovery has been decreed by the learned trial Court and the judgment and decree passed by the trial Court has been affirmed in appeal.

The respondent/plaintiff filed a suit for recovery of ₹3,24,000/- towards principal and interest amounting to ₹71,000/- from 22.11.2005 to 30.04.2008, with future interest. The plea of the respondent is that she is a household lady and is also running a sweet shop at Shahpur Chowk, Pathankot. Dashmesh Kumar Aggarwal (predecessor-in-interest of the defendants) on 22.11.2005 obtained a friendly loan of ₹3,24,000/- on interest @ 18% per annum and assured to return the money within one

year and agreement dated 22.11.2005 was executed by him. Dashmesh Kumar Aggarwal died on 20.05.2007 and after his death, the defendants/appellants have inherited movable and immovable property left behind by the deceased and thus, they are liable to pay the suit amount along with interest.

The defendants/appellants filed the written statement and in turn, challenged maintainability of the suit and there being no cause of action to file the suit against the answering defendants. They have altogether denied that either Dashmesh Kumar Aggarwal obtained a friendly loan from the respondent to the tune of ₹3,24,000/- on 22.11.2005 or executed an agreement with the averments that the alleged agreement dated 25.11.2005 is false, fabricated and fictitious.

After bestowing its thoughtful consideration to the rival submissions made by counsel for the parties, in the light of disputed questions of fact and law involved in the case and evidence adduced on record, the learned trial Court decreed the suit of the respondent and the appellants were held liable to pay an amount of ₹3,95,000/- along with interest and simple interest @9% per annum on ₹3,24,000/- w.e.f. 01.05.2008 till the date of decree and thereafter @ 6% per annum on ₹3,24,000/- till realization of the principal amount. It was further held that the decretal amount would be recoverable from the property inherited by the defendants from Dashmesh Kumar Aggarwal and not from their personal property.

The appeal preferred by the appellants was dismissed and

the findings recorded by the trial Court have been affirmed.

Still feeling dissatisfied, the present appeal has been preferred by the appellants.

Counsel for the appellants would contend that the courts below did not appreciate that the respondent failed to adduce satisfactory evidence on record that she had lent ₹ 3,24,000/- to late Sh.Dashmesh Kumar Aggarwal. There is no explanation with regard to the source of money as the sale deed produced on record pertains to the July 2004 and that too for an amount of ₹3 lacs only. It is further argued that the agreement dated 22.11.2005 was attested by two witnesses but the respondent had examined only Sh. Vinod Kumar, the husband of respondent Sushma Devi. Vinod Kumar in his cross-examination has expressed his ignorance about contents of the agreement, therefore, the agreement in question has not been proved, in accordance with law.

I have heard counsel for the appellants, perused the records and find no merit in the appeal.

To prove the factum of giving loan of ₹3,24,000/- and execution of agreement dated 22.11.2005 Ex.P1, the respondent examined herself and Vinod Kumar PW2. She has also proved copy of notice dated 19.04.2008 calling upon the appellants to pay the outstanding amount. It has also been proved on record that a sale deed was executed by the respondent in the year 2004 for an amount of ₹3 lacs. An attesting witness of an agreement is not supposed to know the contents of the document

because the attestation is made in regard to identity of the executant of the document. There is no rebuttal to the evidence of the respondent/plaintiff as Sh. Dashmesh Kumar Aggarwal had already passed away prior to institution of the suit. Counsel for the appellants has failed to point out anything to prove that agreement dated 22.11.2005 is the result of forgery and fabrication, as has been pleaded in the written statement. In this view of the matter, I do not find any error much less illegality in the consistent findings recorded by the courts below when otherwise no substantial question of law arises for adjudication.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(REKHA MITTAL)
JUDGE

February 04, 2016.

Davinder Kumar