

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

105

Regular Second Appeal No.1819 of 2014 (O&M)
Date of Decision: January 11, 2016

Mangat Ram and others

...Appellants

Versus

Om Parkash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Mani Ram Verma, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 17.02.2011 passed by the Additional Civil Judge (Senior Division), Fatehabad, by which the suit filed by the plaintiff for recovery of an amount of ₹5,76,370/- which includes ₹3,26,719.19 as principal along with interest qua the remaining amount, has been decreed to the extent of the principal amount of ₹3,26,719.19 along with interest at the rate of 6% per annum from the date of filing of the suit, appeal against which preferred by the appellants-defendants stands dismissed by the Additional District Judge, Fatehabad, on 15.11.2013.

2. It is the contention of learned counsel for the appellants that the two entries Exhibits P-7 and P-73, which have been primarily relied upon by the Courts below for decreeing the suit of the plaintiff, are not admissible in evidence as they cannot be treated as an acknowledgement of the debt. He contends that the signatures on the two *bahi* entries were specifically denied by the appellants-defendants and in the absence of any expert evidence proving the signatures of the appellants-defendants, the findings

as recorded by the Courts below cannot be sustained.

3. Assertion has also been made that a counter claim was put up by the appellants-defendants but was forced to withdraw the same as it has been stated by the respondents that the said records were not available with them being not traceable and lost. He contends that the adverse inference, as has been drawn by the Courts below because of the withdrawal of the counter claim as filed, is totally unjustified and uncalled for and the findings, thus, recorded by the Courts below cannot sustain and deserve to be set aside. Assertion has been made that the entries in the *bahi khata* are manipulated and shown in an exaggerated form which cannot be relied upon for accepting the claim of the plaintiff and decreeing the suit. Prayer has, thus, been made for setting aside the impugned judgments and decree passed by the Courts below and for dismissal of the suit of the respondents-plaintiffs.

4. I have considered the submissions made by learned counsel for the appellants and with his able assistance, have gone through the impugned judgments as also the evidence and the entries made in the *bahi khata* but do not find any merit in the arguments as put forth by the counsel.

5. Dealing with the first aspect of the counsel for the appellants that the entries have not been proved as an acknowledgement of his dues, suffice it to say on perusal of the *bahi* entries, it is apparent that in all the entries which not only relate to the appellants but the others also, similar process of entry has been made where the amount has been specifically mentioned and the signatures of the person have been affixed. Qua the specific Exhibits P-7 and P-73, the Courts have rightly come to the conclusion that those are the signatures of the appellants-defendants. This

Court also is of the same view. As regards the contention of the counsel for the appellants that no handwriting expert has been examined to prove the signatures of the appellants-defendants, it may be stated here that the opinion of the expert is not binding upon the Court and it is the solemn duty of the Court to take a decision with regard to the genuineness of the signatures. Since the Court has to take a decision and is the final authority, it can itself look into the document and compare it with the acknowledged signatures to come to a conclusion with regard to the genuineness or otherwise of the said disputed signatures. There is no irregularity or illegality committed by the Courts below in itself examining the signatures and returning a finding on that basis.

6. As regards the contention of the counsel for the appellants that the counter claim of the appellants-defendants had to be withdrawn because of the non-production of the earlier records i.e. for the period 1995 to 2003, the said assertion cannot be accepted as there is a specific statement given by the plaintiff that the said account books are not traceable and lost. Had the appellants-defendants been truthful persons, they would have stuck to their stand instead of withdrawing the said counter claim. It is apparent from the reading of the impugned judgments that the said counter claim was withdrawn on an application moved by the plaintiff dated 09.02.2010 directing the appellants-defendants to give their specimen signatures and handwriting for comparison by the handwriting expert which was allowed on 08.06.2010. The signatures, as has been found by this Court to be that of the appellants-defendants, the obvious reason for withdrawal is apparent, however, that was an application moved by the appellants-defendants and could very well withdraw the same but that does not give a right to the

appellants-defendants to assert that because of non-production of the records prior to 1995-2003, their claim has been adversely effected, specially when they have not insisted upon their counter claim. The judgments and decree passed by the Courts below cannot be faulted with as the same have been passed on due appreciation of the pleadings and the evidence brought on record.

7. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.4440-C of 2014, stands disposed of as infructuous.

January 11, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE