

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

RSA No.4562 of 2015(O&M)

Date of decision:14.3.2016

Kandhara Singh

....Appellant

VERSUS

Nasib Chand (deceased) through LRs

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishwajit Bedi, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against the judgment and decree dated 28.04.2015 passed by Additional District Judge, Patiala, whereby the appeal preferred by appellant-Kandhara Singh against the judgment and decree dated 14.08.2013 passed by Additional Civil Judge (Senior Division), Samana, has been dismissed and the findings recorded by the trial Court in favour of the respondent/plaintiff have been affirmed.

Nasib Chand (since deceased) filed a suit for recovery on the allegations that the appellant/defendant borrowed an amount of Rs.1,90,000/- on 26.11.2006; executed a pro-note and receipt in lieu thereof, agreed to repay loan amount with interest at the rate of 1.50% per month but failed to pay the outstanding amount despite legal notice sent through registered post.

The appellant/defendant filed the written statement controverting taking of loan or execution of pro-note and receipt with the

averments that the respondent has got no cause of action to file the suit and he is guilty of concealing the material facts.

On due consideration of pleadings of the parties, issues framed for determination, evidence adduced on record and rival submission made by counsel for the parties, the learned trial Court accepted claim of the respondent/plaintiff and the suit was decreed for recovery of Rs.1,90,000/- with interest at the rate of 9% per annum from the date of transaction till filing of the suit and future interest at the rate of 6% per annum from the date of decree till realization. The appeal preferred by the appellant did not find favour with Additional District Judge, Patiala, and as a result, the first Appellate Court concurred with the findings recorded by the trial Court.

Still feeling dis-satisfied, the matter has been carried in appeal before this Court.

Counsel for the appellant has assailed the findings of the Courts below on few counts. The first submission made by counsel is that Nasib Chand – respondent/plaintiff was examined-in-chief but the appellant did not get an opportunity to cross-examine him as he (Nasib Chand) passed away during pendency of the proceedings, therefore, statement of Nasib Chand cannot be read against the appellant.

Devinder Kumar son of Nasib Chand, examined in the case was not present at the time of alleged transaction and the pronote and receipt do not bear his endorsement, therefore, his testimony cannot be used to prove the case. Randhir Singh, one of the attesting witnesses to the

receipt, has not fully supported case of the respondent as he stated in cross-examination that Kandhara Singh was not selling his crop to Nasib Chand and the pronote has not been scribed by a duly licenced deed writer/scribe. It has further been argued that on receipt (Ex.P2), address of other attesting witness Jarnail Singh has not been mentioned nor Jarnail Singh has been examined as a witness. The last submission made by counsel is that the judgment passed by the trial Court is based on no evidence, therefore, the judgments passed by the Courts below suffer from perversity and liable to be set aside.

I have heard counsel for the appellant and perused the records particularly the judgments passed by the Courts.

Before advertng to the submissions made by counsel for the appellant, it is appropriate to recount that civil disputes are to be decided on the basis of balance of probabilities. Any interference in the second appeal is warranted if the judgment is based on mis-interpretation of evidence or no evidence, sufficient to call it perverse. Equally true is that an appeal preferred under Section 100 of The Code of Civil Procedure, 1908, can be admitted for hearing only if a substantial question of law is involved for adjudication.

Nasib Chand, respondent/plaintiff examined himself but unfortunately he departed from this world before he could be cross-examined by the appellant/defendant. The statement of a witness, whose examination-in-chief has been recorded and cross-examination could not be conducted due to his death cannot be excluded from consideration. In this context, reference can be made to judgment of Hon'ble the Supreme

Court Satnam Singh (dead) by LRs and others vs. Sadhu Singh and others,
2002(1) CCC 555.

Randhir Singh, one of the attesting witnesses to the receipt (Ex.P2), was examined and cross-examined. Nothing material and tangible has been elicited during his cross-examination to discard or disbelieve his testimony. Mere fact that Randhir Singh has deposed that Kandhara Singh was not selling his crop to Nasib Chand or the pronote and receipt have not been scribed by a duly licenced scribe are of no consequence. This apart, it is none of the requirements in law that a pronote and receipt is required to be scribed by a licenced deed writer.

Devinder Kumar son of Nasib Chand was examined as a witness to reiterate the version put-forth by Nasib Chand. Learned Appellate Court has rightly held that even if statement of Devinder Kumar is taken out of consideration, it would not affect case of the respondent/plaintiff, keeping in view the other evidence available on record. The respondent/plaintiff also examined Navdeep Gupta, Handwriting and Finger Print Expert PW-4 to prove that the pronote and receipt bears signatures of Kandhara Singh. The Court has to examine quality not quantity of evidence to arrive at a conclusion as to in whose favour the balance of probabilities tilts. In the facts and circumstances of the present case, I am unable to accept submissions of counsel for the appellant that the balance has been wrongly held to be in favour of the respondent/plaintiff. There is no material much less cogent, convincing and substantive to accept plea of the appellant that the pronote and receipt are the result of forgery or the same did not bear his signatures. I do not

find any merit in the contention that consistent findings recorded by the Courts below are perverse or based on mis-reading of evidence. No question of law much less a substantial one, arises for adjudication.

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

MARCH 14, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE