

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.2409 of 2016 (O&M)
Date of decision: 27.09.2017

Raghvir Kaur and others

..... Appellants

Versus

Bhinder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sunny K. Singla, Advocate
for the appellants.

Mr. S.S. Slar, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM-11985-C-2017

Application is under Order 41 Rule 27, CPC for permission to lead additional evidence. The appellants are seeking permission to produce certified copy of order dated 10.02.2014 and statement of Rajvir Singh in complaint No.44 dated 14.06.2011. The aforesaid documents are not connected with the present dispute. The parties in the aforesaid orders are entirely different.

In these circumstances, I do not find any good ground to allow the application for additional evidence.

Application is dismissed.

Main Case

Defendants are in regular second appeal against the judgment and decree passed by the Courts below.

Plaintiff had filed a suit for recovery of Rs.4,62,000/- on the basis of pronote and receipt which is Ex. P-1 and P-2 on the file. In the

written statement, defendants totally denied the pronote and receipt and pleaded that the pronote and receipt are forged and fabricated documents.

Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff after recording a finding that late Sh. Randhir Singh had executed a pronote and receipt for consideration.

First appeal preferred by the appellants was also dismissed after re-appreciating the evidence available on the file.

I have heard learned counsel for the parties at length and with their able assistance gone through the record of the case.

Learned counsel for the appellants has submitted that the suit filed by the plaintiff was barred by time. He has further submitted that the suit was not maintainable as one of the defendant was minor and compliance of mandatory provisions of Order 32 Rule 3 has not been made. He has further submitted that the story put-forth by the plaintiff is totally unbelievable as the plaintiff has claimed that he has been demanding the money back from late Sh. Randhir Singh. Although, Randhir Singh has died within five days of execution of the pronote.

On the other hand, learned counsel for the respondent has submitted that the suit is within limitation as 14.02.2010 was Sunday, a holiday. He has further submitted that in the written statement, defendants did not take this objection. The suit was filed against three defendants. Defendant No.1 is the mother of defendant No.3. The suit was filed through mother. No objection to this effect was taken in the written statement.

I have heard learned counsel for the parties at length. I do not find any force in the arguments of learned counsel. Once it is proved on the file that 14.02.2010 was Sunday and the day on which the document was

executed, is to be excluded, then the suit filed is within limitation. Both the

Courts have examined this issue and found concurrently that suit is within limitation.

Next argument of learned counsel is that the suit was filed within compliance of the provisions of Order 32 Rule 3, CPC. No doubt, there is some substance in the argument, however, learned counsel for the respondent has submitted that under Order 32 Rule 3-A, the decree cannot be set aside against minor unless prejudice has been shown. In the present case as observed earlier, in the written statement no objection was taken. Mother had no adverse interest against defendant No.3. Mother and brother of defendant No.3 were party defendants. They contested the suit. In these circumstances, unless prejudice is shown, a decree cannot be set aside on the ground that there is non-compliance of provisions of Order 32 Rule 3, CPC.

Last argument of learned counsel for the appellants is that the story put-forth by the plaintiff is incorrect. It is a case where a negotiable instruments has been produced on the record. As per Section 118 of the Negotiable Instruments Act, the negotiable instrument carries a presumption of truth. Merely because the plaintiff has in one line stated that he had been demanding the amount that would not be sufficient to deny the relief to the plaintiff particularly when the execution of the pronote and receipt is proved on the file.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

27.09.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No