

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

RSA-4155-2015(O&M)

Date of Decision:13.09.2017

Mamta Wadehra

.....Appellant

Versus

State Bank of Patiala & another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Atul Goyal, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Dissatisfied by the concurrent findings of facts recorded by both the learned courts below, whereby her suit was decreed along with interest @ 6% per annum by the learned trial court, vide its impugned judgment and decree dated 17.02.2012 and first appeals filed by both the parties were dismissed by the learned first appellate court, vide its impugned judgment and decree dated 19.02.2015, plaintiff has approached this Court, by way of instant regular second appeal for granting her higher rate of interest.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiff and defendant No.2 were real sisters being the daughters of late Sh. Ganga Bishan Kaura who died on 20.11.1998 intestate. The deceased left no other class I heirs except the plaintiff and defendant No.2. It had further been averred that, Sh. Ganga Bishan Kaura, father of the plaintiff and defendant no.2 held various

saving bank accounts and fixed deposit amount/FDRs with defendant no.1 bank and soon after the death of father, defendant no.2 was out of grab the estate of the father without waiting for the last rites. It had further been averred that she took possession of the bank documents and record with malafide and dishonest intention to grab the entire estate left behind by the father. It had further been averred that in that situation plaintiff was advised to issue a legal notice to defendant no.1 through her counsel on 11.11.1998 by hand but the same was refused after knowing its contents by Sh. JL Arora, acting Branch Manager and he acted and spoke as personally interested person. It had further been averred that the notice was acknowledged by defendant no.1 bank vide its letter dated 18.11.1998 bearing reference no.SB/5859. Mr. JL Arora and his coitre hastened to release the funds to defendant no.2 illegally and against the principle of natural justice and fair play. It had further been averred that thereafter, the plaintiff again approached the defendants to provide her details and render accounts and to pay the share of the plaintiff but to no avail. It had further been averred that the plaintiff issued another legal notice dated 1.3.2000 to defendant bank but the defendant refused to accede. It had further been averred that the defendants had acted in collusion with each and the alleged nomination in favour of defendant no.2 was manipulated and for that reason the defendants were not interested in providing any details to the plaintiff. It had further been averred that the plaintiff being one of two legal heirs was entitled to one half share in the various bank accounts and deposits held by late Sh. Ganga Bishan Kaura with defendant no.1 bank and defendants are bound to disclose the details of amounts standing in the name of deceased to the plaintiff and defendant no.2 was legally bound to remit one half share to

the plaintiff from the amounts withdrawn by defendant no.2 from defendant no.1 bank after 10.11.1998, the date on which Sh. Ganga Bishan Kaura expired. It had further been averred that the plaintiff was also entitled to one half share in the amount still lying with the defendant bank but both the defendants were bound to disclosed the details of amounts standing in the name of deceased to the plaintiff and defendant no.2 was legally bound to remit one half share to the plaintiff from the amounts withdrawn by defendant no.2 from defendant no.1 bank after 10.11.1998 the date on which Sh. Ganga Bishan Kaura expired. It had further been averred that the plaintiff was also entitled to one half share in the amounts still lying with the defendant bank but both the defendants were actively colluding with each other by not providing the desired information so as to prevent the plaintiff to seek an effective legal remedy. It had further been averred that it was for the first time that the statement was made by counsel for defendant no.2 on 31.8.2007 that he was maintaining a bank account no.7798 (old) and 0119000798 (New) and an amount of Rs.3,76,069.68 was credited to her account from the saving bank account no.624 in SBOP, Bharat Nagar Branch, Ludhiana which account was in the name of Late Sh. Ganga Bishan Kaura. It had also further been stated by her counsel that the said amount was credited on 12.11.1998. As per law, it were the legal heirs who were entitled to have the amount standing to the credit of deceased and the nominee had only a right to withdraw the amount. It had further been averred that after withdrawal, the defendant no.2 holds the said money for the other legal heirs i.e., plaintiff as half of this money belongs to the plaintiff being the second legal heir of late S. Ganga Bishan Kaura as such the plaintiff was entitled to the recovery of an amount of Rs.1,88,048.34 Ps

from defendant no.2 alongwith interest @ 18% per annum from the date of withdrawal of the amount till date and thus, total amount in suit comes to Rs.5,60,000/- alongwith future interest at the said rate.

Defendants were put to notice. Since respondent-Bank was the only contesting defendant, it appeared and filed the contesting written statement, raising more than one preliminary objections. Defendant No.2 also filed her separate written statement contesting the claim of the plaintiff. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether plaintiff is entitled to mandatory injunction as prayed for?OPP*
- 2. Whether the plaintiff is entitled to rendition of account as prayed for?OPP*
- 3. Whether the plaintiff is entitled to recovery of Rs.5,60,000/- along with interest @ 18% per annum as prayed for?OPP*
- 4. Whether the suit in the present form is not maintainable?OPD*
- 5. Whether no cause of action arisen to the plaintiff to file the present suit against the defendants?OPD*
- 6. Whether the suit is not within limitation?OPD*
- 7. Whether the plaint is liable to be rejected as provided under order 6 rule 15 CPC?OPD*
- 8. Relief.”*

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, suit of the plaintiff which was initially filed for mandatory injunction and rendition of accounts but was amended during pendency of the suit as suit for recovery, was decreed by

the learned trial court, vide its impugned judgment and decree dated 17.02.2012, whereby defendant No.1 was directed to pay the decretal amount to the plaintiff along with interest @ 6% per annum. Both the parties felt aggrieved and filed their respective first appeals. Both the appeals came to be dismissed by the learned first appellate court, vide its common impugned judgment and decree dated 19.02.2015. After dismissal of her first appeal, defendant No.1 has paid the decretal amount to the plaintiff along with interest @ 6% per annum. However, it is the plaintiff who is still feeling aggrieved and has approached this Court, by way of present regular second appeal, seeking higher rate of interest.

Heard learned counsel for the appellant.

Appellant and respondent No.2 are the real sisters. Respondent No.2 is stated to be younger one. The dispute between the parties arose because of some inadvertent mistake committed on the part of officials of the respondent-Bank. Although the case set-up by the plaintiff-appellant was that the officials of the respondent-Bank caused financial loss to the plaintiff by colluding with defendant No.2 yet the plaintiff-appellant miserably failed to establish any such collusion on record by leading relevant and cogent evidence in this regard.

Plaintiff-appellant was found entitled for recovery of the amount in question only with interest @ 6% per annum and not beyond that. A combined reading of both the impugned judgments and decrees passed by the learned courts below will make it crystal clear that the learned courts below have recorded cogent and convincing findings on each and every relevant aspect of the matter, before passing the impugned judgments and decrees and the same deserve to be upheld.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 24 to 26 of its impugned judgment, which deserve to be noticed here, read as under:-

In another citation relied upon by defendant Anu Kaura "Daljit Kaur and others V/S Hari Singh and others" 2009(2) CCC 660 wherein our Own Hon'ble High Court held at "Para 10. The plaintiff is, thus, entitled to receive the amount after the death of Karam Singh. The defendant no.1, appellant was only entitled to receive the amount on behalf of the legal heir and she, under the provisions of the Act, was duty bound to hand over the same to the legal heir of Karam Singh." It has further been held in "Para 11. In view of the clear enunciation of legal position as stated above, the trial Court had rightly decreed the suit in favour of the plaintiff who is the legal heir of deceased Karam Singh and appellant-defendant no.1 being nominee was liable to return the amount to the plaintiff which she had received from defendant Nos.2 and 3." The above citations clearly hold that nominee is entitled to receive the amount but he is duty bound to return the amount to legal heirs. Even otherwise, in case "Daljeet Kaur V/S Hari Singh" (Supra) suit for recovery had been preferred by Plaintiff Hari Singh against the defendants as the amount was released to defendants and same had been decreed. Therefore, in view of the above discussion, this contention also becomes meritless and fortifies the case of plaintiff. Henceforth, it can be concluded that the Impugned Judgment and Decree does not suffer from any illegality as such warrants no interference.

As far as Contentions of the Ld. Counsel for the

plaintiff that Ld. Trial Court wrongly dismissed the suit qua the Mandatory injunction and rendition of accounts and had not taken into account that defendants no.1 and 2 acted in collusion with each other is not tenable in view of the fact that whatever accounts numbers, amounts, withdrawals etc. were in knowledge of the defendant, it has been disclosed. Moreso, Defendant had been cross-examined at length, and whatever was in her knowledge, she had elucidated the details. The plaintiff has not been able to prove that both the defendants colluded with each other. Therefore the Impugned Judgment and Decree does not suffer from any perversity or illegality.

As a sequel of above discussion, both the appeals preferred by plaintiff and defendant Anu Kaura sans merit and are hereby dismissed and impugned Judgment and Decree dated 17.2.2012 is upheld. In the facts and circumstances of the case, parties are left to bear their own costs.”

Admittedly, there was no agreed rate of interest between the parties. In the absence of such agreed rate of interest, the learned courts below were well justified in decreeing the suit of the plaintiff-appellant for recovery of the amount in question along with interest @ 6% per annum. Since the approach adopted by the learned trial court as well as learned first appellate court was strictly in consonance with true facts of the case as well as the relevant provisions of law, no fault can be found with the concurrent findings of facts recorded by both the learned courts below and the impugned judgments and decrees deserve to be upheld, for this reason also.

When confronted with the abovesaid concurrent and cogent findings recorded by both the learned courts below to point out as to how the appellant was entitled for any higher rate of interest, learned counsel for

the appellant had no answer and rightly so, it being a matter of record.

Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

September 13, 2017
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(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No