IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.4127 of 2017 (O&M)
Date of Decision: 01.11.2017

Smt. Vinita Sangwan

... Appellant

Versus

Laxmi Devi

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. M.L. Sarin, Sr. Advocate with
Mr. Animesh Sharma, Advocate
for the appellant.

Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Gopal Soni, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL).

By this judgement, I shall be disposing of RSA Nos.4127 and 4128 of 2017. Two suits were filed by sisters, namely, Laxmi Devi and Subhash Devi against the defendant-appellant. Both the suits were tried separately, but concurrently. The assertions made in the plaint are common. Even the defence taken by the defendant-appellant is common. Hence, this Court proceeds to decide both the appeals by one judgement with the consent of counsel for the parties.

Two sisters, namely, Laxmi Devi and Subhash Devi filed separate suits for recovery of the amount with the assertions that the defendant was known to them. They had advanced Rs.14,00,000/- and Rs.12,00,000/- as a loan to the defendant with the stipulation that it shall be repayable with interest @ 1.5% per month. It was pleaded that the land belonging to the plaintiffs was acquired by the government and they had received compensation on account of compulsory acquisition of the land and funds were available with them.

It was further pleaded that the amount was advanced through bank draft and cheque, respectively. The details of the amount advanced through four negotiable instruments is as under: –

I	DD No.929373	9,00,000/-	PNB Jhandli	10/11/07
II	929374	5,00,000/-	PNB Jhandli	10/11/07
V	560698	2,50,000/-	Bhiwani, Central, Co-op Bank	10/11/07
VI	Cheque No.927227	9,50,000/-	PNB Charkhi Dadri	11/11/07

The defendant on the other hand pleaded that there is no loan transaction. The amount was received as further payment under the agreement to sell entered into between the defendant and one Jai Bhagwan. It was further pleaded that on 16.07.2007, the defendant/appellant agreed to sell her farm house situated at Kasauli to Jai Bhagwan. The agreement to sell is Ex.DW8/B in the trial Court record in RSA No.4128 of 2017. In the agreement, it was provided that out of the total sale consideration of Rs.2,42,00,000/-, initially Rs.2,00,000/- was paid as earnest money and remaining payment of Rs.40,00,000/- shall be paid in the month of November 2007. The sale deed was to be executed in November 2009. It is further pleaded by the defendant that Jai Bhagwan came with various demand drafts and cheques to pay the aforesaid amount of Rs.40,00,000/-, including demand drafts and cheques subject matter of recovery in these suits. It was received by the defendant/appellant.

It may be significant to note here that the plaintiffs filed the suit through Special Power of Attorney i.e. Maninder Sangwan, who is the husband of one of the plaintiffs i.e. Laxmi Devi.

Learned trial Court after examining the pleadings in the suit filed by Laxmi Devi, framed the following issues: –

> *"1. Whether the plaintiff is entitled to recover suit amount Rs.16,32,000/- (principal amount Rs.12,00,000/- and the amount of interest Rs.4,32,000/-) along with future interest, if so, to what rate? OPP*
>
> *2. Whether the suit is time barred? OPD*
>
> *3. Whether the plaintiff has no locus-standi to file the present suit? OPD*
>
> *4. Whether the suit is not maintainable in the present form? OPD*
>
> *5. Whether the plaintiff is estopped to file the present suit by her own act and conduct? OPD*
>
> *6. Whether the plaintiff has not come to the Court with clean hands and has concealed true and material facts from the Court? OPD*
>
> *7. Relief."*

Similar issues were framed in the second suit also. The parties went to trial and produced the evidence.

Learned trial Court decreed the suit filed by the plaintiffs while assigning the following reasons: –

1. The original agreement to sell dated 16.07.2007 has not been produced by the defendant.

2. The Stamp Vendor who had issued the stamp paper for execution of the agreement to sell has not been produced.

3. No relationship between Jai Bhagwan and Maninder Sangwan has been proved.

4. Ownership of the house at Kasauli has not been proved.

5. Jai Bhagwan had retired from the Army on 31.12.2007. Therefore, it is not established that Jai Bhagwan was a property dealer.

The defendant-appellant filed separate first appeals. During the pendency of the first appeals, an application for additional evidence was moved. The defendant-appellant produced on file the original agreement to sell dated 16.07.2007. Apart therefrom, in one suit, bank account statement of the defendant was also produced and in addition thereto, Income-tax returns of the defendant-appellant were produced in the second case.

Learned first Appellate Court after allowing the application for additional evidence, gave opportunity to the plaintiffs to lead evidence in rebuttal, but counsel made a statement that no further evidence is required to be led.

Learned first Appellate Court has chosen to dismiss the appeals. That is how, these two appeals are before this Court.

In the considered opinion of this Court, following substantial questions of law arise for determination: –

1. Whether an adverse inference is to be drawn against the plaintiff, who has not stepped into the witness box, particularly when plaintiff is asserting an oral agreement of loan with defendant, which is in its exclusive knowledge?

2. Whether a document which has been exhibited on the file, can subsequently be objected to by the other party on the ground that the original has not been produced, although no objection at the time of its exhibition, was taken?

3. Whether the learned first Appellate Court is required to cull out issues which required determination and discuss the entire case being the last Court for appreciation of evidence?

4. Whether the judgements of the Courts below are result of non-reading of the evidence available on the file?

1. Whether an adverse inference is to be drawn against the plaintiff, who has not stepped into the witness box, particularly when plaintiff is asserting an oral agreement of loan with defendant, which is in its exclusive knowledge?

In the present case, none of the plaintiffs in both the suits, have appeared in evidence. In both the suits, the plaintiffs have only examined one Maninder Sangwan, who is Special Power of Attorney and husband of one of the plaintiffs i.e. Laxmi Devi. In the pleadings, there is no assertion that Maninder Sangwan was present when the oral loan agreement between the parties took place or the talks thereof were held. It is a case where the plaintiffs are asserting that the amount was given as a loan to the defendant with the stipulation that the amount will be returned with interest @ 1.5% per month. The plaintiffs were required to appear in the witness box and support such assertions. The defendant would have got the opportunity to cross-examine the plaintiffs. A valuable right of the defendant to cross-examine the plaintiffs in each suit has been denied as the plaintiffs have not chosen to appear in evidence. No reason has been given as to why the plaintiffs have not stepped into the witness box. It is well-settled that if the plaintiffs do not step into the witness box, the Courts are well within their right to draw an adverse inference against the plaintiffs.

Learned counsel for the respondent has drawn my attention to the first paragraph of the affidavit submitted by Maninder Sangwan, wherein it is recorded that his wife had disclosed all the facts to him. He has submitted that once this assertion has been made, adverse inference cannot be drawn.

I have considered the submission. At the cost of repetition, it was a case of oral loan transaction between the two individuals. What was the nature of transaction, only known to the two plaintiffs in respective suits. The plaintiff has to stand on its own legs. The plaintiff is to establish his/her case. Once the plaintiffs have not come into the witness box, the Courts committed an error in refusing to draw adverse inference against them. Hon'ble Supreme Court has deliberated on this issue in more than one judgements. Reference can be made to, *Janki Vasheo Bhojwani and another Vs. Indusind Bank Ltd. and others, AIR 2005 SC 439.*

2. Whether a document which has been exhibited on the file, can subsequently be objected to by the other party on the ground that the original has not been produced, although no objection at the time of its exhibition, was taken?

It is not in dispute that only photocopy of the receipt dated 10.11.2007 is available on the file. However, this photocopy was exhibited as DW8/C. It was exhibited in the statement of Jai Bhagwan, who has appeared as DW8. Counsel for the plaintiffs did not raise any objection when this document was produced on file. It is not known whether the original receipt was brought or not when the document was exhibited. It was for the counsel for the plaintiffs to object at that particular time. Once a document has been exhibited without any objection, then subsequently its admissibility cannot be challenged. Still further, the receipt dated 10.11.2007 Ex.DW8/C is corroborated from the statement of account from the Bank produced by the defendant/appellant. The amount so received through receipt dated 10.11.2007 has been deposited by the defendant in her account. The statement of bank account has been produced on the file, where payment received is reflected.

3. Whether the learned first Appellate Court is required to cull out issues which required determination and discuss the entire case being the last Court for appreciation of evidence?

This Court is sad to observe that the judgement passed by the learned first Appellate Court is wholly non-speaking. The first Appellate Court has just dealt with the case in superfluous manner. The first Appellate Court has not even looked into the issues which were involved in the case. The first Appellate Court after allowing the application for additional evidence does not even discuss the additional evidence. The first Appellate Court has over-looked that the original agreement to sell has come on record.

Learned first Appellate Court has given 3 reasons for dismissal of the appeals, which are extracted as under: –

> *"1. However, this deserves to be noted that, as a rule, the original agreement to sell should have been in the possession of Jai Bhagwan as he had agreed to purchase the property from the appellant."*
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> *2. "This shows that Jai Bhagwan is all out to help the appellant. I am of the considered view that the Trial Court has rightly not placed reliance on the testimony of Jai Bhagwan (DW8) and has also not accepted the version set up by the appellant."*
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> *3. "This also deserves to be mentioned that Jai Bhagwan (DW8) in his testimony has admitted that he had not seen the Farm House regarding which he had entered into an agreement to sell with the appellant on 16.07.2007. I am of the considered view that this is a very strong circumstance which establishes that the agreement to sell set up by the appellant is*

a forged and fabricated one. In the normal course of events, no person would buy any property worth more than rupees two crores without having a look at the same. In the normal course of events, a buyer visits the property; has a look at its location; assesses its utility to him and also makes an assessment of its resale value. I am of the considered view that this circumstance clinches the case against the appellant."

A reading of the aforesaid reasons would show that the learned first Appellate Court travelled totally beyond the pleadings and the case set up. The only issue involved in the present case was whether the plaintiffs in the respective suits had advanced the amount as a loan or not. The Court went to the issue whether the original agreement should have been produced by Jai Bhagwan or by the defendant. Whether Jai Bhagwan has come out to help the defendant or not. Since he had not seen the farm house, therefore, whether the agreement to sell was genuine or not.

The agreement to sell is executed between Vinita Sangwan/appellant-defendant and Jai Bhagwan. Both the parties admit its correctness. The agreement to sell was not subject matter of dispute which arose for determination in the present case. Even the learned trial Court has gone to the issue whether the agreement is genuine or not. Both the parties admit its correctness and in the suits, the Courts below travelled entirely on a wrong direction. The Courts have not examined the case in its proper perspective.

4. Whether the judgements of the Courts below are result

of non-reading of the evidence available on the file?

In the present case, this Court has also noticed that the learned First Appellate Court has over-looked the following material evidence brought on file:

1. The plaintiff has produced on file Income Tax Returns filed on 27.08.2008. On that day, there was no dispute between the parties as the suit in the present case came to be instituted on 09.11.2010. In the Income Tax record, the defendant-appellant has shown in her Income Tax record that she has received Rs.42,00,000/- as advance against the intended sale of the property at Kasauli.

2. Although, Maninder Sangwan, who is husband of the plaintiff-Laxmi Devi in Civil Suit No.826/2010 has initially denied having any relationship with Jai Bhagwan, the person who had entered into an agreement to sell with the defendant-appellant Vinita Sangwan on 16.07.2007. However, in the cross-examination, Maninder Sangwan admits that his wife and Nasib Kaur, wife of Jai Bhagwan have collectively purchased the property vide sale deed dated 23.11.2007. The Courts have over-looked this material admission made by Maninder Sangwan in his cross-examination. Hence, Maninder Sangwan is not a witness, who can be relied upon.

3. Vinita Sangwan on receipt of Rs.40,00,000/- through different drafts/cheques, deposited the amount in her savings bank account and from the evidence available on the file, it is

established that the aforesaid amount remained in the savings bank account of the defendant-appellant for quite some time. Had the appellant-defendant borrowed the amount from the plaintiffs, she would not have kept the amount in savings bank account.

Learned trial Court, as noticed above, has also given reasons which are not in germane to the present case. Whether a stamp vendor, who had issued the stamp paper for execution of the agreement to sell has been examined or not, would not make any difference in the present case. Whether the defendant is owner of the property or it is the lease hold property, would also not make any difference because the agreement to sell is not in question in the present case. Whether Jai Bhagwan had retired after the execution of the agreement to sell or not, would also not be relevant for the purpose of decision of this case.

In these circumstances, this Court finds that the judgements passed by the Courts below are based on conjecture and surmises and, therefore, these judgements and decrees cannot be sustained.

In view of the above, both these appeals are allowed.

(ANIL KSHETARPAL)
JUDGE

01.11.2017
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No