

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.1200 of 2012 (O&M)

Date of Decision.22.05.2018

Om Parkash

...Appellant

Vs

Surinder Kumar and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Hemant Bassi, Advocate
for the appellant.

Mr. Rajesh Sethi, Advocate
for the respondents.

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AMIT RAWAL J.

The appellant-defendant No.1 is aggrieved of the judgments and decrees whereby the suit for recovery of amount of ₹8,95,000/- has been decreed along with interest @6% per annum by the trial Court and affirmed by the lower Appellate Court.

The respondent-plaintiff instituted the suit claiming that they are legal heirs of deceased-Ram Krishan. Plaintiff No.1 was appointed as Special Power of Attorney on behalf of plaintiff No.2 to 6. Defendant No.1, Om Parkash, being an agriculturist used to sell the agricultural produce through commission agency of M/s Lalit Mohan Anil Kumar, Shop No.77, New Mandi, Sirsa. Since defendant No.1 used to visit the shop of plaintiff No.1 and 2, he became conversant with Ram Krishan, who used to sit at Shop No.86 and during the life of Ram Krishan, defendant No.1 had approached him in the month of February, 1998 in the presence of plaintiff No.1 and demanded a sum of ₹4,50,000/- for his urgent need, for, he was under debt at that time and also offered to mortgage his land for the purpose of security and

also for repayment of the loan along with interest at the rate of 1.75% per month. In fact, deceased-Ram Krishan was not involved in lending money, yet keeping in view the acquaintance of the defendant No.1, agreed to advance him a sum of ₹4,50,000/-. In lieu of the payment, defendant No.1 mortgaged his land by way of registered mortgage deed executed on 23.2.1998 mortgaging 77 kanals of land comprised in khasra numbers referred to in the suit. Defendant No.1 had paid a sum of ₹3 lacs to Lali Devi daughter of Durga Devi and also paid a sum of ₹1 lac to Mahavir Singh son of Sohan Lal and out of mortgaged amount of ₹4,50,000/-, a sum of ₹50,000/- was paid to defendant No.1 in the presence of witnesses before the Sub Registrar.

The payment of ₹4 lac to Smt. Lali Devi and Mahavir Singh was also acknowledged by receipt. Defendant No.1 had paid amount of ₹1,75,000/- but thereafter did not pay the mortgage amount plus interest neither got the land redeemed. On obtaining certified copies of the revenue record, plaintiff No.2 came to know that defendant No.1 in collusion with the defendant No.2-Bank had managed to mortgage the land comprised in Square No.26, Killa No.15(8-0) and 16(8-0) in consideration of loan amount of ₹64,000/- with defendant No.2-Bank, though he had no legal right to mortgage in view of the fact that the land was already under mortgage.

The suit aforementioned was contested by the defendant No.1 denying the acquaintance or advancement of loan of ₹4,50,000/-, much less, the mortgage.

Since the parties were at variance, the trial Court framed as many as five issues including the issue of relief. The plaintiffs in

support of their case examined as many as five witnesses whereas the defendants examined two witnesses.

On the basis of the aforementioned evidence, the trial Court found that the mortgage deed *ibid* was registered and the defendant had taken the amount as referred and thus decreed the suit. The appeal laid before the lower Appellate Court was also dismissed.

Mr. Hemant Bassi, learned counsel appearing on behalf of the appellants-defendants submitted that the Courts below have failed to appreciate that the mortgage deed did not bear the signatures of the mortgagee on the last page as well as other page except first page, yet it was registered document. Even the signature of the registering officer was not there on the last page. The persons to whom amounts of ₹3 lacs and ₹1 lac paid by Ram Krishan on behalf of the appellant were none else but relatives of Ram Krishan, however, they did not appear in the witness box, therefore, the plaintiffs miserably failed to discharge the onus.

There is mis-direction with regard to the oral testimony. The suit was filed on 04.10.2004 whereas the alleged loan was to be cleared within a period of two years from 23.02.1998, therefore, it was barred by law of limitation. No evidence had been led by the plaintiffs to prove the fact that the plaintiffs were the successors of Ram Krishan. Certain documents including the document purported to be receipts were exhibited without proof in accordance with law, thus, urges this Court for setting aside the judgments and decrees under challenge.

Per contra, Mr. Rajesh Sethi, learned counsel appearing

on behalf of the respondents-plaintiffs submitted that the finding of fact arrived by the Courts below cannot be interfered with, unless and until there is gross illegality and perversity. The suit for recovery was filed on the basis of registered mortgage deed, Ex.P1, which had been signed by the appellant on all six pages. Even the endorsement revealed that the appellant-Om Parkash signed at two places. Presumption of truth is attached to the mortgage deed as it is a registered document. Scribe of the document Joginder Mohan was examined as PW1, who deposed that the original mortgaged deed was prepared by him at the instance of the appellant in favour of Ram Krishan and after typing the same, he read over the contents of the mortgage deed to the parties. The appellant-defendant signed the same in his presence after understanding its content. The entry of the mortgage was recorded in his register. DW-1 Suresh Kumar Kalra examined on behalf of the appellant admitted that he never executed mortgage deed but admitted that a Panchayat was convened at the shop of Banwari Lal in New Grain Market, Sirsa wherein the appellant participated and this witness got the compromise effected, assured that if the sum of ₹4 lacs being principal amount was paid by the appellant, the plaintiff would withdraw the suit. The aforementioned witness admitted that Om Parkash had paid approximately ₹1,26,000/- to the plaintiffs, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bassi, for, the mortgage deed is a registered

document, which has been proved to the hilt through the testimony of scribe as noticed above. No doubt, in the mortgage deed it was stated that the amount shall be repaid within a period of two years but the element of interest @1.75% per month was recurring. The appellant-defendant had not been able to belie the signatures on the registered document, for, if at all he had not appended signature, nothing prevented him to take assistance of an expert. PW4, Duni Ram categorically stated that he had witnessed the payment of money to Lali Devi and Mahavir, thus, payment of the aforementioned amount has been proved, for, non-examination of Lali Devi and Mahavir could not be said to be fatal to the decision of the suit. Therefore, the argument of Mr. Bassi vis-à-vis non-examination of the aforementioned witnesses is hereby rejected.

The receipt Ex.P4 has also been proved. PW5 Bhupender Kumar also deposed qua due execution of the receipt. Despite extensive cross-examination, testimony of the witnesses could not be shattered rather had been coherent and consistent. Payment of interest had also been proved through the testimony of PW2, Surender Kumar. There was no occasion for defendant No.1 to subsequently execute mortgage deed of the same property in favour of Canara Bank once it was already mortgaged vide Ex.P1. Subsequent mortgage was executed in the year 1999 i.e. after execution of the mortgage deed Ex.P1, therefore, could not create any cloud or would not have bearing on the first mortgage deed.

As an upshot of my finding, I am of the view that the findings arrived at by the Courts below are based upon correct

appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No