

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

RSA No.795 of 2012 (O&M)

Date of decision:22.02.2018

Paramjit Kaur and others

... Appellants

Vs.

Vijay Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gazi Mohd Umair, Advocate
for the appellants.

Mr. Arun Bansal, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The appellant-defendants are in Regular Second Appeal against the judgment and decree dated 30.08.2011 rendered by the Lower Appellate Court, whereby, judgment and decree dated 13.02.2010 of the trial Court dismissing the suit for recovery of ₹3,08,200/- (₹ 2,00,000/- as principal amount and ₹1,08,00/- as interest on it @ 1.5% calculated from 14.09.2004 till filing of the suit, was set aside.

The respondent-plaintiff, Vijay Kumar instituted a suit for recovery of aforementioned amount on the premise that Jaswinder Singh had executed a pronote and receipt on 14.09.2004. Unfortunately, he died in the month of October, 2004. The plaintiff had been requesting defendants for recovery of the aforementioned amount but they did not pay and having lost the hope of recovery, was compelled to file a suit for recovery just

before expiry of the limitation.

The defendants contested the aforesaid suit by raising preliminary objections qua maintainability, locus-standi, limitation and improper valuation of court fees. On merit, it was stated that plaintiff had taken a blank pronote and receipt from Jaswinder Singh for security of payment of the price of said goods. Jaswinder Singh did not borrow any amount from the plaintiff on 14.09.2004 nor executed any pronote and receipt. In fact, account of Jaswinder Singh was settled in the year 2003 when agriculture produce was brought at the shop of plaintiff.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to recover ₹2,00,000/- from the defendants? OPP*
- 2. Whether the plaintiff is entitled to recover interest, if so, at what rate? OPP*
- 3. Whether the plaintiff has got no locus standi to file the suit? OPD*
- 4. Whether the plaintiff has got no cause of action to file the suit? OPD*
- 5. Whether the suit is not maintainable in present form? OPD*
- 6. Whether the pronote and receipt are without consideration? OPD*
- 7. Whether the pronote and receipt are false, forged and*

result of fraud? OPD

8. *Whether the defendants are not liable to pay the amount, as they have not inherited any property from the deceased Jaswinder Singh? OPD*

9. *Whether the suit is within time? OPD*

10. *Whether the defendants are entitled to special costs? OPD*

11. *Whether the plaintiff is money lender without money lending licence, if so its effect? OPD*

12. *Relief.”*

During the course of hearing of the suit, thumb impressions of Jaswinder Singh upon Ex.P1 and Ex.P2 were admitted by the defendants. The trial Court on the basis of documentary evidence dismissed the suit on the ground that defendants, i.e., legal representatives of Jaswinder Singh did not succeed to his estate. The appeal laid before the Lower Appellate Court was allowed. It is in this background of the matter, the present Regular Second Appeal.

Mr. Gazi Mohd Umair, learned counsel appearing on behalf of the appellants submitted that judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law as it was a personal contract between Jaswinder Singh and respondent-plaintiff, then could not be honoured by the legal representatives of Jaswinder Singh, on his demise. If at all, the plaintiff had been wise and careful, he could have taken the blank cheques for the purpose of recovery of amount by invoking the

provisions of Order 37 CPC. In this regard, he has drawn the attention of this Court to the amendment caused in Section 6(4) of Hindu Succession Act, 1956 effective from 09.09.2005 to contend that the Court shall not take cognizance of recovery of amount *vis-a-vis* debt of father and urged this Court for setting aside the judgment and decree of the Lower Appellate Court as no evidence has come on record that the appellants, i.e., LRs succeeded to the estate of Jaswinder Singh.

Mr. Arun Bansal, learned counsel appearing on behalf of the respondent-plaintiff submitted that Ex.P3 jamabandi showed regarding inheritance of estate of Jaswinder Singh by the defendants. The defendants did not deny the signatures of Jaswinder Singh on the pronote and receipt. It is a case of cheating and dishonesty in not honouring the liability. The judgment and decree of the Lower Appellate Court is perfectly legal and justified being the last Court of facts and law, much less cannot be tinkered with until and unless there is gross illegality and perversity.

I have heard the learned counsel for the parties, appraised the judgments and decrees and record of the Courts below and of the view that there is force and merit in the submissions of Mr. Gazi Mohd Umair.

Legislature in the year 2005 caused an amendment in Section 6 (4) of Hindu Succession Act, 1956 in the following manner:-

Section 6(4) in The Hindu Succession Act, 1956

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the

recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—*

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation. —For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005

From the perusal of the aforementioned amendment, it is clear that the Court will not take cognizance against a son, grandson or great grand son of the father, to honour the debt of the creditor. Jamabandi Ex.P3 brought on record in rebuttal prima facie did not make out a case that defendants succeeded to the estate of Jaswinder Singh. Even otherwise there was no contract between the plaintiff and legal representatives nor Jaswinder Singh bound his LR's by terms and conditions of the pronote and receipt. The respondent-plaintiff should have been careful in protecting his

money by taking some blank cheque which is permissible in law, therefore, the argument of Mr. Bansal is rejected.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 :

80 Punj LR 1 (FB)] cannot be sustained and is thus overruled." [at paras 27 - 29]"

"27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have

already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

As an upshot of my findings, judgment and decree of the Lower Appellate Court is set aside. Resultantly, the decree is ordered to be prepared. The appeal stands allowed.

(AMIT RAWAL)
JUDGE

February 22, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No