

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

108

RSA No.3048 of 2013 (O & M)
Date of Decision:04.04.2018

Ajaib Singh

...Appellant

Versus

Gurmail Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Singh, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for recovery of Rs.5,18,000/- on the basis of pronote and receipt executed on 08.12.2000. In the written statement, defendant took a strange stand. On the one hand, he denied having borrowed any amount or having executed any pronote or receipt, on the other hand, he pleaded that earlier he was dealing with Darshan Singh, Commission Agent and when he stopped selling the crop to him, he demanded blank stamp papers, pronote and receipts from him, however, the same were not returned and Darshan Singh might have given these pronote and receipts and blank signed papers to the plaintiff. Para 2 of the written statement is extracted as under:-

“2. Para no.2 of the suit is totally wrong and hence denied. It is again worth mentioning here that the defendant had not taken any amount of loan from the plaintiff. Similarly, the defendant had never agreed to

pay interest to the plaintiff, as alleged. The alleged pronote and receipt is the result of fraud and concoction only. The alleged pronote/receipt is liable to be ignored/rejected. It is worth mentioning here that the plaintiff and Darshan Singh Aarhti, who is resident of officers only and who is having his shops at Bhunerheri and Patiala are closed to each other. Earlier, the answering defendant was selling his crop through the Aarhat Shop of Darshan Singh, but sometime back, the relation between Darshan Singh Aarhti and defendant became strained as Darshan Singh Aarhti refused to return the blank stamp papers/pronotes/receipts, which were duly got signed/thumb marked by Darshan Singh Aarhtia from the defendant earlier. The answering defendant is now selling his crop through Raghubir Singh Aarhtia of Ismalabad. Darshan Singh Aarhtia has now got filed the present suit through the plaintiff who is very close to Darshan Singh. The plaintiff might have forged the pronote and receipt on the blank pronotes/receipts, which were got signed/thumb marked by Darshan Singh Aarhtia from the defendant. The plaintiff sits on the shop of Darshan Singh Aarhtia many times. The answering defendant has no concern/connection with the plaintiff nor he has any dealing with the plaintiff. The answering defendant had never signed/ thumb marked the alleged pronote and

receipt. Similarly, the answering defendant do not know any of the witnesses of the alleged pronote/ receipt. So the alleged pronote/receipt dated 8.12.2012 is the result of fraud/concoction only. A big fraud has been played upon the answering defendant by the plaintiff and by Darshan Singh Aarhtia. As the suit has been filed on false/fabricated grounds, so the same deserves dismissal with heavy costs.”

Plaintiff in order to prove his case, examined marginal witness i.e. Harwinder Singh as PW-2. On appreciation of evidence and after taking into consideration the presumption available to a negotiable instrument under Section 118 of The Negotiable Instruments Act, 1881, decreed the suit for Rs.3,50,000/- along with interest @ 9% per annum during the pendency of the suit and 6% future interest. First appeal preferred by the defendant-appellant was dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellant has vehemently argued that the Courts below have misread the written statement filed by the defendant. He has submitted that the defendant-appellant has not in an indirect manner admitted his signatures and thumb impressions on the pronote and receipt. He has further submitted that the defendant-appellant had examined an expert, who has opined that the thumb impressions and signatures do not tally.

With the help of learned counsel for the appellant, this Court has gone through the judgments passed by the Courts below and the record.

two thumb impressions on 4 revenue stamps affixed on the pronote. He has also signed in a manner that half of the signatures are on the pronote and remaining half are on the revenue stamps. Similarly, receipt also bears the thumb impression and the signatures of the defendant-appellant. Marginal witness-Harwinder Singh has been examined by the plaintiff. It is well known that the private experts engaged by the respective party usually give opinion in favour of their masters.

In the present case, since direct evidence is available coupled with the written statement filed by the defendant, admitting in an indirect manner his thumb impression and signatures, this Court does not find any good ground to take a different view that what has been concluded by the Courts below.

In view of the aforesaid, there is no ground to interfere.

Regular second appeal is dismissed.

04.04.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

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