

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

RSA No.1861 of 2016 (O&M)

Date of decision:29.05.2018

Bhajan Singh

... Appellant

Vs.

Chiman Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jatin Salwan, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

In compliance of the order dated 21.5.2018, costs of Rs.5000/- has been deposited with the Punjab and Haryana High Court Bar Association, Chandigarh, vide receipt dated 24.5.2018. The receipt is taken on record.

The appellant-defendant has not been successful in defending the suit for recovery of ₹9 lacs with interest at the rate of 12% per annum from 6.12.2004 till passing of the decree, i.e. 18.4.2012 and 6% interest till date of realization.

The respondent-plaintiff instituted the suit for recovery of aforementioned amount on the premise that defendant had been selling the crop and had been taking money from the plaintiff for carrying out the agricultural activities and there was running account. The last transaction was of 06.12.2004 and therefore, the suit was filed on 14.08.2007.

The defendant appeared and contested the suit by admitting the transaction of the business vis-a-vis selling of the crop. There were no dues. The entire payment had been paid. The alleged vouchers Ex.P19 to Ex.P22 and Ex.36 had not been proved on record, therefore, the plaintiff has failed to discharge the onus.

The trial Court on the basis of evidence decreed the suit and the appeal filed before the Lower Appellate Court also met with the same fate .

Mr. Jatin Salwan, learned counsel appearing on behalf of the appellant-defendant submits that though the defendant could not lead the evidence to belie the signatures on the aforementioned documents and in this regard moved an application bearing No.4940C of 2016 under Order 41 Rule 27 CPC for examination of the signatures/thumb impressions on the aforementioned documents through handwriting expert and in case such opportunity is granted, defendant is sanguine of the fact that suit of the plaintiff could have been dismissed. The counsel did not properly advice to avail the services of expert and thus, urges this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant-defendant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the appeal as well as in the application, for, no explanation has come forth despite number of opportunities having been availed by the appellant-defendant in suit filed in the year 2007 and decided in 2012. The appellant-defendant did not avail the services of expert to belie the signatures. The prudent person would not know such fact

as it is a matter of common sense. Having failed to rebut the onus discharged by the respondent-plaintiff vis-a-vis liability which had been acknowledged by the defendant, it is too late in a day for moving the application under Order 41 Rule 27 CPC and ordered for inquiry which tantamount to de-novo trial.

The concurrent findings of facts and law, in my view, do not warrant any interference nor involvement of any substantial question of law.

No other argument has been raised.

The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 29, 2018
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Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No