

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

**RSA No. 5237 of 2016 (O&M)
Date of decision: 18.5.2018**

Jagtar Singh

... Appellant

Versus

Jaswinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Harinder Pal Singh Ishar, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 17.1.2015. As even the appeal preferred against the said decree failed, and was dismissed on 22.3.2016, he is in Regular Second Appeal before this Court. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff-Jagtar Singh filed a suit for recovery of Rs.1,20,000/-, along with interest. In brief, the case set out by the plaintiff was that Nachhattar Singh-predecessor-in-interest of the defendants borrowed a sum of Rs.1,00,000/- from the plaintiff on 24.8.2011, and agreed to pay interest @ 1% per month, regarding which a pronote and a receipt was executed. The pronote as also the receipt were alleged to have been scribed by the plaintiff himself, upon instructions from Nachhattar Singh. And the receipt was attested by two witnesses, namely Bhupinder Singh and Baljit Singh.

RSA No. 5237 of 2016 (O&M)

Nachhattar Singh affixed his signatures on the pronote as also the receipt. But, as Nachhattar Singh had passed away, the defendants, being his heirs and having inherited his estate, could be proceeded against to recover the alleged amount.

In defence, it was pleaded on behalf of the defendants that late Nachhattar Singh never borrowed any amount from the plaintiff, nor executed any pronote or receipt in his favour. Nachhattar Singh never signed/thumb marked the said documents. Rather, post death of Nachhattar Singh, the plaintiff forged the alleged documents, in connivance with his witnesses.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that the testimony of Baljit Singh (PW2), who happened to be an attesting witness of the receipt (Ex.P2), admitted, in his cross-examination, that he used to sign while walking. Thus, his presence at the time of execution of the pronote as also the receipt was doubtful. The plaintiff failed to produce Bhupinder Singh, the other attesting witness to the receipt (Ex.P2), who could depose if late Nachhattar Singh actually borrowed any amount from the plaintiff and executed the pronote and receipt. Significantly, Sukhdeep Singh, son of Nachhattar Singh, appeared as DW1, and duly substantiated the case set out by the defendants in their written statement. Significantly, the said witness was never cross-examined by the plaintiff. Therefore, his testimony remained unrebutted/unchallenged. Concededly, Nachhattar Singh had already passed away, when the plaintiff filed the present suit, and, therefore, he was rather obliged to examine an expert to prove his signatures/thumb marks upon the disputed documents. In fact, on an analysis of the pronote,

RSA No. 5237 of 2016 (O&M)

dated 24.8.2011, allegedly executed by the deceased and a similar pronote, dated 23.12.2010, that too was purportedly executed by Nachhattar Singh, the appellate court observed that the pronote, dated 24.8.2011, bear three separate signatures of Nachhattar Singh. Whereas, the other pronote showed four signatures of the deceased. But, upon examining all these signatures, it was clear that these had a different pattern. Further, both the pronotes were executed on different dates, but were attested by the same witnesses. Although, the second pronote was executed after a gap of eight months, but yet the witnesses remained the same. Further, the ink with which the witnesses had put their signatures on both the documents was the same. On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

18.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:
Whether Reportable:

YES