

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5306 of 2016 (O&M)

Date of Decision: November 15, 2018

Bhagat Ram

...Appellant

Versus

Barjinder Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. S.S.Sodhi, Advocate for
Mr. Rajinder Singh Dhaliwal, Advocate,
for the appellant.

AMIT RAWAL, J.

Appellant-defendant has not been successful in defending the suit, whereby ₹ 3,50,000/- was sought to be recovered by the plaintiff in lieu of the advancement of loan by execution of pronote and receipt dated 04.01.2008. The same was decreed along with interest @ 6% per annum from the date of advancement of the loan till actual realization,

Appellant-defendant opposed the suit by denying the execution of pronote and receipt stated to be forged and fabricated. It was alleged that plaintiff had an enmity with the defendant and, therefore, there was multifarious litigation. Even proceedings under Section 107/151 of Criminal Procedure Code were pending.

Plaintiff himself appeared in the witness box as PW-1 and also examined PW-2 Karamjit Singh, PW-3 RV Vashisht, Handwriting and Fingerprint Expert and PW-4 Gopal Krishan Clerk from the office of District Education Officer, Sangrur, who proved copy of the voter list of Village Ghanour Jattan as Ex.P3, reflecting the name of Bhagat Singh son

of Maghi Singh at Sr.No.408.

On the other hand, defendant himself appeared as DW-2 and produced copy of the plaint in Civil Suit No.63 dated 06.03.2010 titled as Gurmit Singh Versus Bhagat Ram as Ex.D1 and various other documents Ex.D2 to Ex.D8, DW-1 HC Subhash Chand and DW-3 Dr.Inderjit Singh Handwriting and Fingerprint Expert.

The trial court, on the preponderance of the evidence, decreed the suit. Appeal laid before the Lower Appellate Court was dismissed.

Mr. S.S.Sodhi Advocate for Mr.R.S.Dhaliwal, learned counsel appearing on behalf of the appellant-defendant submitted that the judgments and decrees of the courts below suffer from illegality and perversity as PW-1, in cross-examination, admitted that Karamjit Singh was known to him for the last 5-6 years on account of his visits to the shop of his uncle and also admitted the complaint filed by defendant before the Deputy Commissioner under Section 107/151 Cr.P.C. PW-2 Karamjit Singh, the marginal witness, did not know the appellant or had seen the appellant at the house of the plaintiff. Scribe cannot be treated as a witness to the instrument. Both the experts have given the report in favour of the respective parties. The courts should have assumed the role of expert under Section 45 of the Indian Evidence Act. The judgments and decrees are the result of non-application of judicial mind. Plaintiff has miserably failed to prove the source of money of ₹ 3,50,000/-.

I am afraid, the aforementioned argument is not sustainable, for, defendant as per the order dated 19.12.2011 was directed to give his specimen signatures for comparison on the pronote and receipt, but the same were not given. Adverse inference drawn by the courts below was perfectly

legal and justified. In such circumstances, the report of the expert of the defendant pales into significance. The litigation, as noticed above, was not entered with the plaintiff but was with the third party and the averments in the written statement could not be proved. The plaintiff had discharged the onus.

For the reasons stated above, I do not find illegality or perversity in the concurrent findings of fact and law, which are based on appreciation of evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 15, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No