

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

RSA No.1734 of 2014.

Decided on:-February 15, 2018.

Paras Ram.

.....Appellant.

Versus

Kansi Ram Swami.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Sudhanshu Makkar, Advocate
for the appellant.

Mr. Chand Ram Olla, Advocate
for the respondent.

HARI PAL VERMA, J.

Appellant Paras Ram (hereinafter referred to as the 'plaintiff') has filed the present regular second appeal against the judgment and decree dated 07.10.2013 passed by learned Additional District Judge, Bhiwani whereby the appeal filed by the respondent-defendant, namely, Kansi Ram Swami (hereinafter referred to as the defendant) against the judgment and decree dated 24.12.2010 passed by learned Additional Civil Judge (Senior Division), Bhiwani, was allowed.

Vide judgment and decree dated 24.12.2010, learned Additional Civil Judge (Senior Division), Bhiwani had decreed the suit of the plaintiff for recovery along with interest.

Briefly stated, the plaintiff had filed a suit for recovery against

the defendant for an amount of Rs.53,760/- i.e. Rs.28,000/- as principal amount and Rs.25,760/- as interest with the pleadings that the parties were in friendly relations. The defendant is a mason and also does the work of a contractor. As the defendant was in need of Rs.28,000/-, he requested the plaintiff for loan amount. The plaintiff accepted his request. Accordingly, the defendant borrowed Rs.28,000/- from the plaintiff and had executed a writing to this effect. The plaintiff had explained and read over that writing to the defendant. After receiving the amount of Rs.28,000/-, the defendant put his signatures on the revenue stamps in Hindi and agreed to repay the same along with interest @ 2% per month after a period of one year. However, after one year, when the plaintiff requested him (defendant) to repay the loan amount along with interest, he did not pay even a single penny to the plaintiff. The plaintiff served a legal notice upon the defendant, but still he did not pay the amount. Hence, the suit.

The defendant filed his written statement taking preliminary objections that the suit of the plaintiff is against law and facts. The suit is time barred and the plaintiff has not affixed proper court fee on the plaint. The suit was filed with an ulterior motive to harass and humiliate the defendant. The plaintiff is not holding any 'money lending licence' and has concealed material facts. In fact, the defendant had borrowed Rs.8,000/- from the plaintiff and a Tehrir to this effect was reduced into writing. The defendant had repaid the said amount after one month and the plaintiff told him that he was not having the key of almirah and would later destroy the writing. But instead of destroying the said writing and while taking the undue benefit of illiteracy of the defendant, the plaintiff wrote the amount of Rs.28,000/- on

the said receipt and filed the present suit after a period of three years. On merits, the averments of preliminary objections were reiterated and dismissal of the suit with special costs was prayed for.

On the basis of pleadings of the parties, following issues were framed by learned trial Court:

1. Whether the plaintiff is entitled for the decree of recovery of Rs.53,760/- along with interest @ 2% per month as alleged? OPP
2. Whether the suit of the plaintiff is time barred? OPD
3. Whether the plaintiff has suppressed the material facts from the Court and as such suit of the plaintiff is liable to be dismissed as alleged? OPD
4. Whether the suit of the plaintiff is not properly stamped? OPD
5. Whether the defendant is entitled for a special costs under Section 35A of CPC? OPD
6. Relief.

After recording the evidence produced by both the parties and hearing their respective arguments, learned trial Court, vide judgment and decree dated 24.12.2010 had decreed the suit of the plaintiff with costs for recovery of Rs.53,760/- along with interest @ 8% per annum from the date of filing of the suit till its realization.

Aggrieved against the aforesaid judgment and decree dated 24.12.2010 passed by the trial Court decreeing the suit of the plaintiff, the defendant filed an appeal before the lower appellate Court. Vide impugned judgment and decree dated 07.10.2013 passed by learned Additional District Judge, Bhiwani, findings of the trial Court on main issue No.1 were reversed and as a consequence thereof, the appeal filed by the defendant was accepted

leading to dismissal of the suit.

It is in these circumstances, the plaintiff has filed the present regular second appeal against the judgment and decree dated 07.10.2013 passed by learned Additional District Judge, Bhiwani.

Following substantial questions of law have been raised by the plaintiff:

- (A) Whether the impugned judgment and decree dated 07.10.2013 passed by 1st appellate Court while reversing the well reasoned judgment and decree dated 24.12.2010 passed by learned trial Court is perverse, illegal, not based on correct appreciation of evidence, misreading and non-reading of material evidence and based on surmises and conjectures and is liable to be set aside?
- (B) Whether the document Ex.P1 the document/writing duly proved by handwriting expert, PW3, plaintiff himself, PW1 and witness Vishnu PW2, could have been held to be forged without any evidence to that extent led by the defendant-respondent?
- (C) Whether the learned 1st appellate Court could assume on its own that the document Ex.P1 is forged?
- (D) Whether the admission of the defendant-respondent to execute the document Ex.P1 is not sufficient to prove its contents thereof?
- (E) Whether the admission of the defendant-respondent to borrow Rs.8,000/- only instead of Rs.28,000/- and then baldly stating the same has been repaid without any corroborative evidence, is sufficient to conclude that he has repaid the amount; and would it be prudent to decline the complete relief to the plaintiff-appellant?
- (F) Whether the defendant-respondent could be permitted under law to make improvement in his stand taken in evidence in comparison to what he has earlier taken in reply to legal notice (Ex.P9) or in written statement?
- (G) Whether the evidence of DW2 Ujala is beyond pleadings and can be read into evidence?

Learned counsel for the plaintiff has argued that the lower

appellate Court has erred in law by not taking any note of the fact that the defendant has not denied that he borrowed the amount against execution of document/Tehrir Ex.P1, though the defendant has pleaded that he had borrowed Rs.8,000/- and not Rs.28,000/-. It has also not been denied by the defendant that he had a friendly relation with the plaintiff. The respondent has not led any evidence to establish that the figures were either converted or that the document Ex.P1 was ever forged. The appellate Court has arrived at the finding of forgery merely on the basis of assumptions and, therefore, the findings recorded by learned lower appellate Court are completely unfounded and deserve to be set aside. The trial Court has rightly decreed the suit.

Learned counsel for the defendant has argued that the defendant had advanced Rs.8,000/- and not Rs.28,000/- as pleaded by the plaintiff. The figure has been interpolated for obvious reasons, so as to admit recovery of Rs.28,000/- instead of Rs.8,000/- which has already been paid. The defendant was not well conversant with the language written in the Tehrir and he had signed the document noticing the figure as Rs.8,000/- only. The plaintiff had intentionally used the Mundi language so that at a later stage, he could fabricate this figure despite knowing it well that he is well conversant with Hindi language.

I have heard learned counsel for the parties and perused the record.

It is pleaded case of the plaintiff that the defendant was in need of Rs.28,000/- for which he approached the plaintiff and the plaintiff had paid this amount to the defendant and a writing/Tehrir was duly executed by the defendant. But this Court on a close scrutiny of the said document Ex.P1

noticed that the defendant has signed the receipt on a revenue stamp in Hindi, though the writing/Tehrir is in Mundi language. There is no dispute as regard the signatures of the defendant on the receipt, as the handwriting expert Shamsheer Singh Malik PW3, vide his report Ex.PW3/B has proved the signatures of defendant on the document. But the defendant has disputed the receipt of the loan amount. Whereas the plaintiff has pleaded that he had advanced Rs.28,000/-, the defendant has pleaded that the amount advanced to him was Rs.8,000/-. Therefore, the handwriting expert was also required to look into the amount filled in the document as well. The defendant has consistently argued/pleaded that he had taken an amount of Rs.8,000/- as advance, but the plaintiff had interpolated the amount by adding the figure '2' before the figure '8' making it Rs.28,000/- instead of Rs.8,000/-.

This Court finds that the handwriting expert was required to analyse the document from this point of view as well, so as to confirm whether the figured amount is Rs.8,000/- or Rs.28,000/-. A bare glance of the document Ex.P1, if perused minutely would show that there is certain line which has been incorporated in it, which includes the addition of figure '2' before the figure 8000/-. Moreover, it was incumbent upon the plaintiff to write the receipt/Tehrir in the language which the defendant could understand, more particularly when the defendant was not conversant with Mundi language.

Interestingly, the plaintiff is also conversant with Hindi language as well. While filing the appeal, he has signed the power of attorney and the pleadings in Hindi language. There is no witness on the said receipt though the plaintiff has pleaded that he had advanced this money in the presence of

PW2 Vishnu, but the document Ex.P1, which is a receipt, nowhere bears the thumb impressions or signatures of PW2 Vishnu. In this manner, even the statement of PW2 Vishnu is not reliable and in case, he was present at the time of payment, he should have witnessed the document/Tehrir executed by the defendant. The writing Ex.P1 is in Mundi language, but during the course of trial, it has been noticed that the plaintiff has not placed any Hindi or English translated version of Ex.P1, which may prove the case of the plaintiff that the defendant had borrowed Rs.28,000/- from the plaintiff. The document is on a plain paper and does not seem as a part of the Bahi. The plaintiff has failed to produce the Bahi in the Court. Therefore, once it has been found that the plaintiff is well conversant with Hindi language as he had signed his power of attorney with the present appeal in Hindi and the fact that the defendant is not conversant with Mundi language, this Court finds that the plaintiff should have prepared the document in the language i.e. Hindi which was understandable even by the defendant also. But by not doing so, it cannot be accepted that he had advanced Rs.28,000/- to the defendant, when the defendant had been admitting advance of Rs.8,000/-. There is no witness produced by the plaintiff to support his contention that he had advanced Rs.28,000/-. The language as used by the plaintiff which is not understandable by the defendant was certainly required to be witnessed by a person who could understand the language written over the receipt. Even otherwise from the document itself, this Court finds that the figure '2' has subsequently been added as the words of the document and figure '2' are closely overlapping each other.

Therefore, this Court does not find any reason to interfere with

the impugned judgment and decree dated 07.10.2013 passed by learned lower appellate Court.

No other point has been argued.

No substantial question of law is involved in the present regular second appeal.

Accordingly, the impugned judgment and decree dated 07.10.2013 passed by learned Additional District Judge, Bhiwani is upheld and the present regular second appeal, being devoid of any merit, is dismissed.

February 15, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No