

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

R.S.A.No.5530 of 2015 (O&M)

Date of Decision: May 25, 2018

Paramjit Kaur & another

...Appellants

Versus

Piara Singh

...Respondent

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr.Sharad Aggarwal, Advocate,  
for the appellants

Mr.Saurabh Arora, Advocate,  
for the respondent.

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**AMIT RAWAL, J.**

Respondent-plaintiff instituted the suit for recovery of ₹20,000/- as principal amount and ₹7,200/- as interest @ 12% per annum from 21.6.2011 to 8.5.2014, which has been decreed by the Lower Appellate Court vide judgment and decree dated 30.4.2015.

Respondent-plaintiff filed the aforementioned suit on the premise that Gurdev Singh son of Sadhu Singh predecessor of the defendants borrowed a sum of ₹20,000/- in cash from the plaintiff on 20.6.2011 on the basis of pronote and receipt of the even date on interest @ 2% per month on principal amount. However, the defendants did not return the same despite repeated requests and service of legal notice dated 22.4.2014.

The aforementioned suit was contested by the defendants on the premise that the suit was based upon forged and fabricated documents. It

was averred that Gurdev Singh son of Sadhu Singh predecessor of the defendants never borrowed the amount from the plaintiff nor executed any pronote and receipt. The pronote and receipt had been procured by the plaintiff in connivance with the alleged marginal witnesses and scribe nor any legal notice was served.

Since the parties were at variance, the trial Court framed the following issues:-

1. *Whether the defendant has borrowed a sum of Rs.20,000/- from the plaintiff and executed pronote and receipt dated 20.06.2011 in lieu thereof? OPP*
2. *Whether the plaintiff is entitled for recovery of suit amount from the defendant alongwith interest? OPP*
3. *Whether suit is not maintainable? OPD*
4. *Whether the plaintiff has no locus standi to file the present suit? OPD*
5. *Whether the pronote and receipt is false, forged, fabricated and fictitious documents? OPD*
6. *Whether the plaint has not been properly verified as required under the law and rules? OPD*
7. *Relief.”*

In support of his case, respondent-plaintiff examined three witnesses, i.e., plaintiff himself as PW-1, Takhat Singh Namberdar PW-2 and Jant Singh Deed Writer as PW-3. On the other hand, defendant No.1 herself appeared as DW-1 and closed the evidence.

The trial Court, on the preponderance of the evidence, dismissed the suit by holding that pronote and receipt revealed that Sukhdev Singh and Takhat Singh Namberdar were not the marginal witnesses, but Takhat Singh Namberdar and Gheela Singh were the marginal witnesses.

Appeal laid before the Lower Appellate Court by the respondent-plaintiff

has been allowed, whereby the judgment and decree of the trial Court has been set-aside, in essence, the suit has been decreed.

Mr.Sharad Aggarwal, learned counsel representing appellant-defendants submitted that the judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law, for, it failed to appreciate that Gurdev Singh was a drunkard and no body in the vicinity was prepared to advance money to him on loan basis and the factum of conduct of Gurdev Singh was in the knowledge of the plaintiff and despite that, he alleged to have extended loan. The story coined is totally based upon surmises and conjectures.

He further submitted that there were major discrepancies in the statements of the witnesses, which go to the root of the matter, for, the plaintiff stated that the scribe was a stranger to him. He stated that he is a labourer, then stated a mason and other witness stated that he was running the business of money lending. It is unbelievable that a person running grocery shop will take loan from the labourer and mason. All these factors were appreciated by the trial Court and, therefore, the suit was rightly dismissed. There is illegality and perversity in the judgment and decree under challenge.

Mr.Saurabh Arora, learned counsel for the respondent- plaintiff submitted that the judgment and decree of the Lower Appellate Court, being the last Court of fact and law, actually appreciated the evidence and decreed the suit. There is no illegality or perversity. The execution of pronote and receipt had been proved and, thus, prayed for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book.

There is a categoric stand of the appellant-defendants in the written statement with regard to the fraud and misrepresentation. The ingredients of fraud and misrepresentation to be taken in the pleadings have been statutorily prescribed under Order 6 Rule 4 of CPC. For proving the same, there has to be direct, cogent and corroborative evidence. The appellant-defendants miserably failed to bring the case within the aforementioned ingredients. No witness has been examined by the defendants to prove how the fraud had actually been played upon.

Minor discrepancies cannot falsify the claim of the plaintiff and the same, with the passage of time, are bound to occur. The trial Court had erroneously come to the conclusion that the plaintiff was a money lender in the absence of any documentary evidence. The trial Court ought not to have drawn an adverse inference against the plaintiff as no issue with regard to the plaintiff carrying on the business of money lending or unregistered was framed. It is settled law that no evidence beyond pleadings can be looked into.

Pronote and receipt Ex.P1 and Ex.P2 had been proved through the testimony of Takhat Singh Numberdar PW-2, who proved that Gurdev Singh had borrowed a sum of ₹20,000/- in cash from the plaintiff and promised to repay the same along with interest @ 2% per month. PW-3 Jant Singh Deed Writer, scribe of the pronote and receipt, deposed that he had been working as a Deed Writer for the last more than 32 years and had made an entry of pronote and receipt in the register at Sr.No.895 dated 20.6.2011 Ex.P6. His testimony has not been shattered. All these factors have weighed in the mind of the Lower Appellate Court being the last Court of law and fact.

As an upshot of the aforementioned findings, there is no illegality or perversity in the impugned judgment and decree. No ground for interference is made out, much less any substantial question of law.

Resultantly, the appeal stands dismissed.

**May 25, 2018**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

***Whether Reportable:***

***Yes/No***