

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT  
CHANDIGARH**

**Regular Second Appeal No. 5451 of 2018(O&M)**

**Date of Decision: October 01 , 2018.**

Gurmej Singh

..... APPELLANT (s)

**Versus**

Sardool Singh

..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Gagandeep Singh Sirphikhi, Advocate  
for the appellant.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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**LISA GILL, J.**

The appellant/defendant is aggrieved of judgment and decree dated 23.12.2016 passed by the learned Civil Judge (Junior Division), Batala decreeing the suit for recovery filed by the respondent/plaintiff as well as judgment and decree dated 15.12.2017 passed by the learned Additional District Judge, Gurdaspur, whereby appeal filed by the appellant/defendant was dismissed.

Brief facts necessary for adjudication of the case are that, the plaintiff/respondent filed a suit for recovery of ₹56,500/- from the appellant/defendant. It was pleaded that the appellant/defendant borrowed a sum of ₹50,000/- from the plaintiff on 10.03.2011. Agreement dated 10.03.2011 was executed by the appellant/defendant in favour of the plaintiff. The

appellant/defendant agreed to pay the said amount to the plaintiff within one year and in case the appellant/defendant failed to pay the amount, the plaintiff would have a right to initiate lawful proceedings against him. Despite repeated requests by the plaintiff, the appellant/defendant failed to pay the said amount. Hence, the suit was filed seeking recovery of ₹50,000/- as well as interest at the rate of 12% per annum.

The appellant/defendant contested the suit. Written statement was filed by him raising various preliminary objections. Averments on merits were controverted. It was pleaded that sum of ₹50,000/- had never been borrowed from the plaintiff by the appellant/defendant, neither was any agreement dated 10.03.2011 executed in favour of the plaintiff. The alleged agreement, if any, is illegal, null and void, inoperative, ineffective, forged and fabricated document qua the defendant. It is further alleged that the agreement must be the result of collusion and conspiracy with the scribe and the marginal witnesses. Dismissal of the suit was prayed for. Replication was filed.

From the pleadings of the parties, the following issues were framed by the learned Tribunal:-

1. Whether the plaintiff is entitled to relief of recovery of Rs.56,500/- on the facts as alleged? OPP
2. Whether plaintiff is entitled to interest, if so, at what rate and for which period? OPP
3. Whether the plaintiff has got no cause of action? OPD
4. Whether suit is not properly valued, signed, stamped and verified? OPD
5. Relief

Evidence was led by both the parties. The learned trial court on considering the evidence on record decreed the suit filed by the plaintiff/

respondent. Appeal filed by the defendant/appellant was dismissed by the learned District Judge, Gurdaspur vide judgment and decree dated 15.12.2017. Aggrieved therefrom, the present appeal has been filed by the appellant/defendant.

Learned counsel for the appellant vehemently argues that both the learned courts below have wrongly decreed the suit filed by the respondent. In fact, agreement dated 10.03.2011 alleged to have been executed by the appellant/defendant in favour of the plaintiff is not proved on record. The scribe was not examined, which is fatal to the case of the plaintiff in the light of the fact that the agreement is averred to be executed on a stamp paper. There is no seal of the stamp-vendor neither the name of the stamp-vendor is available. While referring to the provisions of the Stamp Act and decision of this Court in Mangat Singh v. Rakesh Kumar Gupta and another, 2014(4) RCR(Civil) 387, it is vehemently argued that the agreement in dispute is shrouded in suspicious circumstances and it cannot be said that the same has been proved on record. It is further submitted that PW2 Kabal Singh, the attesting witness of the alleged agreement stated that PW3 Waris Masih had signed the same as an attesting witness whereas, PW3 Waris Masih has not appended his signatures on the document. PW3 Waris Masih specifically stated that he never signed any agreement executed by the present appellant/defendant. It is contended that the suit has been filed at the instance of PW3 Waris Masih, who was earlier employed as a driver with the appellant/defendant. It is thus prayed that this appeal be allowed and impugned judgments and decrees be set aside. Consequently, the suit filed by the plaintiff/respondent be dismissed throughout.

I have heard learned counsel for the appellant and have also gone through the photocopy of the record furnished in Court today by learned counsel for the appellant.

The respondent/plaintiff filed a suit for recovery of ₹56,500/- against the appellant/defendant who was admittedly an Assistant Sub Inspector posted at the Police Lines, PAP, Jalandhar. The plaintiff/respondent in order to prove agreement dated 10.03.2011 (Ex.P1) stepped in the witness box as PW1. He reiterated the averments in the plaint. He specifically stated that the appellant/defendant had borrowed the said amount for some domestic purpose. The execution of the agreement is duly proved on record. The agreement when translated reads as under:-

“I, Gurmej Singh son of Lakhwinder Singh, am a resident of village Kajampur, Post Office Kandila, Tehsil Batala, District Gurdaspur. Today on 10.03.2011, I have taken a sum of ₹50,000/- (Rupees Fifty Thousand) for domestic purpose and this amount of ₹50,000/- (Rupees Fifty Thousand) has been taken from Sh.Sardool Singh son of Ajit Singh, resident of village Basarpura, Post Office Balpuria, Tehsil Batala, District Gurdaspur and I shall return this amount to Sh. Sardool Singh within about one year. In case I do not return this amount, the same be recovered through court process. I shall have no objection. This agreement has been typed in writing with the consent of both the parties in the presence of witnesses so that it can be used if need be. Today dated 10.03.2011.”

The abovesaid agreement is signed by the appellant/defendant as well as the plaintiff-Gurmej Singh. Signatures of Kabal Singh (PW2) are also available on the said agreement. PW2 Kabal Singh, the attesting witness has

clearly narrated about the execution of agreement dated 10.03.2011 (Ex.P1) by the appellant/defendant in his presence. PW3 Waris Masih deposed that the plaintiff/respondent paid a sum of ₹50,000/- to the defendant in his presence. The appellant/defendant in his written statement denied that the amount in question was ever borrowed from the plaintiff and agreement dated 10.03.2011 (Ex.P1) is a forged and fabricated document and must be the result of misrepresentation of facts. A perusal of the written statement filed by the appellant/defendant reveals that no such plea has been raised that the suit in question has been filed by the plaintiff in connivance with PW3 Waris Masih.

Learned counsel for the appellant has vehemently urged that the scribe of this writing has not been examined, neither is there a stamp/signatures of the stamp vendor nor the entry thereof in the register has been proved. Perusal of the photocopy of Ex.P1 reveals that the name of Gurmej Singh son of Lakhwinder Singh, resident of village Kajampur, Post Office Kandila, Tehsil Batala, District Gurdaspur as well as Sr. No.2803 dated 10.03.2011 are mentioned on the back side of the stamp paper. Contention of learned counsel for the appellant that this agreement is shrouded in suspicion and thus cannot be relied upon, is devoid of any merit in the facts and circumstances of the case. In the present case, it cannot be said that the execution of the document in question is shrouded in suspicious circumstances, thus not proved on record. It is not denied that the appellant/defendant was posted as Assistant Sub Inspector (ASI) with the Punjab Police at PAP, Jalandhar. Appellant while deposing as DW1 has merely denied that he appended his signatures on agreement dated 10.03.2011 (Ex.P1).

Contention on behalf of the appellant that the defendant at no stage refused for

having his signatures subjected to scrutiny by the handwriting and fingerprint expert but the plaintiff had never led any evidence, is untenable. This is so for the reason that the appellant/defendant was disputing his signatures. It was incumbent upon him to have led specific evidence to prove the same. The plaintiff, on the other hand, has duly discharged the burden upon him to prove the execution of the agreement (Ex.P1). The plea that the suit in question was filed due to the connivance of the plaintiff/ respondent with PW3 Waris Masih clearly appears to be an after thought. It is apparent that no such plea has been taken by the appellant/defendant in his written statement. Thus, this argumnet is clearly fallacious, unsubstantiated and beyond pleadings. Moreover, it is highly improbable that a mere driver would take up cudgels with with the appellant, who was posted as an ASI with the Punjab Police.

Judgment of this Court in Mangat Singh's case (supra) relied upon by learned counsel for the appellant is clearly distinguishable. The court was dealing with a case of an agreement to sell in a suit for specific performance in Mangat Singh's case (supra). The agreement in that case was sought to be proved merely by examining the document writer, typist/computer operator who had typed it. The agreement was typed on computer, executed on plain paper where adhesive stamps had been affixed. Stamps were allegedly issued by the stamp vendor, but not proved by summoning the register of the stamp vendor. It is in this situation it was held that the register of the stamp vendor wherein corresponding entries would have been made, had not been proved on record which created a cloud on the said document. In the present case agreement dated 10.03.2011 (Ex.P1) is duly proved on record.

It is pertinent to note at this stage that the appellant/defendant filed a suit against the plaintiff pleading that no loan had been taken from the plaintiff. This suit was dismissed in default under Order 9 Rule 8 CPC on 11.07.2014. No efforts were ever made by the appellant/defendant for restoration of the said suit. The contradiction and discrepancies as sought to be projected in the statements of PW2 Kabal Singh and PW3 Waris Masih are immaterial and do not detract from the case of the plaintiff in any manner. The plaintiff has duly proved his case against the appellant/defendant.

No other argument has been raised.

Both the learned courts below have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record. Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 23.12.2016 and 15.12.2017 passed by the learned Civil Judge (Junior Division), Batala and the learned Additional District Judge, Gurdaspur, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

October 01 , 2018.  
'om'

**( LISA GILL )**  
**JUDGE**

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|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |