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

**RSA No.6105 of 2017 (O&M)**
**Date of decision:30.10.2018**

Rakesh Kumar ... Appellant

Vs.

Tarun Kumar and another ... Respondents

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

Present:- Mr. B.D.Sharma, Advocate
for the appellant.

**AMIT RAWAL J. (Oral)**

Appellant-defendant no.2 is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for recovery of Rs.4,60,000/- with costs alongwith interest @6% from 18.02.2008, has been decreed.

The plaintiff instituted the suit on the ground that defendants were owner in possession of the house and he approached the plaintiff for grant of loan of Rs.4,60,000/-. In lieu thereof, the defendants mortgaged the house, vide registered mortgaged deed dated 18.02.2008 and agreed to pay interest @ 1.50% per month. On expiry of mortgage, the defendants did not repay the loan despite repeated requests, therefore, cause of action arose to file the suit.

Appellant-defendant no.2 contested the suit by denying the liability on the premise that on 30.06.2006, agreement to sell in respect of land measuring 40 kanals was entered with the father of plaintiff. The sale deed could not be executed due to some litigation pending between defendant and one Partap Singh. It was settled between the parties that agreement dated 30.06.2006 would be cancelled and the defendants would give security to the father of the plaintiff. The mortgage deed was without consideration. The Court while declining the defence of the defendants decreed the suit and so did the Lower Appellate Court.

Mr. B.D.Sharma, learned counsel appearing on behalf of the appellant submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law as the aforementioned aspect, i.e., adjustment of amount vis-a-vis liability of mortgage had not been looked into. The provisions of Section 91 of Indian Evidence Act, have erroneously been relied upon as there was a categoric assertion in the written statement that defendants had not received any amount of mortgage deed. The earnest money of Rs.3,25,000/- was paid to the father of plaintiff and performa respondent, vide agreement dated 30.06.2006 and thus, urged this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Sharma, for, a registered document and its contents carried a presumption of truth. The same has not been rebutted. The defendants have attempted to connect the execution of the agreement dated 30.06.2006 which was not with the plaintiffs but alleged to have been with his father and this fact had already been acknowledged by the Court in civil suit no.13-1 dated 23.01.2009 decided on 26.09.2012. Rakesh Kumar admitted his signatures on the mortgage deed Ex.P1.

In view of what has been observed above, I do not find any illegality and perversity in the impugned judgments and decrees which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

The appeal stands dismissed.

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

**October 30, 2018**
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No