

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

RSA No.1021 of 2019(O&M)

Decided on:05.07.2019

Raj Kumar

.....Appellant

versus

Jagdish

....Respondent

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.Rajesh Bansal, Advocate,
for the appellant.

DR.RAVI RANJAN, J. (Oral Judgment)

This appeal is directed against the Judgment and decree date 09.08.2018 passed by the Additional District Judge, Sonapat, in Civil Appeal No.17 RBT of 2015/2017 by which he has allowed the appeal setting aside the Judgment and decree dated 18.08.2015 passed by Civil Judge (Jr.Divn.) and though he has not disturbed the finding that the mortgage deed Ex.P1 is inadmissible in evidence under Section 49 of the Registration Act, 1908 (hereinafter to be referred as the 'Act') owing to its non-registration, however, has held that the transaction of Rs.2 Lakh from plaintiff to the defendant on 05.11.2008 stands established and therefore, the plaintiff has been found to have a right to recover such amount alongwith reasonable interest at the rate of 12% per annum from 05.11.2008 till 09.08.2018, and future interest at the rate of 6% per annum till payment of the amount in favour of the plaintiff.

1. Brief fact of the case is as follows:

The civil suit bearing No.785 of 2010 was filed by the

plaintiff/respondent for recovery of Rs.2 Lakh alongwith interest at the rate of 24% per annum from the date of its payment to the defendant till its actual realisation. According to the plaintiff, the defendant is the recorded owner of 1/24 share of the suit property in revenue estate of Gohana, Tehsil Gohana, District Sonapat. It is further alleged that the defendant had taken Rs.2 Lakh from plaintiff as loan to meet out his domestic needs and in return he mortgaged the suit property in his name for two years as a security to the loan amount. An agreement to mortgage the aforesaid land in favour of plaintiff was also executed by the defendant in presence of a witness. A receipt was also given by the defendant to the plaintiff for receiving an amount of Rs.2 Lakh. However, one of the terms of the agreement between the parties to the suit was that in case the defendant does not pay back the mortgaged money to the plaintiff, he would be entitled to get the sale deed executed and registered in his favour of the land which is subject matter of the mortgage or he would be entitled to recover the loan amount through the process of Court. It has been alleged that even after lapse of two years from the date of execution of agreement dated 05.11.2008, the defendant was not able to pay back a single penny to the plaintiff. Hence, the suit for recovery was filed.

2. The defendant appeared and contested the suit by filing a written statement taking a stand that neither any amount was borrowed from the plaintiff nor was any land mortgaged by him on 05.11.2008 vide any instrument of mortgage. The very execution of mortgage deed has been denied. It has been averred in the written statement that the plaintiff has forged the document and placed the same on record.

3. The trial Court, on appreciation of the rival pleadings framed

following issues:

1. Whether the plaintiff is entitled to a decree for recovery as well as consequential relief as prayed for?OPP
 2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
 3. Whether the plaintiff has no *locus standi* to file the present suit?OPD
 4. Relief.
4. The plaintiff has examined himself as PW1 and one Rajeswar Malik, Advocate and Notary Public, Gohana, to prove the mortgage deed Ex.P1 and receipt Ex.P2, as PW2. The attesting witness to the mortgage deed, viz., Surender Kumar, has been examined as PW3.

The plaintiff also tendered *jamabandi* of the land of the defendant as Ex.PX

However, the defendant did not lead any evidence at all.

5. The trial Court, after considering the materials available on record, decided issue no.1 against the plaintiff and issues no.2 and 3 against the defendant.

Issue no.1 has been decided against the plaintiff dismissing the suit for the reason that the mortgage deed executed by the defendant in favour of plaintiff as a security to loan transaction mandatorily required to be registered under the Act which was not done by the plaintiff. As such, the suit was dismissed.

The Judgment and decree of the trial Court was put to challenge by the plaintiff before the Ist Appellate Court. The Ist Appellate Court, after hearing the parties, came to the conclusion that even though the mortgage deed, i.e., Ex.P1 would be inadmissible in evidence as per Section 49 of the Act, owing to its non-registration, however, it is cogently established from the testimony of PW1 Jagdish (plaintiff) and PW3 Surender (attesting

witness to the mortgage deed), that the defendant had taken a loan of Rs.2 Lakh from the plaintiff on 05.11.2008, which stands substantiated by the receipt Ex.P2. It is not the case of the defendant that he has repaid the loan amount to the plaintiff. Thus, the appeal was allowed and Judgement and decree was set aside holding that the plaintiff is entitled to recover amount of Rs.2 Lakh from the defendant alongwith interest at the rate of 12% per annum from the date of execution of the money receipt/mortgage deed, i.e., 05.11.2008 till the date of Judgement and future interest at the rate of 6% per annum till final payment of the amount.

Hence the present appeal has been preferred by the defendant/appellant.

6. Learned counsel appearing for the appellant has vehemently argued before this Court that the defendant/appellant has denied the transaction of Rs.2 Lakh as he has not taken any loan from the plaintiff. He has further denied having put any signature either on the mortgage deed or money receipt. In view of the denial by the defendant, it was the duty of the plaintiff to request the trial Court to appoint an expert to establish as to whether the signature on the mortgage deed or the money receipt is of the defendant or not. In the absence of that, it is urged, that the appeal should not have been allowed by the Ist Appellate Court.

However, I do not find any force in the submission made on behalf of the appellant for the following reasons:

The case of the plaintiff is that on 05.11.2008 Rs.2 Lakh was paid to the defendant by him in the presence of a witness who had also signed as an attesting witness on the mortgage deed and a receipt acknowledging such money transaction was also given by the defendant to

the plaintiff at that point of time and on the same date the mortgage deed and money receipt was affidavited before the Notary public. The attesting witness has been examined as PW3 who has supported the case of the plaintiff and has stated that in his presence the signature was put by the defendant on the mortgage deed as well as on the money receipt and he has also supported the money transaction of which he is also a witness. That apart, the Notary public, before whom the documents were affidavited, has also been examined as PW2 and he has supported such affidavit. Thus, in my considered view, the onus was discharged by the plaintiff and now it was the turn of defendant to prove it otherwise because it was the defendant who had questioned his signature on the documents. In these facts and circumstances, the defendant could have moved before the trial Court for appointing an expert so that the dispute regarding putting his signature could have been resolved but he did not have any courage to do that. Not only that, infact no evidence has been led by the defendant at all.

7. It is next contended by the appellant that there is no condition in the mortgage deed that the plaintiff would be entitled to recover the amount if the defendant fails to pay back the loan amount. Such limb of submission raised on behalf of the appellant is noted only to be rejected for the reason that even if it is not written in the mortgage deed that the plaintiff would be entitled to recover the loan amount, that would make no difference if it is established that loan was given to the defendant and a time frame was also given for returning the same. Even if such term and condition is not in the mortgage deed, a person who has given loan would be entitled to recover it in accordance with law through the process of Court.

8. By way of last resort it is submitted on behalf of the appellant

that once Ex.P1 has been found to be inadmissible in evidence in view of the fact that it was not a registered, the receipt should also be rejected as such. Therefore, the plaintiff should not be held to be entitled to recover the loan amount. This limb of argument is also not tenable for the reason that the alleged mortgage deed would not be admissible for the purpose of the mortgage of the land in view of his mandatory registration required under Section 49 of the Act but the transaction of money by way of loan to defendant is proved by the witnesses also and a receipt thereof is there already, in such a case the right of the person who has advanced loan to recover the same cannot be ousted for the said reason as he would always be entitled to recover the same in accordance with law and through the process of Court. The receipt, which is evidence of transaction of money, can not be held to be inadmissible as the same was not required mandatorily to be registered under the Act.

9. Having given anxious consideration of the aforesaid facts and circumstances, in my considered view, it would be very difficult to accept the aforesaid submission made on behalf of the appellant/defendant. In the result, this appeal, being devoid of any merit, is dismissed.

July 05, 2019

dharamvir

**(DR. RAVI RANJAN)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
YesNo