

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

**RSA No. 3216 of 2019 (O&M)**

**Date of Decision: December 16, 2019**

**Manjit Singh (deceased) through LRs and others**

**..... APPELLANT(s)**

**Versus**

**Angrej Singh and others**

**..... RESPONDENT(s)**

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

Present: Mr. S.S. Walia, Advocate  
for the appellants.

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**LISA GILL, J.**

Appellant-defendant is aggrieved of judgment and decree dated 20.10.2018, passed by the learned Additional District Judge, Fatehabad as well as judgment and decree dated 22.12.2014, passed by the learned Additional Civil Judge (Senior Division), Tohana.

Brief facts necessary for the adjudication of the case are that the plaintiffs-respondents filed a suit for recovery of Rs.4,30,000/- from the appellants-defendants alongwith future interest @ 18% per annum till its realization. It is pleaded that the plaintiff firm M/s. Angrej Singh Ramesh Kumar, Commission Agents, a proprietorship firm with the plaintiff Angrej Singh being the proprietor thereof was doing the business of a commission agent at the new grain market (New Anaj Mandi) Tohana. The customers during the course of business, it is pleaded, would sell their crop with the plaintiff firm on commission basis and they would also take advances from time to time for their domestic and other purposes. Defendant Gurdev Singh (now represented by his legal representatives) is claimed to have taken an

advance of Rs.2,82,000/- on 22.12.2006 on an assurance to sell the crops for the year 2007 through the plaintiff firm. He is also stated to have promised to repay the said amount with interest from the sale proceeds of the crop. As a token of receipt of the said amount, Gurdev Singh is pleaded to have appended his thumb impression on the Rokar Bahi of the plaintiff firm. However, the said defendant did not sell his crop through the plaintiff firm neither the amount was repaid with interest as undertaken. Legal notice dated 03.12.2009 was sent to the defendant, who neither replied to the notice nor made the payment. An amount of Rs.1,48,000/- was stated to have accrued with interest, taking the total amount due to be Rs.4,30,000/-. On the refusal of the defendant to pay the amount, the suit was filed.

The suit was contested by the defendant while taking various preliminary objections. It is denied that any amount had been taken by the defendant Gurdev Singh as pleaded or that he promised to sell his crop through the plaintiff firm. The defendant claims himself to be 72 years old and that his sons used to sell their crop through the plaintiff firm and he would only accompany his sons on some occasions. The defendant's sons, it is stated, have been cultivating their land since 2001. It is further claimed that in case, the plaintiff firm managed to procure the thumb impressions of the defendant on Bahi fraudulently, the same was not in his knowledge. It is also stated that the defendant was never in need of any money, neither had he appended his thumb impressions on any Bahi. His acknowledgement of receipt of any amount under plaintiff firm is claimed to have been fraudulently reflected in the said Bahi. Moreover, the plaintiff firm, it is

contended, had no license to lend any money on interest. Dismissal of the suit was thus prayed for.

Replication was not filed and following issues were framed on the basis of the pleadings of the parties:-

1. Whether the present defendants being the legal heirs of Gurdev Singh (since deceased) are liable to pay the sum of Rs.4,30,000/- along with future interest @ 18% per annum as mentioned in the plaint? OPP.
2. Whether the suit of the plaintiffs is false and frivolous and is liable to be dismissed with special costs ? OPD
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs have no locus-standi and cause of action to file the present suit? OPD
5. Whether the plaintiffs have concealed the true and material facts from this court, if so, its effect? OPD
6. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
7. Whether the suit of the plaintiffs is time barred? OPD
8. Whether the Civil Court at Tohana has no jurisdiction to try and decide the suit? OPD
9. Whether the suit is bad for mis-joinder of parties and non joinder of necessary parties? OPD
10. Relief.

Defendant Gurdev Singh passed away during the pendency of the suit and his legal representatives were brought on record vide order dated 28.04.2012, passed by the learned trial Court.

Evidence was led by the parties in support of their respective stands.

Learned trial Court on consideration of the evidence on record, facts and circumstances concluded that the plaintiff had successfully proved the receipt of the amount of Rs.2,82,000/- by the defendant Gurdev Singh. Thumb impressions of Gurdev Singh were duly authenticated on the Bahi Ex.P-1. Accordingly, the suit was decreed for recovery of Rs.2,82,000/- with interest @ 9%.

Appeal preferred by the defendants-appellants was dismissed by the learned Additional District Judge, Fatehabad, vide judgment and decree dated 20.10.2018. Aggrieved therefrom, present appeal has been filed.

Learned Counsel for the appellants vehemently argues that both the learned Courts below have grossly erred in law and on facts in decreeing the suit in favour of the plaintiffs. It is submitted that the evidence on record does not in any manner prove the receipt of money in question by the defendant Gurdev Singh. First and foremost, no reliance could have been placed on the entries in the Bahi. Moreover, the defendant Gurdev Singh used to append his signatures on documents and comparison of thumb impression in the Bahi with the so called thumb impressions of Gurdev Singh with thumb impressions on a Will are unjustified and uncalled for and do not in any manner advance the case of the plaintiffs as it is not proved that the Will was executed by Gurdev Singh. The plaintiff firm, it is submitted, did not have any license to give the money on interest. Defendant Gurdev Singh, in any case, had nothing to do with the transactions if any, which may have been carried out by his sons with the plaintiff firm for disposal of the crop.

It is further contended that there are substantial questions of law, which arise for consideration of this Court, in-as-much as there is complete misreading of the evidence on record and both the impugned judgments and decrees are riddled with discrepancies and infirmities and are thus liable to be set aside.

I have heard learned counsel for the appellants at length and have gone through the photocopy of the record produced by him in Court today.

The case set up by the plaintiffs-respondents is that the defendant Gurdev Singh had taken an advance of Rs.2,82,000/- on 22.12.2006. In order to prove his case, plaintiff-Angrej Singh himself has stepped into the witness box as PW-1. Entries in the Bahi Ex.P-1 have been relied upon to prove the transaction. The said Bahi is proved to be maintained in the course of business and in fact there is nothing to the contrary pointed out by the learned counsel for the appellants.

I do not find any merit in the argument raised by learned counsel for the appellant that the Munim of the plaintiff firm namely Rajpal had not been examined by the plaintiff to prove the entry, therefore, this evidence be discarded. PW-1 has himself clearly deposed in respect to the facts as pleaded. The entries in the Bahi Ex.P-1 and Ex.P-2 have been proved. Thumb impression of the defendant Gurdev Singh in the Bahi have been authenticated after examination by the Handwriting and Fingerprint Expert (PW-5) Dr. Inderjeet Singh, who has tendered his report Ex.PW5/1. The comparison of the thumb impressions on the Bahi has been made with

the thumb impressions of Gurdev Singh on a registered Will No. 305 dated 31.12.2010, executed by Gurdev Singh son of Jangir Singh. PW-2 Atam Parkash, Registration Clerk examined by the plaintiff, has duly produced the relevant record in respect to the said registered Will. The said registered Will No. 305 duly bears the photograph of Gurdev Singh, duly identified by the defendants DW1 and DW2. The Will has been produced through the official source. The relevant entries have been proved by him. Learned counsel for the appellants is unable to point out any cross-examination worth the name of this witness, PW2.

Learned Additional Sessions Judge, Fatehabad has correctly observed as under:-

*“After the plaintiffs have led evidence to substantiate bahi entry Ex.P1, it was for the defendants to rebut the same and to have controverted the same by placing on record any other admitted thumb impressions of Gurdev Singh and then to get compared the same with bahi entry Ex.P-1. The defendants failed to lead any such evidence. This court is of the opinion that defendant has come up with simple denial of his thumb impressions on bahi entry Ex.P-1 and further he has cleverly starting putting signatures so that his thumb impressions may not be got compared. The case of defendant is dented on two aspects, firstly, defendant admitted his thumb impressions on the bahi entry indirectly but later on, in reply to admission in denial application, it is pleaded that the contents of written statement be read on that aspect, and secondly, the defendant now started signing the documents, after institution of this suit, which would indicate that he knows a bit of writing and signing and has not grown that old*

*that he would mistakenly put his thumb impressions on bahi entry with a commission agent. The evidence adduced would indicate that defendant Gurdev Singh was selling his crops with plaintiff's earlier firm. The parties are from same village. Such a person (defendant) would not put his thumb impression on the bahi. In these days it is highly improbable and unnatural that a farmer would conveniently put his thumb impressions on the bahi entry without obtaining any loan. It is not the case of defendant that he had borrowed a lesser amount which has been inflated by the commission agent. The stand of defendant is that of complete denial with alternative plea. Depositions of DW-1 Gurmeet Singh and DW-2 Surjeet Singh would not improve the case of defendants that thumb impressions of Gurdev Singh were obtained fraudulently. Even in civil proceedings the fraud has to be first pleaded specifically and then proved to the hilt as so required in criminal cases. No criminal case was ever instituted nor any criminal complaint was filed for any such alleged fraud committed by plaintiffs against defendant, though he survived for about two years after institution of the suit. The ratio of aforesaid authorities relied upon by learned counsel for the appellant would not help his case being distinguishable on facts. The depositions of proprietor plaintiff Angrej Singh PW1 of plaintiff firm and of Balkar Singh PW4 scribe/author of the bahi entry Ex.P-1 proves the case of the plaintiff. Non-examination of Rajpal who simply certified correctness/genuineness of the photocopy of the entry would not be fatal to the case of the plaintiff. The account books are maintained by the plaintiff regular course of business, hence, said bahi entry and roker khata entry are admissible in evidence. The case of the plaintiff is proved."*

Both the learned Courts below have correctly held that there is no such evidence on record to indicate any fraud by the plaintiff firm upon the defendant Gurdev Singh. It is not disputed that Gurdev Singh's sons had transactions with the plaintiff firm in connection with sale of their crop. To say that Gurdev Singh had nothing to do with the same and that in case any amount had to be advanced, it would only be to the sons of Gurdev Singh, is not tenable and neither substantiated by any evidence on record. Both the learned Courts below have rendered the impugned judgments and decrees after proper appreciation of the evidence on record.

Keeping in view the facts and circumstances as discussed above, there is no question of law much less a substantial question of law, which is involved for consideration in this regular second appeal.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 20.10.2018, passed by the learned Additional District Judge, Fatehabad, as well as judgment and decree dated 22.12.2014, passed by the learned Additional Civil Judge (Senior Division), Tohana, which calls for any interference by this Court in second appeal. However, there is merit in the argument raised by learned counsel for the appellants that keeping in view the prevalent rates of interest, interest @ 9% as awarded by the learned Courts below is on the higher side. Keeping in view the facts and circumstances of the case, it is considered just and appropriate to reduce the interest from 9% per annum to 6.5% per annum. This order is being passed without issuance of the notice to the respondents, keeping in view the fact

that the variation in the total amount is about Rs.1 lakh only and calling upon the respondents only for the said limited aspect would only entail unnecessary and avoidable expenditure for the respondent/plaintiff, leading to unnecessary delay.

No other argument has been addressed.

There is a delay of 98 days in refiling and 15 days in filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing and refiling of this appeal has been rendered academic. Applications are, accordingly, disposed of.

Accordingly, with the variation in the rate of interest, this appeal is dismissed with no order as to costs.

December 16, 2019.  
Sunil

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

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