

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

RSA No.1296 of 1988 (O&M)

Date of decision:21.02.2019

Sher Deen

... Appellant

Vs.

Jai Singh (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.K.Verma, Advocate
for the appellant.

None for the respondent.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the judgment and decree of the Lower Appellate Court whereby suit of the respondent-plaintiff for recovery, has been decreed.

The plaintiff filed the civil suit for recovery of Rs.6,677/- (Rs.6145 as principal amount and Rs.532/- as interest) against the appellant-Sher Deen on the premise that appellant-defendant was owner of 1/3rd share of the land measuring 33 kanals 3 marlas and had entered into agreement to mortgage the land measuring 16 kanals 11 marlas for a sum of Rs.10,000/- vide agreement dated 30.4.1984 and sum of Rs.2,000/- as earnest money was received by the defendant from the plaintiff on 30.4.1984. On 27.6.1984, defendant received a sum of Rs.4,000/- towards the mortgage amount for the reason that said land was pledged with the primary land

mortgage bank. The amount was accordingly deposited in the account of the defendant and after that defendant received a sum of Rs.145/- from the plaintiff for his house hold expenses and in this way, defendant received a sum of Rs.6145/-. The suit land was redeemed by the defendant from the Bank by obtaining a clearance certificate but the defendant refused to execute the mortgage deed in favour of the plaintiff. The plaintiff requested the defendant a number of time but did not yield result, thus, cause of action accrued to file the suit.

The defendant opposed the suit and stated that defendant had borrowed a sum of Rs.2,000/- from the plaintiff in order to secure the amount of loan. The plaintiff requested to execute an agreement to mortgage his share in the suit land against the receipt of Rs.10,000/- and arranged a sum of Rs.2000/- from the maternal uncle and therefore, requested the plaintiff to get the money deposited in the Bank and thus, claimed defendant was only liable to pay a sum of Rs.2,000/-. Replication was filed.

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

1. *Whether the plaintiff is entitled to recover the amount of Rs.6667/- as claimed in the plaint?*
2. *Whether the defendant executed any receipt for this amount vide agreement dated 31.1.1985?OPP*
3. *Whether the plaintiff is entitled for any interest? So at what rate and what extent?OPP*
4. *Whether the suit is not maintainable?OPP*

5. *Whether there is no lawful agreement, if so to what effect?OPD*
6. *Whether the alleged agreement is a sham transaction and is outcome of fraud and coercion if so to what effect?OPD*
7. *Whether the defendant is small farmer and is protected under the Haryana Relief of Agricultural Industries Act, 1975?OPD*
8. *Relief.”*

The plaintiff in support of the evidence examined five witnesses and brought on record Ex.P1 to Ex.P10, i.e. loan clearance certificate, agreements, postal receipt, registered letters, order of the Joint Sub Registrar, copy of order of appearance etc. On the other hand, defendant examined five witnesses and closed the evidence.

On the basis of the evidence, the trial Court partly decreed the suit but the Lower Appellate Court modified the same confining it to the principal amount.

Mr. R.K.Verma, learned counsel appearing on behalf of the appellant-defendant submitted that judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law as the trial Court has rightly held that plaintiff was not entitled to recover the amount of Rs.4145/- from the appellant and confined the decree to Rs.2,000/-. The claim of the plaintiff was falsified to the testimony of DW3 whereby it has come on record that defendant had been paying the amount to the plaintiff for depositing the same in the bank as her husband was in judicial lock up.

The plaintiff miserably failed to prove the execution of the agreements to mortgage, Ex.P3 and Ex.P4.

During the pendency of the appeal, the respondent-plaintiff had died. The application for bringing on record his legal representative was filed which was allowed and legal representatives were ordered to be brought on record.

As per office report, notices were sent to the legal representatives. However, the same has not received back so far.

I have heard the learned counsel for the appellant-defendant, appraised the judgments and decrees as well as record of both the Courts below and of the view that following substantial question of law arises for adjudication of the present appeal:-

“1. Whether the judgment and decree of the Lower Appellate Court suffers from illegality and perversity?”

The undisputed fact is that defendant had admitted to have taken assistance of loan, whether it is Rs.6145/- or Rs.2000/- as sought to be projected in the written statement.

PW5-Jai Singh stated that defendant had received a sum of Rs.4,145/- after the execution of the agreement photostat copy thereof is Ex.P4. In fact, he had deposited the amount in the Land Mortgage Bank and obtained receipt Ex.P1 and obtained the clearance certificate Ex.P2 but the defendant did not execute the mortgage deed.

PW3-Joginder Kumar Wasika Nawis and PW2-Sarwan Singh, Sarpanch, independent respective witnesses also proved the execution of the

agreement. In the written statement, respondent stated that his wife had arranged Rs.2,000/- from her maternal uncle and Rs.1969 from the house but in the testimony stated that wife had brought Rs.3000/- from her brother and Rs.1000/- from the house. There was stark contradiction.

PW1-Lachman Dass Clerk of the Land Mortgage Bank proved the fact that on 27.6.1984, Jai Singh-plaintiff deposited a sum of Rs.3,669.55 paise on behalf of defendant-Teja son of Nizammudin and issued a receipt Ex.P1, thus, from the testimony of aforementioned witnesses, defence of the defendant stood belied.

As an upshot of my findings, the findings of fact and law based upon the testimony of the witnesses which have gone un-rebutted and un-controverted cannot be said to be suffering from illegality and perversity. Substantial question of law, aforementioned is answered in favour of the respondent and against the appellant.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 21, 2019

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No