

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-3438-2019 (O&M)

Date of Decision: 18.07.2019

Vinod Kumar

.... Appellant

Versus

Mohkam Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Shvetanshu Goel, Advocate for the appellant.

RAMENDRA JAIN, J. (ORAL)

The defendant-appellant has preferred this regular second appeal against judgment and decree dated 23.04.2019 of the Ist Appellate Court, dismissing his appeal, thereby affirming judgment and decree of the trial Court dated 17.08.2015, whereby, suit of the respondent-plaintiff for recovery of ₹2,50,000/- along with interest @ 12% per annum from the date of payment till its realization, was decreed.

Briefly, respondent-plaintiff filed a suit against the appellant for recovery of ₹2,50,000/- along with interest @ 12% per annum from the date of payment till its realization. The trial Court after holding trial, decreed the suit in *toto* vide judgment and decree dated 17.08.2015.

Being aggrieved, the appellant approached the Ist Appellate Court, but remained un-successful as his appeal was dismissed.

Learned counsel for the appellant-defendant *inter alia*

contends that both the Courts below failed to appreciate that there was a cutting in receipt dated 26.02.2005 (Ex. P-1), whereas statement of PW-2 Hasnraj, own witness of the respondent-plaintiff was contrary to the said fact inasmuch as, he falsely testified that there was no cutting in the receipt at the time he signed. Thus, it was proved on the record that receipt Ex. P-1 was a forged and fabricated document. Another marginal witness of the said receipt, namely; Rajesh was not examined by the respondent-plaintiff for the reasons best known to him. Therefore, the Courts below ought to have drawn adverse inference. Even otherwise, receipt Ex. P-1 was not legally proved, inasmuch as, both the Courts below also erred in ignoring the statement of PW-2 Hansraj, marginal witness to said receipt that alleged transaction of lending money to the appellant by the respondent had not taken place in his presence.

Having given thoughtful consideration to the submissions of learned counsel for the appellant, this Court finds the instant regular second appeal merits dismissal for the reasons to follow:-

As per settled proposition of law, statement of a witness has to be read as a whole and not in isolation. In case, statement of PW-2 Hans Raj, would be read as a whole, in that eventuality, only irresistible conclusion, which can be drawn, is that he had fully proved due execution of receipt (Ex. P-1) by the appellant-defendant in favour of respondent-plaintiff.

As far as, cutting in the receipt is concerned, the appellant-defendant did not raise any doubt during cross-examination of PW-1 respondent-plaintiff or PW-2 Hans Raj, to its validity. Therefore,

evidence led by respondent-plaintiff remained un-controverted. In such a situation, there was no necessity to examine second attesting witness of receipt (Ex. P-1) by the respondent-plaintiff, inasmuch as, there is no legal requirement to examine any marginal witness to a document except for a Will.

Cutting in receipt (Ex. P-1) by itself did not invalidate it. Had there been any dishonest intention of respondent-plaintiff to cheat the appellant-defendant, in that eventuality, he must have prepared a forged receipt without any cutting. Alleged cutting in the aforesaid receipt, may be on account of some human error which by in itself does not extend any benefit to the appellant-plaintiff.

The appellant-defendant did not lead any contrary evidence to disapprove receipt (Ex. P-1), examining some handwriting or finger print expert, rather he took a vague/unsubstantiated plea that the same was forged and fabricated document. It is settled proposition of law by now that in civil cases also, allegations of forgery, fraud and misrepresentation are to be proved like a criminal charge, which the appellant has miserably failed to do so.

After going through the concurrent findings recorded by both the Courts below in the impugned judgments, this Court finds that the respondent-plaintiff fully has been able to establish that he had advanced friendly loan of ₹2,50,000/- to the appellant-defendant against receipt (Ex. P-1) and, thus, his suit has rightly been decreed by both the Courts below.

No question of law, much less substantial, has been raised in the instant appeal. Therefore, the same is held not maintainable.

In view of the above, the instant appeal, being meritless, is dismissed.

July 18, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No