IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1264-2012(O&M)
Date of decision:-1.11.2019

Kulbir Singh @ Satbir Singh

...Appellant

Versus

Anil Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.S. Kathuria, Advocate
for the appellant.

Mr.Deepinder Ahlawat, Advocate
for respondent No.1.

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H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Anil Kumar son of Sh.Abey Ram, resident of village Goriya, Tehsil and District Jhajjar had brought a suit against the defendants i.e. Kulbir Singh @ Satbir Singh, Bhupender and Ramphul seeking recovery of Rs.2,47,500/-.

As per the case of the plaintiff, defendant No.1 being owner in possession of the land detailed in para No.1 of the plaint had mortgaged it in favour of the plaintiff and defendant No.2 – Bhupender to the extent of ½ share each without delivering possession, for a sum of Rs.4,95,000/- vide registered mortgage deed dated 13.8.2001; as per the terms and conditions agreed upon between the parties, the rate of interest was settled at 2% per month and defendant No.1 had agreed to get the mortgaged land redeemed up to 12.8.2002 by paying an amount of Rs.4,95,000/- with interest up to date and in case he failed to do so then the mortgagees could recover their amount with interest by getting the mortgaged land sold and in that event defendant No.1 would be responsible for all expenses, damages and costs; the defendant No.1 had failed to get the mortgage land redeemed and to pay the mortgage money with interest and cost and rather he tried to sell the land to defendant No.3 in order to defeat the claim of the plaintiff, giving rise to a cause of action to the plaintiff to bring the suit.

On notice only defendant No.1 had put in appearance, whereas defendants No.2 and 3 did not appear despite service, as such they were proceeded against ex-parte.

Defendant No.1 filed written statement contesting the suit submitting that he is owner in possession of the land in question. According to the answering defendant, he had received only a sum of Rs.2,50,000/- and not Rs.4,95,000/- from the plaintiff and defendant No.2; he had got released the suit property by paying a sum of Rs.3 lakhs to the plaintiff and defendant No.2 on 2.5.2002 and a writing in that regard was executed on the back side of the mortgage deed. According to the answering defendant, the suit was not maintainable in the present form and the plaintiff had concealed the material facts from the court; the plaintiff had not returned the original mortgage deed to defendant No.1 and in that way had cheated him; the plaintiff and defendant No.2 had not written on the back of the mortgage deed regarding the receipt of mortgage amount. Refuting the remaining allegations in the plaint, such defendant prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to recover Rs.2,47,500/- at the rate of 2% per month? OPP.
2. Whether the plaintiff is entitled for the relief of injunction as prayed for? OPP.
3. Whether the suit of the plaintiff is not maintainable? OPD.
4. Whether the plaintiff has suppressed the true and material facts from the Court? OPD.
5. Relief.

Both the parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff, issues

No.3 and 4 against the defendant. Resultantly, the suit of the plaintiff was decreed with costs and a decree for recovery of Rs.2,47,500/- with interest @ 2% per month up to the date of filing of the suit was passed in favour of the plaintiff and against defendant No.1; the plaintiff was also entitled to interest @ 6% per annum from the date of filing of the suit till its realisation. This was so done vide judgment and decree dated 12.10.2010.

Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal in the Court of District Judge, Jhajjar, which was assigned to Additional District Judge, Jhajjar, who vide judgment and decree dated 16.11.2011 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed the Courts below, the defendant No.1 has filed the present regular second appeal before this Court, notice of which was issued to respondents No.1 and 2. However, only respondent No.1 appeared through counsel.

I have heard learned counsel for the parties besides going through the records.

Firstly, coming to the judgment passed by the trial Court. The trial Court has observed that defendant No.1 admits the execution of mortgage deed dated 13.8.2001 by him in favour plaintiff and defendant No.2. In terms of said mortgage deed the plaintiff and defendant No.2 had advanced a loan of Rs.4,95,000/- to defendant No.1 repayable with interest @ 2% per month till date of payment of loan and half of the loan amount was contributed by the plaintiff and remaining half by defendant No.2, in that way a sum of Rs.2,47,500/- was advanced to defendant No.1 by the plaintiff, therefore, the plaintiff is entitled to recover this amount with interest to the tune of Rs.82,500/- with future interest @ 6% per annum. Dealing with the claim of defendant No.1 that he had actually received a loan of Rs.2,50,000/- only and he has already paid a sum of Rs.3 lakhs to plaintiff and defendant No.2 getting the suit land redeemed, the trial Court has observed that the burden was heavily upon defendant No.1 to prove the repayment of the loan but he had failed to produce any evidence in the form of receipt etc. to show that he had repaid the loan amount with interest to plaintiff and defendant No.2. The defendant No.1 had claimed that there is an endorsement on the mortgage deed itself regarding his having paid a sum of Rs.3 lakhs to the plaintiff and defendant No.2 but then such original mortgage deed is not there before the Court from which this fact could be ascertained. The trial Court has rightly come to the conclusion that defendant No.1 has failed to produce any receipt etc. showing that he has repaid the loan amount with interest to plaintiff and defendant No.2. He could not get the original mortgage deed produced in the Court to show that some endorsement is there on the mortgage deed with regard to payment of Rs.3 lakhs by defendant No.1 to the plaintiff and defendant No.2. It may be mentioned here that the contention of the defendant No.1 that as a matter of fact he had received a sum of Rs.2,50,000/- only from the plaintiff and defendant No.2 though the amount mentioned in the mortgage deed is Rs.4,95,000/-, this contention does not come out to be plausible or convincing. It is specifically mentioned in the mortgage deed, which is a registered document that a sum of Rs.4,95,000/- was being given by the plaintiff and defendant No.2 in equal shares to defendant No.1. The Sub Registrar, a public servant acting in discharge of his official duties would not have registered the document, if he was satisfied that the contents thereof were not correct and whenever a document is registered, the Sub Registrar inquires from the person concerned as to whether he had received the consideration amount or not and if defendant No.1 had actually received a sum of Rs.2,50,000/- instead of Rs.4,95,000/-, he could very well have agitate this point before the Sub Registrar concerned refusing to append his signatures on the mortgage deed at the time of registration of the mortgage deed but obviously he did not do so. Section 91 and 92 of the Evidence Act also prohibits leading of oral evidence to explain any term or condition contrary to the one given in a written document. Therefore, this plea of defendant No.1 cannot be believed.

Learned Additional District Judge, Jhajjar was in full agreement with the trial Court in that regard. Defendant No.1 having failed to show the repayment of loan amount with interest and cost or that the mortgaged land stood redeemed, is certainly liable to pay 50% share in the principal amount with interest at the agreed rate to the plaintiff. The suit was rightly decreed by the trial Court and appeal against it was correctly dismissed by the learned Additional District Judge, Jhajjar.

Learned counsel for the appellant has referred to an authority i.e. ***Mohinder Singh Versus Krishan Lal and others, 2009(2) RCR(Civil)642***. But the said judgment does not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

1.11.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No