

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

RSA-1122-2014(O&M)

Date of decision:-5.2.2019

Gurdial Singh

...Appellant

Versus

Dalveer Kaur

...Respondent

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

Present: Mr.Tarunveer Vashisht, Advocate
for the appellant.

Mr.Ishan Gupta, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Gurdial Singh had brought a suit against defendant Partap Singh seeking recovery of Rs.4,55,000/- along with interest on the basis of pronote/receipt dated 27.10.2000 besides craving for grant of permanent injunction restraining the defendant from alienating the suit property.

As per the version of the plaintiff, defendant Partap Singh

had raised a loan of Rs.3,50,000/- from him on 27.10.2000 and executed a pronote and receipt in his favour putting his signatures thereon in presence of the witnesses and the witnesses had attested those documents; that the defendant had agreed to repay the loan amount with interest @ 1.50% per month on demand, however, he failed to pay any amount to the plaintiff towards principal or interest on demand despite repeated requests, giving rise to a cause of action to the plaintiff to bring the suit in question.

On notice, the defendant appeared and filed written statement contesting the suit raising legal plea that the Court in question lacked territorial jurisdiction to entertain and try the suit since the defendant did not have any property at village Dharamgarh Chhana, whereas the alleged pronote and receipt were executed at Patran, Tehsil Samana. On merits, the defendant denied having raised any loan from the plaintiff or having executed any pronote and receipt. He dubbed those documents to be forged and fabricated contending that the alleged witnesses were closely related to the plaintiff, whereas the alleged scribe was commission agent of the plaintiff. Refuting the remaining allegations, the 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 defendant executed pronote dated 27.10.2000 in favour of plaintiff for a sum of Rs.3,50,000/-? OPP.
2. Whether the plaintiff is entitled to recovery of suit amount alongwith interest, if so at what rate of interest? OPP.
3. Whether this Court has no jurisdiction to try and decide the present suit? OPD.
4. Whether the plaintiff has not come to the Court with clean hands? OPD.
5. Relief.

Both the parties led evidence in respect of their claims.

During the course of his evidence, the plaintiff got his own statement recorded as PW1 repeating on oath his case as given in his pleadings. In addition to that he examined Sh.Ajaib Singh as PW2, HC Pritam Singh as PW3, Sh.P.C. Jindal, Advocate as PW4, Sh.Satnam Singh as PW5, Sh.Navdeep Gupta, Handwriting and Fingerprint Expert as PW6. After tendering certified copy of affidavit Mark X, the evidence of the plaintiff was closed.

In rebuttal, defendant Partap Singh got his statement recorded as DW1 and repeated on oath his version as given in the written statement. In addition to that he examined Sh.Manjit Singh as DW2. With that the evidence of the defendant stood closed.

It is pertinent to mention that the defendant had died during the pendency of the suit and his legal representative was brought on record.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff, issue No.3 against the defendant, issue No.4 against the defendant. Resultantly suit of the plaintiff was decreed for recovery of Rs.3,50,000/- with interest @ 12% per annum from the date of execution of pronote till decree and future interest @ 6% per annum from the date of decree till realization. Since the defendant had died during the pendency of the suit, the trial Court directed that the decree would be executable against all the legal representatives of the deceased Partap Singh, who had succeeded to his estate. Relief of permanent injunction was, however, not granted to the plaintiff. This was so done vide judgment and decree dated 23.12.2010.

Legal representative of the defendant was aggrieved by the said judgment and decree and she had filed an appeal before the Court of District Judge, Sangrur, which was assigned to Additional District Judge, Sangrur, who vide judgment and decree dated 27.7.2013 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit.

Being dissatisfied with the judgment and decree passed by the First Appellate Court, the plaintiff had filed the present regular

second appeal before this Court, notice of which was issued and the legal representative of respondent-defendant appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The crucial thing to be seen in this case is that though the plaintiff had brought the suit on the basis of pronote/receipt said to have been executed by the defendant in favour of the plaintiff in consideration of raising loan of Rs.3,50,000/- from him but the original pronote and receipt did not see light of the day. Only photostat copy of the pronote and receipt was placed on the record. The plaintiff had moved an application for permission to seek secondary evidence to prove pronote and receipt for the reason that the original of those documents were not traceable and such permission was granted to them, subject to proof of loss and existence.

The trial Court by adopting a casual and cursory approach came to the conclusion that the original pronote and receipt were there, which had been misplaced, however, the execution was proved, had decreed the suit. But the First Appellate Court properly appreciated the facts and circumstances of the case in light of the evidence available on the record, disagreeing with the trial Court on

that point and for the said reason dismissed the suit.

I find the reasoning given by the First Appellate Court to be cogent and convincing and I do not see any reason to disagree with the same. As per the case of the plaintiff, the original pronote and receipt had been handed over by him to his counsel Sh.PC Jindal, Advocate, subsequently those were not found to be in his custody. The counsel for the plaintiff had moved an application on 24.3.2003 seeking permission of the Court to lead secondary evidence mentioning therein that at the time of filing of the suit, photocopy of pronote and receipt was placed on record, thereafter original pronote and receipt dated 27.10.2000 were not traceable, the same had been misplaced somewhere and could not be traced despite every possible effort, therefore, permission be granted to lead secondary evidence. That application was contested by the defendant. However, the trial Court passed an order dated 2.7.2003 allowing the application, subject to strict proof of existence and loss of the same. During his evidence, the plaintiff appearing as PW1 had stated in his examination in chief that he had handed over the pronote and receipt to his counsel Sh.PC Jindal, Advocate on 26.6.2002 at 10:00 a.m. for filing a suit; that photostat copies of pronote and receipt were prepared, which were attached with the plaint at the time of filing of the suit, whereas the original were kept by Sh.PC Jindal, Advocate; that later on Sh.PC Jindal, Advocate had lost those documents and he

had lodged report in that regard. PW2 Ajaib Singh, an attesting witness of pronote and receipt had submitted his affidavit Ex.PW2/A, which was attested on 6.5.2004 proving original pronote as Ex.PW2/A and receipt as Ex.PW2/B mentioning in the affidavit that he had seen the original pronote and receipt on that day. Further, in his cross-examination, he had stated that he had not seen the original pronote and receipt on that day and he was not aware where the original pronote and receipt had been lost. Thus, his deposition showed that he had seen pronote and receipt on 6.5.2004 when he had sworn his affidavit to be furnished in the Court in his examination in chief. But when his cross-examination was conducted on 2.9.2004, he stated that he had not seen the pronote and receipt on that date. PW4 Sh.P.C.Jindal had testified that on 26.6.2002, plaintiff Gurdial Singh had come to him for filing a suit along with original pronote and receipt; that he had prepared the suit and filed it after appending photostat copy of pronote and receipt, however he stated that he did not remember whether he took original documents with him or had left in his brief but when he checked his brief on 21.3.2003, the original documents were not there and he got recorded a report in that regard with Police Station City, Sunam submitting an affidavit, copy of which being Ex.PW3/A. When cross-examined, he stated that he came to know about loss of pronote/the same being not in his brief, on 21.3.2003. The First Appellate Court by a detailed

analysis of the evidence adduced by the plaintiff has observed that it is quite possible that the original pronote and receipt might not have been lost and the evidence of the plaintiff regarding loss of original pronote and receipt was not convincing more particularly when Sh.PC Jindal, Advocate had not stated with conviction that the original pronote and receipt were left by the plaintiff with him or that original pronote and receipt had been lost from his brief, rather in his cross examination stating that it is quite possible that original pronote and receipt might not have been lost. The situation got more complicated when PW2 Ajaib Singh had stated that he had seen the original pronote and receipt on 6.5.2004, whereas the report regarding loss of original had been lodged on 21.3.2003. The First Appellate Court has rightly observed that if PW2 had seen the original pronote and receipt on 6.5.2004, then the story put forward by plaintiff/respondent that original had been lost from custody of his counsel Sh.P.C. Jindal, Advocate on 21.3.2003 stands falsified. Furthermore, in the DDR got recorded by Sh.PC Jindal, Advocate, he had not categorically stated that the original pronote and receipt were in his brief, rather he had stated that he did not remember whether Gurdial Singh had taken original pronote and receipt from him or not, therefore, the plaintiff/respondent had failed to prove on record loss of original pronote and receipt and the secondary evidence to prove the execution and attestation of the same could not be read into

evidence in view of order dated 2.7.2003 passed by the trial Court. The First Appellate Court has further observed that the plaintiff/respondent had failed to prove on record possession of Rs.3.5 lacs allegedly advanced to him to the defendant not mentioning a word in that regard in his examination in chief, though in his cross-examination stating that he had sold paddy of Rs.2 lacs to Surinder Kumar, Commission Agent and had taken amount from him 20-25 days earlier for making the payment to the defendant, therefore, at best he could give some sort of explanation for possession of Rs.2 lacs only though not convincingly since he failed to bring on record cogent evidence in that regard and not regarding the remaining amount of Rs.1.5 lacs. Therefore, passing of consideration amount from the plaintiff and defendant was not proved. The First Appellate Court has discussed the law in that regard i.e. *S.Narayanasamy Reddiar Versus K.P. Sivaraman 2003(1) RCR(Criminal) 37.*

Another reason for non-suiting of the plaintiff was that though the plaintiff had examined a document expert but since he had compared the alleged signatures of the defendant from the photostat copy with the standard signatures, the same could not be done. The relevant authorities in that regard cited by learned counsel for the parties have been discussed. The First Appellate Court has rightly observed that no reliance can be placed upon the report of

document expert since the signatures could not be compared from the photostat copy.

Furthermore, it needs to be mentioned here that under Order 7 Rule 14 CPC, the original documents in possession of the plaintiff ought to have been attached along with the plaint. However, strangely enough only photostat copies thereof were filed. The plaintiff would have been on better footing if the pronote and receipt were scribed by a regular Deed Writer with an entry being there in his register in the ordinary course of business containing signatures of the parties and those of attesting witnesses, then the chances of the pronote and receipt having been forged/fabricated would have been minimized but it is not so in the present case. There could be a possibility of the documents being fabricated, the signatures of defendant being lifted from any document containing his admitted signatures and placed on other documents by superimposition as has been observed in authority by a Coordinate Bench of this Court i.e. **Sh.Surjit Rai Versus Sh.Prem Kumar Khera and Ors. 1995(2) PLR 140** and then suit filed on the basis thereof stating that the original had been lost.

Learned counsel for the plaintiff has contended that there was no necessity of proving account books by the plaintiff, since the plaintiff did not happen to be a professional money lender. In support of that contention, he had referred to authority **Natarajan Versus**

Marappa Gounder, 2005(1)RCR(Civil) 67 by a Division Bench of Madras High Court.

However, learned counsel for the respondent has contended that even if it is so nevertheless the plaintiff was required to explain as to how he was in possession of a substantial amount of 3.5 lacs, which he had allegedly advanced to defendant but he has failed to do so.

After hearing the rival contentions, I find myself in agreement with learned counsel for the respondent. Though the plaintiff might not have been condemned for non-production of account books for the reason that he was not maintaining the same but he was expected to explain the source of substantial amount of Rs.3.5 lacs allegedly advanced by him to the defendant, which he failed to do by bringing cogent and convincing evidence on record.

Learned counsel for the appellant has referred to authority **Harbans Singh & Others Versus Jagir Singh & Others, 2006(1) PLJ 84** by a Coordinate Bench of this Court. That authority was cited on behalf of the appellant/plaintiff before the First Appellate Court also and it has been duly distinguished by the said Court. This authority does not come to help of the appellant due to different facts and circumstances and the context in which such observations have been made.

No substantial questions of law arises.

Thus I do not find any illegality or infirmity in the judgment passed by the learned First Appellate Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Finding no merit in the appeal, the same stands dismissed.

5.2.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No