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RSA No.1367 of 2020 (O&M)
Date of Decision: 07.11.2023

Om Parkash Arya

Dharambir

Versus

.....Appellant

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. Rao Ajender Singh, Advocate
for the appellant.

SANJAY VASHISTH, J (ORAL)

1. The present Regular Second Appeal has been filed by the defendant against the concurrent findings of dismissal of suit.

2. Plaintiff relied upon the two pronotes Ex.P1 and Ex.P4 and filed a suit for recovery of an amount of Rs. 3,00,000/- along with interest. In the written statement filed by the sole defendant-Om Parkash Arya (appellant herein), a categoric stand was taken that no such pronotes dated 25.06.2010 and 15.07.2010 were ever executed by the defendant in favour of plaintiff. Vide order dated 17.04.2013, learned trial Court framed following five issues:-

1	Whether plaintiff is entitled to recover Rs.3,63,750/- along with interest @ 1% per month as alleged? OPP
2	Whether the present suit is not maintainable?OPD
3.	Whether the civil court has got no jurisdiction to try and entertain the present suit?OPD
4.	Whether the plaintiff has not affixed proper court fees?OPD
5.	Relief.

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3. For proving the handwriting and signature of defendant on the pronotes, material witness examined by the plaintiff is Sh. V.B Kashyap (PW4), Handwriting and Fingerprint Expert.

On the other hand, defendant also examined DW2 Sh. Jaiveer Singh Yadav, Handwriting and Fingerprint Expert.

4. While examining the evidence and its reliability, both the learned Courts below have basically dealt with the reports of the handwriting experts and accordingly, decreed the suit by holding that the plaintiff has fully proved his case along with the signatures on the pronote as having been affixed by the defendant.

5. Counsel for the defendant further argues before this Court that Court has not taken into consideration the fact that in regard to the forged signatures of the defendant, one FIR No.42 dated 19.03.2014, under Sections 420, 383, 467, 468, 471 r/w 120-B IPC was registered at PS Ateli and this fact itself is sufficient to prove the fraud committed by the plaintiff. Moreover, no evidence regarding the final outcome of the registration of the FIR has been brought on record or even referred by counsel before this Court at the time of submissions.

6. Learned arguing counsel for the appellant could not even answer about the present status of the criminal case. While relying upon the statement of Sh. Jaiveer Singh Yadav, Handwriting and Fingerprint Expert, who appeared as DW2, learned counsel submits that he has successfully proved that the signatures which are there on the pronotes dated 25.06.2010 (Ex.P1) and dated 15.07.2010 (Ex.P4) are not of one and the same person after the same being compared with the signatures available on some of the documents i.e. affidavit etc.

7. Both the learned courts below have already given its concurrent findings in regard to the standard of reliability of the evidence of the deposition of the said witness. Court found that the opinion of Sh. Jaiveer Singh Yadav, Handwriting Expert and Fingerprint Expert, appears to be biased and not based upon comparison of signatures upon material documents including summons, written statement and vakalatnama filed by the defendant in the present suit. None of the signatures available on the said undisputed documents have been got compared by the defendant. Obviously, the report of comparison of the signatures available on the vakalatnama, written statement and summons could go adverse to the interest of the defendant.

On being asked by the Court, arguing counsel for the appellant, also admits that on the other hand, plaintiff got examined the signatures by comparing the signatures available on vakalatnama, written statement and summons of the defendant. Even learned Appellate Court in its paragraph No.9 has affirmed its finding and the same is reproduced hereinbelow:-

“9. The bone of contention between both the parties/counsels at the time of arguments was with regard to the rate of interest awarded by learned trial Court to the plaintiff @10% per annum. There is no dispute between both the parties at this stage, that rate of interest between both the parties was agreed upon @1% per month.

With regard to execution of documents Ex.P1 to Ex.P4, plaintiff led positive evidence along with expert opinion regarding signatures of defendant upon the pronote and receipt in question. Plaintiff succeeded by leading positive evidence in proving documents Ex.P1 to P4. However, defendant could not rebut the evidence of plaintiff. The expert opinion regarding signatures of defendant over pronote and receipt was certainly doubtful because the expert, who prepared the report on behalf of the defendant did not pick up signatures of defendant from the relevant documents,

so it was certainly biased reprot. This was the main case of defendant, which he failed to establish, so on the basis of preponderance of evidence, plaintiff certainly succeeded in proving his case regarding execution of documents Ex.P1 to Ex.P4 by defendant in favour of plaintiff. No other point was argued, raised or brought to the notice of Court by plaintiff.”

8. I do not find any reason to interfere with the findings given by the courts below that the signatures of the defendant, appears to be genuine and defendant himself has failed in proving the defence taken by him.

9. Even, no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

10. Thus, the instant appeal being devoid of merits, stands dismissed. The judgment(s) & decree passed by both the Courts below are hereby affirmed.

11. Since the appeal has been dismissed on merits, no separate order in the delay application is required to be passed.

(SANJAY VASHISTH)
JUDGE

07.11.2023

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