

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

RSA-2692-1999(O&M)

Date of decision:-16.1.2023

Kulwant Kaur and others

...Appellants

Versus

Balbir Singh

...Respondent

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

Present: None

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Balbir Singh had brought a suit for recovery of Rs.48,120/- with interest and costs against defendants Kulwant Kaur widow of Mohinder Singh, Jaspal Kaur daughter of Mohinder Singh, Sinder Paul Kaur daughter of Mohinder Singh and Darshan Singh son of Mohinder Singh.

2. As per the case of the plaintiff, Mohinder Singh predecessor-in-interest of defendants had borrowed a sum of Rs.35,000/- from him agreeing to return the amount with interest @ 2.25% per month on 27.6.1993 and had executed a pronote and receipt in favour of the plaintiff; the pronote was signed by Mohinder Singh and attested by the witnesses; although Mohinder Singh has expired but he is being survived

by his legal heirs i.e. the defendants, who are in possession of his property, therefore, they are liable to pay the suit amount.

3. As per the version of the plaintiff, he had called upon Mohinder Singh during his life time and after his death the defendants to return the loan amount with interest but to no effect, as such the plaintiff brought the suit in question.

4. On notice, the defendants appeared and filed written statement contesting the suit denying the assertions in the plaint, refuting that Mohinder Singh had ever borrowed a sum of Rs.35,000/- from the plaintiff or had executed any pronote and receipt in his favour. According to the defendants as Mohinder Singh has died, therefore, they can at best be held liable for the amounts taken for legal necessity. The defendants denied their liability to pay any amount to the plaintiff.

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

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

1. Whether Mohinder Singh now deceased borrowed a sum of Rs.35,000/- from the plaintiff on 27.6.93 and executed the pronote and receipt in favour of the plaintiff? OPP.

2. Whether the plaintiff has no cause of action to file the present suit? OPD.

3. Relief.

7. The parties were afforded opportunities to lead evidence in

support of their respective claims.

During the course of his evidence, the plaintiff got his statement recorded as PW1 besides examining Sher Singh as PW2, Bahadur Singh as PW3 and also tendered in evidence certain documents.

In rebuttal, the defendant No.1 Kulwant Kaur herself stepped into the witness box as DW1. Since the defendants failed to conclude their evidence despite availing ample opportunities, therefore their evidence was closed by Court order.

8. After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff and against the defendants. Issue No.2 was decided against the defendants and in favour of the plaintiff. As a result of findings on issues, the suit of the plaintiff for recovery of Rs.48,120/- was decreed with costs. It was observed that the defendants shall be liable to make the payment of decretal amount to the extent of the property of the deceased Mohinder Singh, which has come to their hands along with interest at the rate of 12% per annum from the date of filing of the suit till date of decree with future interest @ 6% per annum from the date of decree till actual realisation. This was so done vide judgment and decree dated 15.11.1997.

9. Feeling aggrieved by the said judgment and decree, the defendants had filed appeal in the Court of District Judge, Sangrur, which were assigned to Additional District Judge, Sangrur, who vide judgment and decree dated 12.1.1999 dismissed the appeal upholding the judgment and decree passed by the trial Court.

10. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed the present regular second appeal before this Court, notice of which was given to the respondents, who put in appearance through counsel.

11. Subsequently none of the counsel put in appearance on behalf of the parties. As such, I am proceeding further to decide the appeal after going through the record since the appeal relates to the year 1999.

12. Here to the specific case set up by the plaintiff that Mohinder Singh predecessor-in-interest of defendants had borrowed a sum of Rs.35,000/- from him undertaking to return the same with interest @ 2.25% per month on 27.6.1993 and had executed a pronote and receipt in his favour, the defendants are offering a complete denial. However, the plaintiff appearing as PW1 repeated on oath his case as given in the plaint proving the pronote Ex.P9 and receipt Ex.P10 executed by Mohinder Singh in his favour, which were attested by PW2 Sher Singh and PW3 Bahadur Singh further stating that during his life time Mohinder did not pay any amount to him and after his death the defendants did not bother to return any amount to the plaintiff. The plaintiff had proved on record postal receipts Ex.P2 to Ex.P5. He further stated that when the defendants were about to sell the land then he obtained injunction against them. PW2 Sher Singh and PW3 Bahadur Singh, both the attesting witnesses of pronote and receipt, supported version of the plaintiff on material points. Although they were cross-examined at length on behalf of the defendants but they stuck to their guns and could not be shattered on any material point. No reason is coming fourth as to why PW1 Balbir Singh (plaintiff)

should prepare fake documents and sue the defendants and for PW2 Sher Singh and PW3 Bahadur Singh join the alleged conspiracy and depose falsely against the defendants and in favour of the plaintiff. On the other hand, the defendants are completely denying the pronote Ex.P9 and receipt Ex.P10. Defendant Kulwant Kaur (defendant No.1), is a sole witness, who had appeared on behalf of the defendants. This witness denied Mohinder Singh having raised any loan from the plaintiff or executing any pronote and receipt in his favour. The trial Court by detailed analysis of the evidence adduced by the parties in light of their pleadings has come to the conclusion that the plaintiff has successfully proved that the Mohinder Singh had borrowed a sum of Rs.35,000/- from him on 27.6.1993 and executed pronote and receipt in favour of the plaintiff undertaking to return the loan amount with interest @ 2.25% as and when demanded by the plaintiff. The version of the plaintiff was found to be plausible and convincing, whereas that of defendants was held to be unworthy of reliance.

13. The suit was rightly decreed by the trial Court. No fault can be found with the approach of the trial Court in decreeing the suit of the plaintiff. The First Appellate Court of Additional District Judge, Sangrur by proper analysis of evidence and correct interpretation of law held the appeal to be without any merit and dismissed the same. Similar is the position with regard to the present regular second appeal filed by the defendants. The same comes out to be without any element of merit.

14. The judgments and decrees passed by the Courts below are quite detailed well reasoned, based on proper appraisal of evidence and

correct interpretation of law, which do not call for any interference.

15. No substantial question of law arises in this appeal.

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

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

16.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No