

RSA-2414 of 2023 (O&M)

2023:PHHC:112646

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

RSA-2414 of 2023 (O&M)

Date of decision: 25.08.2023

Resham Singh and another

.....Appellants

Versus

Darshan Singh alias Darshan Sandhu since deceased through his LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Surinder Garg, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 13.01.2020 passed by Civil Judge (Senior Division), Faridkot, whereby suit for recovery filed by the plaintiff-respondent(s) has been decreed as well as against the judgment and decree dated 25.04.2023 passed by Additional District Judge-I, Faridkot, whereby appeal filed by the defendant-appellants against the judgment and decree dated 13.01.2020, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that plaintiff-Darshan Singh filed a suit for recovery pleading therein that plaintiff is residing in village Panj Grain Kalan and is an agriculturist. The defendants were in the need of money and in pursuance to the writing dated 30.04.2016 duly executed

by the defendants in favour of the plaintiff, he advanced an amount of Rs.5 Lacs by way of loan in favour of the defendants, which was repayable along with interest at the rate of 12% per annum. The original writing dated 30.04.2016 which was executed on a stamp paper is claimed to have been lost by the plaintiff on 09.04.2018 and the matter was reported to the police on 10.04.2018 by the plaintiff. Despite the demand regarding repayment of the loan amount having been made by the plaintiff from the defendants, they paid no heed.

3. Upon notice, defendants appeared and filed written statement taking preliminary objections regarding maintainability of the suit with further plea that the plaintiff has suppressed the true and material facts from the Court. The defendants and the plaintiff were known to each other and the plaintiff, after returning from abroad in the year 2016, asked defendant No.1 that if any of his relatives intend to go abroad i.e. Philippines, he could arrange the Visa. The defendants further pleaded that defendant No.1 was also known to plaintiff's son namely Bharminder Singh living in Philippines. The defendants further pleaded that he could send defendant No.2 Gurdev Singh to Philippines for an amount of Rs.20 Lacs to which the defendants agreed. The defendants further submitted that defendant No.2 Gurdev Singh sold his Trailer/Trolla worth Rs.17,17,000/- on 30.04.2016 to one Kali Babu and defendant No.2 along with his son, and defendant No.1 met the plaintiff and handed over all the important documents, including Passport and photographs along with an amount of Rs.3,50,000/- in cash and Jaspreet Singh, other son of the plaintiff was also present there

at that time. The defendants further submitted that the plaintiff took the written proof of the amount of Rs.5 Lacs from them by way of security on the pretext of sending defendant No.2 abroad. Further plea of defendants is that defendant Gurdev Singh was not permitted to enter Philippines by the Airport Authorities. Defendants further submitted that writing of Rs.5 Lacs which was taken by the plaintiff before sending defendant No.2 Gurdev Singh abroad, was returned back to the defendants when the issue was raised before the plaintiff that they were defrauded by him. Further plea of defendants was that while returning the writing of Rs.5 Lacs to the defendants, the plaintiff promised to return the remaining amount within a few days, but he never returned the same, rather false DDR was got entered in P.S. City Kotkapura, that he had lost the said writing. The defendants also took a plea that defendant Gurdev Singh moved an application before the Senior Superintendent of Police, Faridkot, but no action was taken as the plaintiff had close proximity with the political leaders. On merits, the claim of the plaintiff was denied by the defendants.

4. From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for recovery of the suit amount from the defendants, as prayed for ?
OPP
2. Whether suit of the plaintiff is not maintainable in the present form, as prayed for ? OPD
3. Whether plaintiff has concealed material facts from the Court ? OPD.

4. Whether suit is not properly valued for the purpose of Court fee and jurisdiction ? OPD
5. Relief.
5. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record decreed the suit filed by the plaintiff.
6. Feeling aggrieved against the said judgment and decree of the trial Court, defendants preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 25.04.2023.
7. Learned counsel for the appellants contended that the judgments and decrees passed by both the Courts below are against law and the evidence on record. He further contended that both the Courts below failed to appreciate that plaintiff-respondent(s) failed to prove the veracity of writing dated 30.04.2016, therefore, the same was not admissible in evidence. Both the Courts below by wrongly relying upon writing Ex.P3 have decreed the claim of the plaintiff.
8. I have heard learned counsel for the appellants and perused the record.
9. Plaintiff (now deceased through his LRs) filed a suit for recovery against the defendant-appellants claiming that defendants had taken a loan of Rs.5 lakh from them and defendant-appellants agreed to return the same along with interest @ 12% per annum. In this regard a writing dated 30.04.2016 was executed between the parties. Plaintiff pleaded that the said writing has been lost and in support of his claim he produced photocopy of the writing dated 30.04.2016 on record as

Ex.P3. Plaintiff also produced copy of DDR regarding loss of original writing as Ex.P4 on record. On the other hand appellants produced writing dated 30.04.2016 in original as Ex.D1 pleading that said document was merely a security document and no loan was availed by them.

10. During cross-examination of defendant No.1-Resham Singh admitted that writing dated 30.04.2016 Ex.D1 was executed at the residence of the plaintiff and he himself had purchased the stamp paper for the said purpose. He admitted that loan as mentioned in writing dated 30.04.2016 Ex.D1 took place between the parties. He further stated that at the time of execution of the said writing he (Resham Singh), Gurdev Singh, Nirmal Singh and Arun Kumar were present there and Naib Singh also reached there later on. During his cross-examination, Naib Singh DW1 has identified the signatures of both the defendant-appellants on the said writing. He further stated that he was present at the time of execution of the writing dated 30.04.2016 Ex.D1 and the entire transaction took place in his presence. In writing dated 30.04.2016 Ex.D1 it was nowhere mentioned that the same was a security document nor it was mentioned that the same was cancelled or returned by the plaintiff to the defendants on account of fulfilment/discharge of their liability. Defendant-appellants failed to prove that the said writing was executed as a security for sending defendant No.2 Gurdev Singh abroad rather they have admitted the claim of the plaintiff that they had taken loan from him.

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11. Concurrent findings have been recorded by both the Courts below that claim of the plaintiff with regard to recovery of loan amount is proved on record. Learned counsel for the appellants has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. In view of above, no question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. Dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

25.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No