IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1329-2012 (O&M)
Reserved on: 24.03.2023
Date of pronouncement: 28.03.2023

Hardyal Singh

...Appellant

Versus

Jagdish Kumar

...Respondent

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

Present: Ms. Reeta Kohli, Sr. Advocate with
Ms. Vandana Kohli, Advocate for the appellant.

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H.S. MADAAN, J.

Briefly summed up, the facts of the case are that plaintiff Jagdish Kumar had brought a suit against defendant Hardyal Singh seeking recovery of Rs.5,70,000/- detailed in headnote of the plaint on the basis of receipt dated 04.04.2005 with interest @ 18% p.a., till realization. As per version of the plaintiff, defendant No.1 Hardyal Singh had executed a General Power of Attorney in favour of the plaintiff on 04.04.2005 with respect to 160/2947 share of the land measuring 147K-7M i.e. 8 kanals from khatoni No.318/790 to 797, khasra No.71/8 as per jamabandi for the year 2001-02 authorizing the plaintiff to alienate the said land to anybody in any manner; defendant No.1 had taken Rs.5,55,000/- from the plaintiff as a token thereof, had executed a receipt in his favour on 04.04.2005; defendant No.1 had handed over possession of that land to plaintiff, however, to dupe the plaintiff, defendant No.1 had executed a mortgage deed dated 02.05.2005 in favour of Jagat Singh-defendant No.2 through Balwinder Singh defendant No.3 for a sum of Rs.5,55,000/-; defendant No.3 with the help of defendant No.1 had delivered possession to defendant No.2 forcibly; according to the plaintiff, the mortgage deed is a fake and factitious document for the reason that defendant No.1 had already received Rs.5,55,000/- as consideration of the land from the plaintiff, therefore, he had no right to mortgage or alienate the land to anybody including defendant No.2; however to strengthen his hands, defendant No.1 had firstly written a fake cancellation deed dated 25.04.2005 with regard to General Power of Attorney and thereafter had mortgaged the land; a registered notice was issued by the plaintiff dated 15.06.2005 to defendant No.1 which was duly received by him and by way of reply admitted the execution of General Power of Attorney dated 04.04.2005 and mortgage deed dated 02.05.2005 as well as cancellation deed dated 25.04.2005 but denying the execution of receipt dated 04.04.2005 was received; according to the plaintiff receipt dated 04.04.2005 is a genuine document, duly executed by defendant No.1, therefore, the plaintiff is entitled to recover the suit amount with interest @ 18% p.a., which he did not pay to the plaintiff despite various requests and demands, giving rise to a cause of action to the plaintiff to bring the suit in question.

2. On notice, defendant No.1 appeared and filed a written statement, contesting the suit, raising various preliminary objections to to wit that the suit is not maintainable in the present form and the plaintiff has filed the suit with a view to harass the defendants; the plaintiff has not approached the Court with clean hands; the plaintiff might have got signatures of answering defendant and prepared a fake receipt; the answering defendant has already filed an injunction suit which is pending disposal in the Court of Civil Judge (Jr. Divn.) Tarn Taran; such defendant denied having executed any receipt as alleged by the plaintiff etc.

On merit, defendant No.1 submitted that he had cancelled the General Power of Attorney dated 04.04.2005; vide that General Power of Attorney, such defendant had appointed the plaintiff as his attorney for managing the property only but he was not authorized to alienate the land in any manner; the defendant denied that he had obtained Rs.5,55,000/- from the plaintiff and had executed the alleged receipt in his favour; such defendant further denied having executed mortgage deed dated 02.05.2005 in favour of defendant Jagat Singh; according to defendant No.1, the mortgage deed is outcome of fraud and such defendant has already filed a suit for cancellation of mortgage deed which is pending in the Court of Civil Judge (Jr. Divn.) Tarn Taran; since defendant had not received any amount from the plaintiff, therefore, the suit is not maintainable; defendant No.1 prayed for dismissal of the suit.

3. Defendants No.2 and 3 had filed a joint written statement denying the allegations in the plaint paying for dismissal of the suit.

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

1. Whether defendant No.1 took a loan of Rs.5,55,000/- from the plaintiff on 4.4.2005 and executed a receipt in lieu thereof? OPP.
2. Whether defendant No.1 executed a mortgage deed dated 02.05.2005 in favour of defendant No.2 through defendant No.3 if so, its effect? OPP.
3. Whether the plaintiff is entitled to recover Rs.5,70,000/- from defendant No.1 as alleged? OPP.
4. Whether the plaintiff is entitled to interest, if so, at what rate? OPP.
5. Whether the suit is not maintainable in the eyes of law? OPD.
6. Whether the suit is not properly valued for purposes of court fee and jurisdiction? OPD
7. Relief.

5. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the trial Court of Civil Judge (Sr. Divn.) Tarn Taran, vide judgment and decree dated 07.08.2009 gave issue-wise findings and on the basis of such findings, the suit of the plaintiff was dismissed with costs.

7. Feeling aggrieved by the judgment and decree passed by the trial Court, the plaintiff had preferred an appeal before District Judge, Tarn Taran, that appeal was assigned to Addl. District Judge, Taran Taran, who vide judgment and decree dated 14.11.2011 partly allowed the same inasmuch as the judgment and decree passed by the trial Court were set aside and the suit of the plaintiff was decreed for recovery of Rs.5,55,000/- from defendant No.1 with proportionate costs throughout.

8. Now it was turn of defendant No.1 to feel aggrieved and he approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/plaintiff, who had initially put in appearance through counsel but subsequently on 24.03.2023, such respondent/plaintiff went unrepresented. Since the appeal relates to the year 2012 i.e. more than 10 years old, as such, I proceed to decide it after hearing counsel for the appellant and going through the record.

9. A perusal of the judgment passed by the trial Court goes to show that the trial Court had rejected the claim of the plaintiff mainly for the reason that receipt dated 04.04.2005 Ex.P1 which was made a basis for recovery, is an unregistered document despite the fact that vide it interest in the land measuring 8K-0M i.e. 160/2947 share out of land measuring 147K-7M was created in favour of the plaintiff by defendant No.1 and possession of the land was also delivered. Such receipt required compulsory registration in terms of Section 17 of the Registration Act and judgment **Gangaram Sakharam Dhuri & Ors. Gangubai Raghunath Ayare & Ors.**, 2007(4) Civil Court Cases 079 (Bombay) and **Shishpal Vs. Vikram**, 1999(1) Civil Court Cases 605 (P&H), the trial Court was of the view that on account of non-registration of receipt, it is inadmissible in evidence and cannot be read for collateral purposes even. There is no mention in the receipt that in case of any eventuality either of the party would be entitled to recovery. The suit for recovery has been filed simply on account of the fact that General Power of Attorney in favour of the plaintiff was cancelled by defendant No.1 and defendant No.1 has executed a mortgage deed of the disputed land in favour of defendant No.2, however, it is nowhere pleaded that the plaintiff has been divested of the possession of the disputed land and cause of action could arise to the plaintiff only if he had been deprived of possession of the land. Mere execution of mortgage deed by defendant No.1 in favour of defendant No.2 through defendant No.3 will not afford any cause of action for filing the suit for recovery. The end result was that the suit of the plaintiff was dismissed.

10. However, when the judgment and decree passed by the trial Court were impugned before learned Addl. District Judge, Tarn Taran, he found merit in the claim of the plaintiff and allowed the said claim giving reasons that although receipt Ex.P2 is an unregistered one and there is a reference of mortgage of some agricultural land, therefore, the same cannot be considered for the purpose of mortgage or for the purpose of possession but for the purpose of payment of Rs.5,55,000/- by plaintiff to defendant No.1, the receipt can certainly be read in evidence and from the record. As observed by learned Addl. District Judge, it is proved that vide receipt Ex.P2, defendant No.1 had taken amount of Rs.5,55,000/- from the plaintiff and the plaintiff was entitled to recover that amount from defendant No.1; Defendant No.1 Hardyal Singh while appearing as DW1 in his cross-examination had admitted with regard to execution of the mortgage deed since later on defendant No.1 had filed a suit for declaration and permanent injunction against defendant No.2 challenging the mortgage, vide judgment Ex.P7 and decree Ex.P8, the suit was dismissed. Learned Addl. District Judge had further observed that it can be said that defendant No.1 is in habit of taking contradictory pleas. However, execution of the mortgage deed by defendant No.1 in favour of defendant No.2 has no effect on the rights of the plaintiff. The plaintiff is not entitled to any interest since no interest was agreed to be paid. The suit was found to be maintainable.

11. I find that the trial Court was not justified in rejecting the claim of the plaintiff for recovery of Rs.5,55,000/- solely for the reason that receipt Ex.P2 is an unregistered document and cannot be read in evidence, however, as has been rightly observed by learned Addl. District Judge, Tarn Taran, the document may not be read for the purpose of determining whether any mortgage was created by defendant No.1 in favour of the plaintiff or to see the nature of possession of plaintiff but it can certainly be perused to find out as to whether a sum of Rs.5,55,000/- had been received by defendant No.1 from the plaintiff. In my considered view, this document can be looked into for collateral purpose to find out as to whether the plaintiff had paid a sum of Rs.5,55,000/- to defendant No.1. The plaintiff has successfully proved this fact by bringing enough cogent and convincing evidence. The plaintiff himself got his statement recorded as PW2 and tendered in evidence his affidavit duly sworn as Ex.P2/A repeating on oath his case as given in the plaint. He has categorically stated that defendant No.1 had received a sum of Rs.5,55,000/- from him and in token thereof, had executed a receipt Ex.P2 in his favour on 04.04.2005, which was duly signed and thumb marked by him after admitting the contents to be correct in the presence of Harjinder Singh, Sukhdev Singh and Jagat Singh. He stated that to dupe him, Hardyal Singh, defendant No.1 had executed a mortgage deed in favour of defendant No.2 Jagat Singh through Balwinder Singh for a consideration of Rs.5,55,000/- delivering possession to defendant No.2 Jagat Singh with the help of Balwinder Singh forcibly. Although, he was examined at length on behalf of defendant No.1 but he remained un-shattered and could not be shaken on any material point. He stated that the amount of Rs.5,55,000/- paid by him to Hardyal Singh was from his own pocket and he had not obtained any loan from anybody and had not withdrawn any amount from the bank. May it be so but then in the opening lines of his cross-examination, he had stated that he is a property dealer and also doing contractor-ship. It is not difficult for a person engaged in such type of avocation to arrange a sum of Rs.5,55,000/-, therefore, case of the plaintiff cannot be doubt for that reason that he had not withdrawn the amount from any bank for making payment to defendant No.1.

12. Similarly, non production of the income tax returns in this case cannot be taken to be adverse to the case of the plaintiff. PW3 Sukhjinder Singh, Hand Writing and Finger Print Expert, Patiala stated that he had examined and compared the questioned thumb impression of defendant No.1 mark Q1 to Q2 on Ex.P2 receipt dated 04.04.2005 comparing those with his standard thumb impression S1 and S2 on the Power of Attorney dated 04.04.2005 Ex.P1. Similarly, he had compared the questioned signatures of Hardyal Singh marked as Q2 on receipt Ex.P2 comparing those with his standard signatures mark S1 to S6 on Power of Attorney Ex.P1 and came to conclusion that the questioned thumb impressions Q1 tally with standard thumb impressions of Hardyal Singh S2 and had been affixed by one and same person and further he proved the detailed reasons for his opinion as Ex.PW3/A. He further stated that he is of the opinion that questioned signatures of Hardyal Singh tallied with his standard signatures. He proved photographic chart and report in that regard as Ex.PW3/E to Ex.PW3/J, negatives Ex.PW3/K to Ex.PW3/R. It has to be taken into view that science of comparison of finger prints is a perfect science whereas science with regard to comparison of hand writing is fairly accurate. Therefore, statement of PW3 Sukhjinder Singh corroborated by his report and photographic chart are to be given due weightage more particularly, when he could not be shattered on any material point in his cross-examination.

13. Defendant Hardyal Singh had got his statement recorded as DW1 submitting his affidavit Ex. DW1/A in which he had repeated his case as given in the written statement. In his cross-examination, he stated that he came to know about the receipt after he got notice of the same but he did not report the matter to the police regarding the false preparation of the receipt by the plaintiff and had not filed any complaint against the plaintiff. He further stated that he has no enmity with Hardyal Singh, Sukhdev Singh and Jagat Singh witnesses of the receipt as well as Sulakhan Singh, Deed Writer. Under normal circumstances, if the plaintiff had prepared a false receipt in connivance with the attesting witnesses and scribe, defendant No.1 would not have kept quite and would have rather agitated the matter by reporting the matter to the police so as to seek taking of action against the plaintiff, attesting witnesses and scribe of the receipt and if police did not take action, he could file a private complaint in the Court of law but his failure to do so leads to the adverse inference that allegations made by him that receipt is a forged and fabricated by him are wrong. Defendant Hardyal Singh did not make any effort to examine any hand writing or finger expert to show that the signatures and thumb impression purportedly appended by him on the receipt are not by him but by some impersonator. This also travels against his case. Furthermore, the sequence of the events i.e. executing power of attorney by him in favour of the plaintiff, authorizing him to sell, exchange, mortgage land belonging to him on 04.04.2005 and execution of receipt of the even date rather point out that Hardyal Singh would not have appointed plaintiff as his attorney without any rhyme or reason and it becomes all more probable that he has done so after receiving a sum of Rs.5,55,000/- from his regarding which he had issued a separate receipt making mention of mortgaging land with him and delivering possession to him.

14. The judgment passed by the trial Court was not legally sustainable and was rightly set aside by learned Addl. District Judge, Tarn Taran by giving valid and convincing reasons. I do not see any illegality or infirmity in the impugned judgment passed by learned Addl. District Judge, Tarn Taran. No interference therewith is called for. No substantial question of law arises in the appeal. The appeal is found to be without merit and is dismissed accordingly.

28.03.2023 **(H.S. MADAAN)**
sumit.k **JUDGE**

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