

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-6209-2015(O&M)

Reserved on:- 25.07.2023

Pronounced on:- 17.08.2023

Sukhwant Singh

....Appellant

Versus

Jasvir Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. A.S.Gill, Advocate
for the appellant.

Mr. J.S.Dadwal, Advocate
for the respondent.

AMARJOT BHATTI, J.

1. The appellant/defendant – Sukhwant Singh has filed Regular Second Appeal against impugned judgment and decree dated 13.08.2015 passed by learned Additional District Judge, Jalandhar vide which the appeal has been dismissed and the judgment and decree dated 01.10.2014 passed by learned Civil Judge (Junior Division), Jalandhar was upheld.

2. The facts of the case are that Jasvir Singh – respondent/plaintiff had filed suit for recovery of Rs.6,85,000/- i.e. Rs.4,45,000/- as principal amount and Rs.2,40,000/- as interest at the rate of 18% per annum from 10.06.2005 to 20.05.2008 along with future interest at the rate of 18% per annum from the date of filing of suit till its realization. The plaintiff alleged that he was running the business of Commission Agent under the name and style of M/s Nahal Trading Company, Grain Market, Allawalpur, Tehsil and District Jalandhar which

is sole proprietorship concern of the plaintiff. The defendant was a farmer

at village Darawan, Tehsil and District Jalandhar. They were having dealings and good relationship with each other. On 10.06.2005, the defendant borrowed Rs.4,45,000/- from the plaintiff with interest of 1.5% per month i.e. 18% per annum on the pretext that he required money for his use, to pay the lease amount, for purchase of seeds and fertilizers etc. An agreement was reduced into writing between the plaintiff and the defendant in the presence of witnesses regarding receipt of Rs. 4,45,000/- by the defendant. The defendant assured to repay this amount along with interest to the plaintiff on demand. The plaintiff requested the defendant number of times to return the money as per the terms and conditions of the agreement dated 10.06.2005 but he failed. He put off the matter on one pretext or the other and ultimately refused to make the payment. The defendant in order to usurp the amount also sent a legal notice dated 01.05.2008 under Section 452/499/500/506/511 IPC through his counsel Mr. Balbir Singh Chahal, Advocate, Jalandhar and it was replied by the counsel for the plaintiff namely Mr. Gurvinder Arora, Advocate. The defendant was called upon to return the amount with interest but no amount was paid. Ultimately, the suit was filed.

3. Notice of the suit was given to the defendant who contested the suit and filed his written statement taking preliminary objection that the suit was not maintainable in the present form. The plaintiff had no *locus- standi* to file the suit. He was not having any cause of action to file the suit. He did not approach the Court with clean hands. The suit was barred by time. On merits of the case, the defendant denied to have borrowed Rs.4,45,000/- on 10.06.2005 as alleged in the plaint. There was no requirement for the defendant to raise a loan. He is not having any landed property. Therefore, how the plaintiff paid Rs.4,45,000/- as loan

without taking any security. In fact, the alleged agreement has been prepared fraudulently by the plaintiff in connivance with his own persons as witnesses. In fact, the defendant might have put his signatures as a witness on a blank printed form. The defendant is an illiterate person whose signatures have been forged by the plaintiff. The plaintiff has no cause of action to file the present suit. The suit is false, frivolous without merits and the same may kindly be dismissed.

4. The plaintiff filed rejoinder to the written statement in which he denied the facts stated in the written statement and reiterated his claim in the plaint.

5. From the pleadings of the parties, following issues were framed by the trial Court on 13.03.2009:-

- (1) *Whether the plaintiff is entitled to recovery of Rs. 6,85,000/- (i.e. Rs. 4,45,000/- as the principal amount and Rs.2,40,000/- as interest @ 18% per annum) OPP*
- (2). *Whether the plaintiff is entitled to interest, if so, at what rate?OPP*
- (3) *Whether the defendant had executed the agreement dated 10.06.2005 after receiving Rs. 4,45,000/-? OPP*
- (4) *Whether the suit of the plaintiff has been filed without cause of action? OPD*
- (5) *Whether the plaintiff has concealed the material facts from the court and has not come in the court with clean hands? OPD*
- (6) *Whether the suit is barred by time?OPD*
- (7) *Whether the suit of the plaintiff is not maintainable? OPD*

(8) *Relief.*

6. In order to prove the suit, the respondent-plaintiff Jasvir Singh examined himself as PW-1. He also examined Jaswant Singh as PW2 and Sunehri Lal as PW-3. Thereafter, learned counsel for the plaintiff closed the evidence.

7. In order to rebut the case of the respondent-plaintiff, the appellant-defendant Sukhwant Singh himself stepped into the witness box as DW-1. Thereafter, defendant closed the evidence.

8. After hearing the arguments advanced by learned counsel for both the parties, the suit filed by the respondent-plaintiff was decreed with costs and defendant was directed to make the payment of amount in question i.e. Rs.4,45,000/- to the plaintiff with interest, at the rate of 9% per annum from the date of payment till the filing of the present case and at the rate of 6% per annum from the date of filing the present suit till its realization vide judgment and decree dated 01.10.2014. Feeling aggrieved of this judgment and decree, the appellant/defendant has filed the appeal before the Lower Appellate Court, which was also dismissed vide impugned judgment and decree dated 13.08.2015. Thereafter, the present regular second appeal has been filed.

9. I have heard the arguments advanced by learned counsel for the appellant/defendant and learned counsel for the respondent/plaintiff. Learned counsel for the appellant/defendant took the stand that the alleged agreement dated 10.06.2005 is a forged document. He never took any loan from the plaintiff nor executed and signed the agreement in dispute. The appellant/defendant was not owner of any agricultural land, therefore, there was no question of payment of lease money nor he required money to purchase seeds or fertilizers. The stand taken by the respondent/plaintiff is false and concocted version. In fact the father of

the appellant/defendant had some dealings with the respondent/plaintiff, under the garb of surety the plaintiff might have obtained his signatures on certain blank papers and stamp papers which were later on converted into said agreement in dispute.

The learned counsel for the appellant/defendant referred to the disputed agreement dated 10.06.2005 Ex.P-1 and referred to the spacing in the lines. The names of scribe were written with different pen. The witnesses to the aforesaid agreement dated 10.06.2005 Ex.P-1 are interested witnesses and their statements cannot be safely relied upon. The respondent/plaintiff has failed to produce his books of account to show that sum of Rs.4,45,000/- was given as a loan to the appellant/defendant nor this amount was reflected in his income tax return. The learned courts below have failed to consider the aforesaid facts and has wrongly decreed the suit filed by the respondent/plaintiff on the basis of agreement dated 10.06.2005 Ex.P-1. It is prayed that the findings given by the learned Civil Judge (Junior Division), Jalandhar may kindly be set aside by accepting the present appeal and the suit filed by the respondent/plaintiff-Jasvir Singh may kindly be dismissed with costs.

10. On the other hand, learned counsel for the respondent/plaintiff in his brief arguments pointed out that the facts of the case and the agreement dated 10.06.2005 Ex.P-1 is duly proved on record by examining the respondent/plaintiff-Jasvir Singh as PW-1 as well as by examining both marginal witnesses namely Jaswant Singh as PW-2 and Sunehri Lal as PW-3. The stand taken by the appellant/defendant is self contradictory. The learned counsel for the respondent/plaintiff further referred to the cross-examination of Sukhwant Singh DW-1, where he has admitted the facts alleged by the plaintiff in the plaint. He has not disputed his

signatures on the agreement dated 10.06.2005 Ex.P-1. Therefore, the facts of the case and the evidence on record were rightly considered by the court of Civil Judge (Junior Division), Jalandhar and the suit filed by the plaintiff seeking recovery was rightly decreed vide judgment and decree dated 01.10.2014 and the appeal preferred by the defendant was also rightly dismissed vide judgment and decree dated 13.08.2015. It is prayed that the appeal preferred by the appellant/defendant deserves dismissal.

11. I have considered the aforesaid arguments advanced before me and have gone through the record of learned trial Court in Civil Suit No.51654 of 2013 decided on 01.10.2014. The plaintiff-Jasvir Singh filed suit for recovery on the basis of one agreement dated 10.06.2005, according to which the appellant/defendant Sukhwant Singh borrowed a sum of Rs.4,45,000/- and agreed to repay the same with interest at the rate 18% per annum on demand. The said agreement dated 10.06.2005 Ex.P-1 is proved on record by Sukhwant Singh as PW-1 and his version is supported by both marginal witnesses examined as Jaswant Singh PW-2 and Sunehri Lal as PW-3. These witnesses categorically stated that the appellant/defendant Sukhwant Singh had executed the aforesaid agreement dated 10.06.2005 Ex.P-1 on receipt of loan of Rs.4,45,000/- which he agreed to repay with interest as per the terms and conditions mentioned in the aforesaid agreement.

In the case in hand, the appellant/defendant contested the suit and filed his written statement. Firstly, taking the stand that the agreement in question was got prepared fraudulently in connivance with the witnesses who are supporters of respondent/plaintiff. He further, took the stand that it is possible that respondent/plaintiff was able to get his signatures on blank printed form which was later on misused by the respondent/plaintiff.

He further took the stand that the appellant/defendant had no dealings with the respondent/plaintiff. He was not having any land, therefore, the question of raising loan for the alleged purpose does not arise. However, in the grounds of appeal, the appellant/defendant took the stand that the agreement is a forged and fabricated document. In this case the appellant/defendant-Sukhwant Singh stepped into the witness box as DW-1. The cross-examination of appellant/defendant is material where he admitted that the respondent/plaintiff is running the business of Commission Agent under the name and style of M/s Nahal Trading Company, Grain Market, Allawalpur, Tehsil and District Jalandhar. He denied to have raised loan of Rs.4,45,000/- along with interest at the rate of 18% per annum for his own use, for payment of lease amount of the land, for purchase of seeds and fertilizers etc. and at this stage, he stated that his father had obtained the amount from the plaintiff and he had affixed his signatures. Thereafter, he claimed that his father had returned the entire amount but he cannot produce any proof regarding the same. In later part of the cross-examination, he further admitted that when any agricultural produce is sold to the commission agent then J-form is issued. He admitted that J-form Ex.PX was issued pertaining to his agricultural dealing with the plaintiff. He further admitted his signatures on agreement dated 10.06.2005 Ex.P-1 at point A and B along with witnesses Jaswant Singh and Sunehri Lal, who had also affixed their signatures on the same, at the time of execution. Therefore, the stand taken by the appellant/defendant is falsified from his cross-examination as DW-1. He further conceded that he has not filed any complaint to the police or any other authority for obtaining his signatures on agreement Ex.P-1 in a fraudulent manner. The appellant has taken contradictory stand to avoid

his liability but failed to prove the same. In fact the appellant/defendant-Sukhwant Singh has admitted the entire case of the respondent/plaintiff. Therefore, the facts of the case and the evidence on record were rightly considered by the court of Civil Judge (Junior Division), Jalandhar and the suit filed by the plaintiff-Jasvir Singh was rightly decreed and the appeal preferred by the appellant/defendant-Sukhwant Singh was rightly dismissed vide judgment and decree dated 13.08.2015.

In view of the facts and the circumstances of the case as discussed above, the verdict given by the courts below is based on proper appreciation of the facts and the evidence on record. No substantial question of law or fact arises in this appeal. I do not find any reason to interfere in the concurrent finding of the two Courts below in favour of the respondent/plaintiff. Resultantly, finding no merits in the Regular Second Appeal filed by the appellant/defendant Sukhwant Singh, the same is accordingly dismissed.

The records received from the two Courts below be sent back to the concerned quarter.

Pending application(s) if any, also stands disposed of.

17.08.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No