

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

RSA-137-2018 (O&M)

Date of decision: 16.01.2023

Avtar Singh

...Appellant

Versus

Didar Singh

...Respondent

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

Present: Mr. M.K. Singla, Advocate with
Ms. Shikha Singh, Advocate and
Mr. Dinesh Kumar, Advocate for the appellant.

H.S. MADAAN, J. (Oral)

Briefly stated facts of the case are that plaintiff Didar Singh had brought a suit for recovery of Rs.6,77,600/- i.e. Rs.4,40,000/- as principal amount and Rs.2,37,600/- as interest thereon @ Rs.1.50% per month from 01.06.2010 to 30.05.2013 against defendant Avtar Singh, on the basis of pronote and receipt dated 01.06.2010 on the averments that the defendant had borrowed an amount of Rs.4,40,000/- from the plaintiff repayable with interest @1.50% per month on 01.06.2010, executing a pronote and receipt of even date in favour of the plaintiff, attested by Sukhdev Singh and Balkar Singh. The defendant had appended his thumb impressions on such documents. The loan had been raised by the defendant from the plaintiff for the purpose of construction of house and to meet his

domestic needs. He had promised to return the loan amount with interest to the plaintiff as and when demanded by him. The plaintiff called upon the defendant several times to return the loan amount with interest but the defendant put off the matter on one pretext or the other and thereafter finally refused to do so, giving rise to a cause of action to the plaintiff to bring the suit in question.

2. On notice, the defendant appeared and filed written statement, contesting the suit, raising various legal objections, contending that the suit was not maintainable; the plaintiff had concealed the material facts from the Court; no cause of action had arisen to the plaintiff to bring the suit; the plaintiff lacked locus standi to file the suit etc. On merits, the defendant denied having borrowed a sum of Rs.4,40,000/- from the plaintiff or executing the pronote and receipt in his favour on 01.06.2010 or undertaking to return the alleged amount with interest @ 1.50% per month. The defendant contended that he is a matriculate, as such, an educated person, appending his signatures on the necessary documents. Therefore, there was no question of his putting thumb impression on pronote and receipt. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

3. No replication was filed. From the pleadings of the parties, following issues were framed:-

1. Whether the defendant borrowed an amount of Rs.4,40,000/- from the plaintiff on the basis of pronote and receipt dated

- 1.6.2010? OPP.*
- 2. If issue No.1 is proved, whether the plaintiff is entitled to recover the suit amount as claimed? OPP*
- 3. Whether the suit is within time? OPP*
- 4. Whether the pronote and receipt dated 01.06.2010 relied upon by the plaintiff is forged and fabricated document? OPD*
- 5. Relief.*

4. During the course of evidence of plaintiff, he got his own statement recorded as PW-1 besides examining Balkar Singh as PW2, Sukhdev Singh as PW3, Gurnam Singh as PW4. The plaintiff relied upon various documents. With that his evidence got closed.

5. In rebuttal, defendant Avtar Singh got his own statement recorded as DW1 and repeated on oath his case as given in the written statement. He also relied upon several documents.

6. After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.) Fatehgarh Sahib, decided issues No.1 to 5 in favour of the plaintiff and against the defendant and issue No.6 in favour of the defendant and against the plaintiff. Resultantly, vide judgment and decree dt.28.10.2015, the trial Court decreed the suit of the plaintiff for recovery of Rs.4,40,000/- with interest @ 9% p.a., from 01.06.2010 till date of decree and future interest @ 6% p.a., from the date of decree till actual realization with costs of the suit.

7. Feeling aggrieved by the judgment and decree passed by the trial Court, the defendant had preferred an appeal before District

Judge, Fatehgarh Sahib, however, that appeal was dismissed, vide detailed judgment and decree dt. 25.09.2017.

8. Now the defendant has knocked at the door of this Court by way of filing the present Regular Second Appeal.

9. I have heard learned counsel for the appellant/defendant besides going through the record and I find that there is absolutely no merit in the appeal.

In this case, the trial Court as well as Ist Appellate Court have returned concurrent findings that defendant Avtar Singh had borrowed a sum of Rs.4,40,000/- from the plaintiff on 01.06.2010 agreeing to repay the same with interest @ 1.50% per month executing pronote Ex.P1 and receipt Ex.P2 in his favour. However, he has not returned any amount to the plaintiff against principal or interest. The findings recorded by the Ist Appellate Court of District Judge, Fatehgarh Sahib are to the similar effect. Although the defendant had come up with a plea that in the month of May, 2012 there arose dispute between the parties to the suit regarding some property which was later on compromised, vide writing dt. 02.05.2012 in the presence of Gursewak Singh, Sarpanch of Village Khera and Piara Singh witness and the writing was got attested from Mrs. Kamaljit Kaur Dumna, Notary Public, Fatehgarh Sahib, the same being Ex.D1. It was signed by the parties and other witnesses in terms of which the plaintiff undertook to make the payment of Rs.80,000/- to the defendant upto 10.05.2012 which was duly paid by him to defendant thereby showing

that the defendant was not under any liability to pay Rs.4,40,000/- to the plaintiff and if it was so then the plaintiff would not have paid Rs.80,000/- to the defendant under Ex.D1, rather it could have been adjusted towards alleged liability of Rs.4,40,000/-. However, that version was rejected by the Courts below for the reason that defendant had failed to produce any evidence that the thumb mark on pronote and receipt purportedly appended by him were of some other person and not of the defendant.

10. Similarly as regards compromise Ex.D1, it was not specifically pleaded by the defendant in the written statement, therefore, it could not be relied upon and taken into consideration by the Court. The defendant had failed to establish that the pronote and receipt are forged and fabricated documents. It may be mentioned here that though the defendant had sought amendment of written statement to take plea with regard to compromise Ex.D1 at the stage of first appeal, however, that application was dismissed by learned District Judge, Fatehgarh Sahib, vide order dt. 25.09.2017. He had filed an application U/o 41 Rule 27 CPC for permission to exhibit certified copy of order dt. 16.02.2011 by way of additional evidence which order had been passed by the Court of Civil Judge (Jr. Divn.) Fatehgarh Sahib in civil suit titled as Balkar Singh and Ors. Vs. Avtar Singh & Ors., however, that application was also dismissed by the Court of Ist Appellate Authority of District Judge, Fatehgarh Sahib, vide order dt.

25.09.2017, with such concurrent findings being there in favour of the plaintiff and against the defendant.

11. The impugned judgments are quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. No illegality or infirmity therein is found to be there. There is no ground to interfere with the impugned judgments and decrees passed by both the Courts below in Regular Second Appeal. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

16.01.2023
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(H.S. MADAAN)
JUDGE

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