

109.

2023:PHHC:166494

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

RSA No.2610 of 2018 (O&M)

Date of decision: 13.10.2023

Mahipal

.... Appellant

Versus

Rajesh

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Sumit Sangwan, Advocate, for the appellant.

GURBIR SINGH, J.

1. Present regular second appeal has been filed against the judgment and decree dated 27.09.2017 passed by learned Additional District Judge, Charkhi Dadri, whereby the appeal filed by the appellant-plaintiff against the judgment and decree dated 26.05.2015 passed by learned Additional Civil Judge (Senior Division), Charkhi Dadri, has been dismissed.
2. Briefly stated, the appellant-plaintiff (hereinafter called, "plaintiff") filed a suit for recovery of Rs.4,08,100/- against the respondent-defendant (hereinafter called, "defendant") along with interest and costs. The case of the plaintiff is that on 10.03.2011, defendant borrowed Rs.2,65,000/- in cash from him for domestic needs. The defendant agreed to repay said amount till July, 2011 with interest @ Rs.1.50/- per hundred per month. Said transaction was also entered in the bahi of plaintiff and scribed by Umed Singh who read over its contents to the parties. Defendant received Rs.2,65,000/- from the plaintiff in the presence of witness Gunpal Singh and

other witnesses. But the defendant did not repay the said amount within the stipulated period even after serving a legal notice dated 21.02.2014.

2.1 Upon notice, the defendant appeared and denied the factum of borrowing Rs.2,65,000/- from the plaintiff on 10.03.2011. It was pleaded that in fact both the parties were brothers and there was a dispute with regard to land. On 03.10.2011, a panchayat was convened wherein it was decided that plaintiff would give one bigha of land to the defendant out of fields of Girwana. The cost of said land was ascertained as Rs.2,65,000/-. It was submitted that the defendant had already spent Rs.50,000/- on behalf of plaintiff for the repair of a common well. The plaintiff had sold trees on the said land of Girwana for Rs.1 lac and, therefore, the liability towards the defendant was of Rs.1,15,000/-. But the plaintiff was not ready to perform his part of compromise.

2.2 After appreciating the evidence on record, the trial Court dismissed the suit and the appeal filed against thereof was also dismissed.

3. Learned counsel for the appellant has argued that the execution of bahi writing Ex.P1 was well proved by the plaintiff and when document is in writing, then oral evidence could not be led to explain its contents, but the courts below discarded the said document by relying upon stray evidence. Once the execution is proved, in such an eventuality even the witnesses won over by the opposite party have no effect on the merits of the case.

4. I have heard the submissions of learned counsel for the appellant and have gone through the file.

5. The case of the appellant-plaintiff is that respondent-defendant borrowed Rs.2,65,000/- from him vide Ex.P1 in the presence of Umed Singh-PW1, Dharambir-PW2 and Gunpal Singh-PW3, but in the cross-examination, these witnesses denied the aforesaid transaction in their presence. They deposed on the same lines that in fact there was a land dispute between the parties and as per compromise, the appellant was to give one bigha of land out of Girwana fields to the respondent which he did not give.

5.1 Considering the fact that the witnesses so produced by the appellant had categorically deposed that no money was exchanged in their presence and these witnesses rather supported the case of the respondent. The specific case of plaintiff-appellant is that defendant-respondent borrowed the amount from him. The plaintiff-appellant miserably failed to prove the same. No case is made out in favour of the appellant.

6. The courts below have recorded concurrent findings of facts. There is neither any misreading of evidence nor any substantial question of law is involved in the present appeal. The appeal is without any merit and is dismissed accordingly.

7. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

October 13, 2023

sanjeev

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