

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****229****RSA No. 550 of 2017 (O&M)****Reserved on : 16.05.2023****Date of Decision : 29.05.2023**

Pardeep Singh (deceased) through LR

... Appellant(s)

Versus

Deepak Dutta and Another

... Respondent(s)

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Sunil Agnihotri, Advocate for the appellant.

**ALKA SARIN, J.**

1. The present appeal has been preferred by the plaintiff. No.1-appellant against the judgment and decree dated 18.09.2015 passed by the First Appellate Court whereby the appeal of the defendant-respondent No.1 was accepted and the suit of the plaintiffs was dismissed. The Trial Court had decreed the suit for recovery filed by the plaintiff No.1-appellant along with the present plaintiff No.2-respondent No.2.

2. The brief facts relevant to the present *lis* are that the plaintiffs filed a suit for recovery of Rs.21,00,000/- against the defendant alleging that they were unemployed and that the defendant had promised to send them abroad and had demanded Rs.10,50,000/- from each of the plaintiffs. As per the plaintiffs the said amount was paid to the defendant and two agreements were executed and that the defendant had agreed to return the said amount if the plaintiffs could not be sent to America. Since the defendant did not send the plaintiffs abroad as assured, the plaintiffs demanded the paid amount back from the defendant but he did not pay leading to the filing of the present suit for recovery of Rs.10,50,000/- in favour of each of the plaintiffs

along with interest.

3. In his written statement the defendant averred that impugned agreements are the result of fraud, misrepresentation, coercion and conspiracy played by Sarup Singh (father of plaintiff No.1-appellant) and others and the same is without consideration and that the plaintiffs have no locus standi or cause of action to file the present suit. It was denied that the plaintiffs paid Rs.21,00,000/- to the defendant.

4. During the pendency of the suit plaintiff No.1 (Pardeep Singh) died on 29.05.2005 and his mother was impleaded as his heir. On the basis of the pleadings of the parties, the following issues were framed by the Trial Court on 01.06.2011 :

1. Whether the plaintiffs are entitled for the recovery of Rs.21 lac alongwith interest as demanded in the head note of the plaint ? OPP
2. Whether the suit of the plaintiffs is not maintainable ? OPD
3. Whether the plaintiffs have not come to the court with clean hands ? OPD
4. Whether the impugned agreement dated 11.2.2003 are the result of fraud, misrepresentation, coercion and conspiracy played by Sarup Singh and others ? OPD
5. Whether the plaintiffs have no cause of action and locus standi to file the present suit ? OPD
6. Whether the plaintiffs are estopped from filing the

present suit by their act and conduct ? OPD

7. Relief.

5. The Trial Court vide judgment and decree dated 21.11.2011 decreed the suit for recovery of Rs.21,00,000/- along with interest. Aggrieved by the said judgment and decree, an appeal was preferred by the defendant which appeal was accepted by the First Appellate Court vide judgment and decree dated 18.09.2015. Hence, the present regular second appeal has been filed by the plaintiff No.1-appellant. The second plaintiff (Navdeep Singh) has not challenged the findings of the First Appellate Court.

6. Learned counsel for the plaintiff No.1-appellant has contended that the First Appellate Court has erred in dismissing the suit of the plaintiffs. It is submitted that the payment of Rs.21,00,000/- by the plaintiffs to the defendant and the execution of the agreements was fully proved on the record and as such the suit for recovery ought to have been decreed. Learned counsel has further contended that the approach of the First Appellate Court was also illegal.

7. I have heard learned counsel for the plaintiff No.1-appellant.

8. In the present case the First Appellate Court has examined the entire evidence thread-bare and concluded that plaintiffs have failed to prove that any consideration amount was paid to the defendant as mentioned in the agreements. The plaintiffs had been unable to prove the source from where a huge amount of Rs.21,00,000/- was brought and when it was paid to the defendant. The First Appellate Court also found that the evidence led by the plaintiffs did not tally with the facts as stated in the plaint and something

new was introduced in the evidence. Upon appraisal of the evidence the First Appellate Court inter-alia found that *“If at all agreements Ex.P1 and Ex.P2 were in existence on 11.2.2003 it must have been mentioned in the application moved to the police on 22.8.2003 that such agreements have already been executed by the defendant Deepak Dutta. Not mentioning of these agreements in the complaint to the police goes in a long way to show that these documents were prepared subsequently and version of the defendant that he was kidnapped and his signatures were obtained at gunpoint appears to be more probable”*. The First Appellate Court further held that *“So from all the angles, the plaintiffs have miserably failed to prove that any consideration was made regarding the disputed amount by the plaintiffs vide Ex.P1 and Ex.P2. These are highly suspicious documents as these do not find mentioned in the complaint moved to the police. A perusal of the file goes to show that criminal case was decided on 1.5.2007, complaint was also moved to the police after the alleged execution of these documents but why there was total silence regarding these documents has not been explained. So that further goes to show that Ex.P1 and Ex.P2 are not genuine and the same could not be looked into”*.

9. Learned counsel for the plaintiff No.1-appellant has not been able to convince this Court that any interference is called for in the findings of fact recorded by the First Appellate Court. No material irregularity or illegality in the findings recorded has been highlighted.

10. In view of the above, I do not find any illegality or infirmity in the judgment and decree passed by the First Appellate Court. No question of law, much less any substantial question of law, arises in the present case.

The appeal, which is devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

29.05.2023

jk

**( ALKA SARIN )  
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO