

111.

2023:PHHC:165167

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

Regular Second Appeal No.251 of 2019 (O&M)

Date of decision: 30.10.2023

Balkar Singh

.... Appellant

Versus

Tehal Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Sanjeev Kumar Arora, Advocate, for the appellant.

GURBIR SINGH, J.

1. Present regular second appeal has been filed against the judgment and decree dated 11.10.2018 passed by learned Additional District Judge, Ferozepur, whereby the appeal preferred by the appellant-defendant against the judgment and decree dated 28.02.2018 passed by learned Additional Civil Judge (Senior Division), Guruharsahai, has been dismissed.

2. Brief facts of the case are that the respondent-plaintiff (hereinafter called, "plaintiff") filed a civil suit under Order 37 CPC for recovery of Rs.1,89,000/- i.e. Rs.1,50,000/- as principal and Rs.39,000/- as interest w.e.f. 10.12.2014. The case of the plaintiff is that on 10.12.2014, the appellant-defendant (hereinafter called, "defendant") took Rs.1,50,000/- @ 2% interest per month for his domestic use and in this respect, a pronote and receipt were also executed. However, despite repeated requests of the plaintiff and even after serving a legal notice dated 31.12.2015, the defendant did not pay even a single penny.

2.1 Upon notice, defendant appeared and filed written statement. It was contended that the plaintiff has filed the present suit just to harass him at the behest of his brother Malook Singh with whom defendant is litigating since long. Said Malook Singh forged an agreement to sell and on that basis filed a suit for specific performance and also filed injunction suit restraining the defendant from interfering in his alleged possession over the land. Though the court passed status quo order but even then Malook Singh with his associates tried to take forcible possession of the land from the defendant. Now, Malook Singh in connivance with his brother i.e. the plaintiff, has forged the alleged pronote and receipt and it is on that basis, the present suit has been filed.

2.2 In support of the case, the plaintiff examined Nishan Singh, marginal witness of receipt, as PW1 and he himself stepped into the witness box as PW2 and on the other hand, the defendant himself stepped into the witness as DW1 and closed the evidence.

2.3 After appreciating the evidence on record, the trial Court, vide judgment and decree dated 28.02.2018 decreed the suit in favour of the plaintiff and held that the plaintiff is entitled to recover sum of Rs.1,50,000/- along with interest @ 9% per annum from the date of execution of the pronote and receipt till actual realization of the decretal amount. The defendant filed appeal challenging the said judgment and decree, however, the learned Appellate Court upheld the findings of the trial Court and dismissed the appeal vide judgment and decree dated 11.10.2018.

2.4 Aggrieved against the said judgements and decrees of both the courts below, the defendant has approached this Court by way of present appeal.

3. Learned counsel for the appellant has argued that the appellant-defendant has not taken any loan amount from the respondent-plaintiff and the alleged pronote Ex.P1 and receipt Ex.P2 are fabricated documents. Nishan Singh, one of marginal witnesses, who stepped into the witness-box as PW1, had stated in his examination-in-chief that both the parties after admitting the alleged documents i.e. Exs.P-1 and P-2 as correct 'signed' them, whereas on those documents, 'thumb-impressions' of the appellant are stated to be affixed. Moreover, there are discrepancies in the statements of PW1 and PW2 regarding the execution of Exs.P-1 and P-2. PW1 in his cross-examination stated that the plaintiff arranged an amount of Rs.1,20,000/- on the same day i.e. 10.12.2014 when the alleged pronote and receipt were executed, by selling his two buffaloes in the evening, whereas the alleged pronote and receipt were executed in day time. On the other hand, the plaintiff himself who stepped into the witness-box as PW2, deposed that he sold two buffaloes four years back for Rs.1 lac and Rs.50,000/- were lying in his house for 6/7 years, which is highly improbable that a person will keep said amount for such a long period and will not spend the same. It is also argued that since there were litigation between the parties, the question of execution of alleged documents did not arise.

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

5. The whole case depends upon the execution of alleged pronote Ex.P1 and receipt Ex.P2. In this case, the respondent-plaintiff proved the execution of said documents by examining Nishan Singh-PW1, who deposed that the appellant-defendant took the suit amount from the respondent-plaintiff in his presence and he executed the documents and attested the same. Whereas the plea taken by the appellant-defendant is that the alleged documents did not bear his thumb-impressions and these are forged one. The appellant failed to examine expert. The science of fingerprints is perfect science. It can be safely concluded that said documents bear thumb-impression of appellant. A mere bald statement of the appellant that the alleged documents were not executed, is not of any help to him. The other plea taken by the appellant-defendant is that there was prior litigation between him and Malook Singh, brother of the respondent-plaintiff, but as per judgments Exs.D1 and D2, the respondent-plaintiff was not a party to said litigation, and Malook Singh is stated to be residing separately with his family and has his own separate business, so, no benefit of said plea can be given to the appellant. Though there is discrepancy in the statements of PW1 and PW2 as to when buffaloes were sold, but the fact remains that the suit amount was the same. Any discrepancy regarding arranging of amount is of not much help to the appellant.

6. Once the execution of the documents Exs.P1 and P2 stood proved, the burden of proof of want of consideration was upon appellant-defendant which he failed to discharge that onus since he could not rebut the oral and documentary evidence led by the respondent-plaintiff. Moreover, the respondent-plaintiff also served legal notice dated 31.12.2015, but the

appellant-defendant did not reply to said notice, which facts are sufficient to prove that he had nothing to say about the execution of said documents and admits the same.

7. 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 same is without any merit and is dismissed accordingly.

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

(GURBIR SINGH)
JUDGE

October 30, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No