

RSA-368-2019 (O&M)

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

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**RSA-368-2019 (O&M)
Decided on : 04.12.2023**

Col. Kuldip Singh (now deceased)
through his LRs.

... Appellant(s)

Versus

Acchra Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Dinesh Mahajan, Advocate for
Mr. S.S. Gill, Advocate, for the appellant(s).

SANJAY VASHISTH, J. (Oral)

CM-787-C-2019

i. This is an application under Order 22 Rule 3 for impleading/bringing on record the legal representative of appellant No.1 – Daljit Kaur.

ii. It has been averred in the application that during the pendency of litigation, Daljit Kaur (wife of appellant Col. Kuldip Singh) has also expired, leaving behind his legal representative (son) as mentioned in para No.3 of the application. It has further been averred that apart from him, there is no other legal representative of late Col. Kuldeep Singh, and Daljit Kaur (now deceased). The application is accompanied by an affidavit of Amandeep Singh, who is son of the deceased/appellant No.1 – Daljit Kaur.

iii. After hearing learned counsel for the applicant-appellant and perusing the application, which is supported by an affidavit, same is allowed, subject to all just exceptions and the applicant as mentioned in para No.3 of the application is ordered to be impleaded as legal representative of deceased/appellant No.1 – Daljit Kaur. It is, however, clarified that this

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order shall not confer any title upon the legal representative to the estate of the deceased - appellant No.1 and this order has been passed only to allow the aforesaid legal representative to pursue this appeal.

iv. CM stands **disposed of**. Memo of parties is already appended with the appeal.

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1. Present Regular Second Appeal (RSA) has been filed by the against the concurrent finding of dismissal of suit, filed by the plaintiffs (appellants herein).

2. Col. Kuldeep Singh (now deceased) filed a suit for recovery of Rs.5,75,000/- (Rs.5,00,000/- as principal loan amount, and Rs.75,000/- as interest over the said loan amount). It is pleaded in the suit that defendant (respondent herein) – Achhra Singh, borrowed an amount of Rs.5,00,000/- on 06.11.2007 from Col. Kuldeep Singh, and in lieu thereof, defendant executed one pronote and receipt by signing the same in ‘Punjabi’. As per said pronote, defendant has to pay the interest @ 1.5% per annum.

During the pendency of the suit, Col. Kuldeep Singh expired, and he was represented through his wife ‘Daljit Kaur’ and minor son ‘Amandeep Singh’, through his mother - Daljit Kaur. Further, during the pendency of the suit, ‘Daljit Kaur’ also expired, therefore, proceedings on behalf of the plaintiff were represented through the sole surviving plaintiff i.e. ‘Amandeep Singh’. Further, for the purpose of succeeding the rights of ‘Daljit Kaur’, ‘Amandeep Singh’ has been allowed to be legal representative on her behalf in the present appeal also, by passing a separate order of the even date in CM-787-C-2019.

3. In the written statement, specific ground is taken by the

defendant that he has never executed any pronote or receipt, and the alleged pronote and receipt does not bear the signatures of the defendant. Further alleged that he does not know how to sign and write in Punjabi, and he signs only in English language. It is also pleaded that present suit has been filed by the plaintiffs in connivance with Mr. Kaur Chand, who is Commission Agent at Grain Market, Khanna.

Defendant further pleaded that he used to sell the crop through the Commission Agent namely; Kaur Chand. Said Kaur Chand committed certain irregularities in the account, and on that account he was found guilty of cheating, and thereafter, defendant stopped selling his crop through him since the year 2006. Thus, alleged pronote and receipt is result of forgery committed by said 'Kaur Chand'. Accordingly, the suit was prayed to be dismissed.

4. Thereafter, learned trial Court framed the following six issues:

- “1. Whether the defendant executed pronote and receipt dated 6.11.2007 in favour of the plaintiff? OPP*
- 2. Whether consideration passed in hand under pronote and receipt in question? OPP*
- 3. Whether the plaintiff is entitled to recover Rs.5 lac from defendant? OPP*
- 4. Whether the plaintiff is entitled to interest @ 1.5% per month from the defendant? OPP*
- 5. Whether suit is not maintainable in the present form? OPD*
- 6. Relief.”*

5. All the issues were taken up together. PW1 – Sajjan Singh, appeared in relation to admission and withdrawal register of defendant – Achhra Singh, regarding his admission in Govt. Primary School, village Bharthala Randhawa (Block, Khanna-I), Tehsil Payal, Distt. Ludhiana, and stated that Achhra Singh was admitted vide Admission No. 301, dated

12.04.1965 in first class and his name was struck-off in third class on 04.10.1968. School was of 'Punjabi' medium, and Achhra Singh studied in the said school in 'Punjabi' medium. Another, witness; PW2 – Bahadur Singh, appeared as attorney of son of the plaintiff by way of affidavit Ex.PA, and tendered his Special Power of Attorney (SPA) (Ex.P2), original pronote (Ex.P3) and receipt (Ex.P4). PW3 – Dr. Navdeep Gupta, appeared as document expert.

On the other hand, Achhra Singh appeared as his own witness as DW1, and tendered his affidavit Ex.DA, as per the averments made in the written statement.

6. After appreciating the evidence led by the respective parties, learned trial Court found that there is no evidence available on record to prove that defendant executed any pronote and receipt. Even, there is no evidence to say that the consideration changed hands and any amount was taken by the defendant. Therefore, learned trial Court concluded that merely on the basis of alleged documents, is not proved that any execution of the same has taken place, and thus, same are not acceptable until some evidence to prove the same is produced by the plaintiff.

Learned trial Court found that son of the plaintiff, who was said to be well conversant with the facts of the case, has not stepped into the witness-box, though he was hale & hearty. While PW2 – Bahadur Singh appeared, in his cross-examination, he deposed that plaintiff has no knowledge regarding any case in which he is party as legal representative of his father Col. Kuldip Singh. Meaning thereby, even son of the plaintiff had no personal knowledge regarding the loan amount, if any, given to the defendant. Even otherwise also, attorney of the plaintiff cannot be assumed

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to be conversant with the facts of the case, because as per pronote or receipt, his presence is not found to be there at the time of alleged transaction.

Thus, by recording said reasons, suit was dismissed by the learned trial Court.

7. Thereafter, in the appeal filed by the plaintiff before the learned First Appellate Court, the findings given by the learned trial Court, were affirmed.

8. Broadly speaking, none of the witnesses, appearing on behalf of the appellant, could prove the passing of the consideration i.e. alleged loan amount to the defendant.

9. I have gone through the findings given by both the learned Courts below. In the absence of any unimpeachable evidence, said findings cannot be disturbed. Both the learned Courts below are absolute correct in observing that there is no evidence on record for proving the loan transaction. Therefore, without causing any interference in the impugned judgment(s) & decree, present appeal is hereby **dismissed**.

Besides, no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

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

(SANJAY VASHISTH)
JUDGE

December 04, 2023

J.Ram

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