

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

RSA No.3771 of 2019 (O&M)

Date of Decision: 21.02.2024

Gurdeep Kaur and others

...Appellants

Versus

Ramesh Kumar

...Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Parminder Singh, Advocate
for the appellants.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree handed down by learned District Judge, Jind (for short 'the Lower Appellate Court') on 11.01.2019, whereby the appeal moved by the respondent-plaintiff (here-in-after to be referred as 'the plaintiff') to assail the judgment and decree as passed by learned Additional Civil Judge (Senior Division), Safidon (for short 'the trial Court') on 05.04.2017, dismissing the Civil Suit filed by him against the appellants-defendants (here-in-after to be referred as 'the defendants'), has been allowed and the afore-said Suit has been decreed, entitling him (plaintiff) to recover the amount of Rs.1,00,800/- from the defendants, along-with interest @ 9% per annum from the date of filing of the Suit till the date of decree as passed by the trial Court and @ 6% per annum thereafter till the payment of this amount, while clarifying that they (defendants) would be liable to pay the decretal amount out of the property

as inherited by them from Darshan Singh (here-in-after to be referred as ‘the borrower’), the defendants have chosen to prefer the instant appeal to lay challenge to the same.

2. Shorn and short of unnecessary details, the facts, as emerging from the perusal of the file and resulting in the filing of the present appeal, are that the plaintiff filed the above-said Civil Suit against the defendants, while averring that on 19.02.2012, the afore-named borrower, who was their (defendants’) predecessor-in-interest, had raised a loan of Rs.60,000/- from him (plaintiff) and had executed the Pronote and Receipt in his favour in lieu thereof but he (borrower) failed to repay the loan amount despite the issuance of a notice to him in this regard. The defendants, in their joint written-statement, controverted the claim of the plaintiff by denying the execution of any Pronote and Receipt by the borrower in his (plaintiff’s) favour. Then, the parties were put to the trial by framing the issues and after appreciating and evaluating the evidence as led by them on the record and hearing their respective counsel, the trial Court held that the factum of the execution of both the above-mentioned documents by the borrower had been duly proved but it dismissed the Suit while observing that the plaintiff had not been able to produce any evidence on the file, so as to show that the defendants had inherited any property from the borrower and therefore, they could not be fastened with the liability to repay any loan amount to him and the appeal moved by the plaintiff against the judgment and decree, handed down by the trial Court, has been allowed, as already discussed in the opening para of this judgment.

3. I have heard learned counsel for the appellants-defendants in the instant appeal, at the preliminary stage and have also gone through the file carefully.

4. Learned counsel for the defendants contends that the borrower had never raised any loan from the plaintiff nor he had executed the alleged Pronote and the Receipt in his (plaintiff's) favour and even otherwise, the defendants had not inherited any property from the borrower and hence, they could not be saddled with the liability to repay any loan amount to the plaintiff and in these circumstances, it becomes explicit that the impugned judgment and decree, passed by the Lower Appellate Court, are not legally sustainable and therefore, the same deserve to be set-aside.

5. However, the afore-raised contentions are devoid of any merit because the trial Court and the Lower Appellate Court have concurrently held that the factum of the execution of the Pronote and Receipt by the borrower, stood duly proved on the record. As regards the contention qua the defendants not having inherited any property from the borrower, it is worth-while to mention here that in Para No.13 in the impugned judgment, the Lower Appellate Court has specifically observed that in Para No.4 in the plaint, the plaintiff had averred that the defendants had inherited the property from the borrower and the defendants had not denied this fact in their written-statement and then, in his affidavit Exhibit PW2/A also, the plaintiff had made depositions to the same effect but he had not been cross-examined by the defendants on this aspect. These facts certainly amount to an implied admission on the part of the defendants regarding their having

inherited the property from the borrower. To add to it, as mentioned earlier, the Lower Appellate Court has categorically restricted the liability of the defendants to pay the decretal amount only to the extent of the property, as inherited by them from the borrower. The defendants have not been able to show as to how the above-discussed observations, as made by the Lower Appellate Court, are factually incorrect or are perverse in any manner.

6. As a sequel to the fore-going discussion, it follows that the impugned judgment and decree, passed by the Lower Appellate Court, do not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the Regular Second Appeal in hand, being *sans* any merit, stands dismissed.

21.02.2024
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(MEENAKSHI I. MEHTA)
JUDGE

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