

(2013) 08 P&H CK 0751

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3230 of 1986

Paras Ram

APPELLANT

Vs

Chiranji Lal

RESPONDENT

Date of Decision: Aug. 14, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 33

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Sudhanshu Makkar, for the Appellant; Mani Ram Verma, for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.

The appeal is filed by the plaintiff whose suit has been dismissed for recovery of money said to have been lent by the plaintiff to the defendant. The defendant denied the borrowing and also contended that there were material alterations made in the document. His principal contest was that the plaintiff was himself a money lender and he not having registered as such under the Punjab Registration of Money Lender's Act, 1938 was barred from instituting the suit. The Courts below framed an issue whether the plaintiff had been a money lender and whether the suit was maintainable, the trial Court as well as the Appellate Court found that he was a money lender and the suit was not competent. In the so doing, the Appellate Court was affirming the basis of reasoning given by the trial Court with reference to his status as a money lender. The Courts below have observed that the plaintiff had admitted himself to have filed decree for recovery of Rs. 22,000/- against some other person and he had also been called by the Deputy Commissioner for giving statement regarding his money transactions. He was also admitted to have lent monies to more than 20 persons. With the quality of evidence that had been brought as admission of the plaintiff, the trial Court and the Appellate Court held that he was a money lender within the definition of the Act and the suit for recovery

by the plaintiff without registration mandated by law was not maintainable.

2. Learned counsel appearing on behalf of the appellant argues on the point of formulation regarding the maintainability of the suit that his status as a money lender itself was wrongly considered by the Courts below. The counsel would refer me to the decision rendered by this Court that placed the burden of proof on the person that contends that the plaintiff was a money lender and the suit was barred. The issue relating to burden of proof is well taken and I will take it that the burden was on the defendant to establish that the plaintiff had been a money lender. It is a trite law that admission is the best form of proof and if the defendant was relying on admission by the plaintiff in the course of cross examination, the fact that the defendant himself did not offer any evidence will not require a new burden to be again cast and to be discharged. In this case, the two Courts below have considered the admission which he was making and if the inference was that the plaintiff had been in the business of money lending, it should be only taken that the finding had been rendered by an appreciation of evidence on a point of fact on the basis of which it applied the law to find that the suit was not maintainable. The learned counsel refers me to the decision in *Balvinder Singh Vs. M/s. Basaikhi Ram Saina Ram* 2008 (2) RCR (Civil) 467 that refers to the issue of burden of proof and I have already dealt with it. In two other decisions, one in [Sant Lal Vs. Noria Mal](#) and yet another decision in S.S.S [Amar Singh Vs. Kuldip Singh and Others](#), two distinct Benches of this Court have interpreted the expression "money lender" to mean a person who is in the regular business and not mere causal instances of money transactions. In this case, the Courts have held that the plaintiff was engaged in regular loan transactions and if the Court inferred that there had been 20 transactions of loan before the institution of suit and held for recovery of money against yet another person and the statements which were taken by the commissioner regarding his loan transaction and found also that he was a money lender, I have no reason to take a different view on the same and upset the judgments passed by both the Courts below. The question of law which has been raised regarding the maintainability of the suit is, therefore, to be returned against the plaintiff that he was a money lender and other issues are not required to be answered in the manner framed. Although the Courts have found a basis for a decree for the amount said to have been lent but there has been no cross appeal as regards the same, when the issue was one of the maintainability of the suit, the fact that there was no cross appeal ought not to make a difference. I invoke the power under Order 41 Rule 33 and hold that the suit was not competent in the manner framed and no decree could have been passed. The second appeal is dismissed with costs, counsel's fee Rs. 2500/-.