

(2012) 08 P&H CK 0295

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal 3644 of 2012 (O and M)

Jag Ram

APPELLANT

Vs

Dilbag Singh

RESPONDENT

Date of Decision: Aug. 21, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: Yashwinder Paul Singh, for the Appellant;

Final Decision: Dismissed

Judgement

T.P.S. Mann, J.

Suit for recovery filed by the plaintiff-respondent was decreed by the trial Court which judgment and decree was upheld by the lower appellate Court when it dismissed the appeal filed by the defendant-appellant, who is now before this Court by way of second appeal filed u/s 100 of the Code of Civil Procedure. The defendant-appellant has admitted the execution of the pronote and receipt of consideration. However, he has taken the plea of having repaid the money in the presence of Laxmi Narain, Jai Bhagwan, Balwan Singh and others and after receiving the said money, the plaintiff had executed a receipt in that regard. However, the defendant-appellant while examining the aforementioned three persons as DW1, DW2 and DW3 respectively, did not confront them about the receipt said to have been executed by the plaintiff-respondent. Even while appearing as his own witness, the defendant did not exhibit the receipt. Under these circumstances, the receipt remained only as a mark on the file of the case.

2. Learned Counsel for the defendant-appellant has submitted that during the pendency of the suit, an application was filed by him for obtaining the specimen signatures of the plaintiff which application was allowed and the specimen

signatures were obtained and sent for comparison, and the Handwriting Expert, after examining the specimen signatures and the questioned signatures of the plaintiff-respondent on the receipt in question came to the conclusion that they were of the same person. After the report of the Handwriting Expert was received and placed on the file, the plaintiff filed an application for removal of the said report from the file which application was allowed. As the plaintiff had not challenged the order of the trial Court while directing him to give his specimen signatures for comparison and the report of the Handwriting Expert had come in that regard, it could not be said that the plaintiff had not executed the receipt and, therefore, the Courts below have erred in decreeing the suit filed by the plaintiff-respondent.

3. I have heard Learned Counsel for the defendant appellant.

4. It is true that the plaintiff-respondent had not challenged the order passed by the trial Court on 16.1.2007 while directing him to give his specimen signatures and after obtaining the specimen signatures and sending them for comparison, the Handwriting Expert had given a report against the plaintiff. The fact, however, remains that after the report had been received, it was ordered to be removed off the record by the trial Court vide order dated 16.2.2011. The said order had never been challenged by the defendant-appellant. Therefore, under these circumstances, it could not be said that the plaintiff-respondent had executed a receipt which could be termed as legal so as to absolve the defendant from its liability of repaying the amount specified on the pronote. In view of the above, no case for interference in the judgments passed by the Courts below is made out. The appeal is without any merit and, accordingly, dismissed.