(2011) 08 P&H CK 0253

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2535 of 2008

Sohan Singh		APPELLANT
	Vs	
Amritpal Singh		RESPONDENT

Date of Decision: Aug. 24, 2011

Acts Referred:

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

Citation: (2011) 164 PLR 305

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

The conspectus of the facts, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant regular second appeal and emanating from the record, is that Sohan Singh son of Gik Singh Appellant-Plaintiff (for brevity "the Plaintiff") filed the suit against Amritpal Singh son of Narinder Singh-Respondent-Defendant (for short "the Defendant") for a decree of recovery of Rs. 73125/-(Rs. 60,000/-principal plus interest), inter-alia pleading that he (Defendant) borrowed a sum of Rs. 60,000/-from him (Plaintiff) on 2.1.2001 on interest at the rate of 2% per month and executed the pronote (Ex.P1) and receipt (Ex.P2) in this respect. According to the Plaintiff that the Defendant agreed to repay the amount alongwith interest on demand, but he has refused to repay the same, despite repeated requests. It necessitated him to file the suit. On the basis of aforesaid allegations, the Plaintiff filed the suit for a decree of recovery against the Defendant, in the manner indicated hereinbefore.

2. The Defendant contested the suit and filed the written statement, raising certain preliminary objections of, maintainability of the suit, suppression of material facts, limitation, cause of action and locus standi of the Plaintiff. The case set up by the

Defendant, in brief in so far as relevant, was that on 2.1.2001, he did not borrow the amount of Rs. 60,000/-from the Plaintiff, whereas in fact, the Defendant borrowed a sum of Rs. 37,500/-on interest on 29.11.1999 and executed the pronote (Ex.D2) and receipt (Ex.D3) in his favour. The pronote and receipt were attested by Ashok Kumar and Tarsem Lal. Again on 29.1.2000, the Defendant borrowed a sum of Rs. 10,000/-from the Plaintiff and another pronote (Ex.D4) and receipt (Ex.D5) were also executed on the same day, which were attested by Ashok Kumar and Darshan Singh. The Defendant claimed that on 2.1.2001, the Plaintiff had compounded and worked out the principal amount of both the above said pronotes and receipts alongwith interest at the rate of 2% per month as Rs. 60,000/-. In this manner, he got scribed the pronote (Ex.P1) and receipt (Ex.P2), without payment of any amount of Rs. 60,000/-. Earlier amounts, subject matter of pronotes and receipts (Ex.D2 to Ex.D5) were stated to have already been paid by the Defendant and received by the Plaintiff. In all, the Defendant pleaded that the pronote (Ex.P1) and receipt (Ex.P2) were executed, in lieu of principal amount and interest, subject matter of earlier pronotes and receipts (Ex.D2 to Ex.D5), which, the Plaintiff has already received. The story put forth by the Plaintiff for payment of Rs. 60,000/-as loan, in pursuance of pronote (Ex.P1) and receipt (Ex.P2), was stated to be false and fabricated. It will not be out of place to mention here that the Defendant has stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

3. Controverting the allegations contained in the written statement and reiterating the pleadings of the plaint, the Plaintiff filed the replication, wherein, the factum of taking loan of Rs. 37,500/-and Rs. 10,000/-by the Defendant and execution of pronotes and receipts (Ex.D2 to Ex.D5) was admitted. It was specifically admitted that the Defendant had already repaid the amount of earlier pronotes and receipts to him (Plaintiff).

4. In the wake of pleadings of the parties, the trial Court framed the essential issues for proper adjudication of the case.

5. The parties to the lis, produced on record the oral as well as documentary evidence, in order to prove their respective pleaded cases.

6. The trial Court, after taking into consideration the entire evidence on record, dismissed the suit of the Plaintiff, by means of impugned judgment and decree dated 14.12.2005.

7. Aggrieved by the decision of the trial Court, the Plaintiff filed the appeal, which was dismissed with costs as well, by the Ist Appellate Court, by way of impugned judgment and decree dated 5.5.2008.

8. The Appellant-Plaintiff still did not feel satisfied with the impugned judgments and the decrees of the Courts below and preferred the present regular second appeal. That is how I am seized of the matter.

9. Having heard the learned Counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is No. merit in the instant appeal in this context.

10. Ex-facie, the argument of learned Counsel that since the Defendant has admitted the execution of pronote (Ex.P1) and receipt (Ex.P2) and there is a legal presumption of consideration, so, the Courts below committed a legal mistake in dismissing the suit of Plaintiff, is not only devoid of merit but misplaced as well.

11. As is evident from the record that Plaintiff claimed that Defendant borrowed a sum of Rs. 60,000/-from him on 2.1.2001 on interest and executed the pronote (Ex.P1) and receipt (Ex.P2) in this regard. On the contrary, according to the Defendant that he obtained a loan of Rs. 37,500/-, vide pronote (Ex.D2) and receipt (Ex.D3) on 29.11.1999 and another amount of Rs. 10,000/-, by virtue of pronote (Ex.D4) and receipt (Ex.D5) on 29.1.2000. The entire indicated principal amount and interest were compounded and clubbed, which come to Rs. 60,000/- and fresh pronote (Ex.P1) and receipt (Ex.P2) were executed in this respect. It has been specifically pleaded by the Defendant that he has already repaid the entire amount of Rs. 60,000/-to the Plaintiff. Not only that, the Plaintiff, in his replication and statement, has admitted the receipt of principal amount and interest, subject matter of earlier pronotes and receipts (Ex.D2 to Ex.D5). Thus, it would be seen that the facts of this case are neither intricate nor much disputed.

12. At the very outset, No. one can lose sight of the fact that the Plaintiff has to prove his own case by producing the cogent evidence that consideration amount of Rs. 60,000/-was actually passed, in lieu of pronote (Ex.P1) and receipt (Ex.P2). He cannot take the advantage of weakness in the Defendant''s case to get a decree, in view of the law laid down by the Hon''ble Apex Court in case Punjab Urban Planning and Dev. Authority Vs. M/s. Shiv Saraswati Iron and Steel Re-Rolling Mills, . It is equally well settled that onus of proof of consideration is also on the Plaintiff. Once the Plaintiff fails to prove that the consideration recited in the pronote and receipt did not pass, then he cannot legally succeed to recover the amount of loan.

13. Above being the position on record, now the short and significant question, though important, that arises for determination in this appeal is, as to whether the Plaintiff had actually advanced a loan of Rs. 60,000/-to the Defendant on 2.1.2001. To put it differently whether the pronote (Ex.P1) and receipt (Ex.P2) were executed after passing the due consideration amount of Rs. 60,000/- or not ?

14. Having regard to the rival contentions of learned Counsel for the parties, to me, the answer must obviously be in the negative, as the Plaintiff has miserably failed to prove the passing of the indicated consideration amount, in pursuance of pronote (Ex.P1) and receipt (Ex.P2).

15. Possibly, No. one can dispute with regard to the observations of Hon''ble Supreme Court in case Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Finn

and Ors. 2008 (3) Civil CC 392 (SC) that there is a legal presumption of consideration if the execution of the pronote is proved and this Court in case Harbans Singh v. Firm M/s Sunder Mal Sat Pal 1998 (1) Civil CC 589 (P&H), relied on behalf of the Plaintiff that past consideration is valid consideration to hold that the document has been executed for consideration, but to my mind, the same would not come to the rescue of the Plaintiff in the present controversy.

16. As indicated earlier, the Plaintiff has categorically admitted, in his replication and statement, that he has already received the principal amount alongwith interest in lieu of earlier pronotes and receipts (Ex.D2 to Ex.D5) and passing of Rs. 60,000/-, in pursuance of pronote (Ex.P1) and receipt (Ex.P2) is not proved on record. If passing of the consideration amount is not duly proved, even if the execution of pronote and receipt is proved, then it remained just a paper transaction, which cannot be enforced against the executant in the court of law. Once he has received the amount of earlier pronotes and receipts, then question of past consideration, in lieu of present pronote (Ex.P1) and receipt (Ex.P2) did not arise at all, as urged on his behalf.

17. Therefore, to me, the trial Court, after analyzing the entire material on record in the right perspective, has recorded the finding of fact that it stands proved on record that the Defendant has already paid the previous amount to the Plaintiff (Ex.D2 to Ex.D5). The Plaintiff has utterly failed to prove the passing of consideration amount, in pursuance of pronote (Ex.P1) and receipt (Ex.P2).

18. Not only that, the decision of the trial Court was also upheld by the first appellate Court, by way of impugned judgment dated 5.5.2008, the operative part of which is (paras 14 and 15) as under:

14. Now, it has to be seen as to whether the amount pertaining to the promissory note dated 29.1.1999 and 29.1.2000 was repaid by the Defendant prior to the execution of the promissory note dated 2.1.2001 or not. The Defendant while appearing in the witness box has deposed to the effect that the account with regard to the previous promissory notes alongwith interest was worked out to be Rs. 60,000/-and consequently the promissory note was executed on 2.1.2001. To the similar effect is the deposition of Sardara Singh DW2 who is a witness to the receipt Ex.P2. He has specifically deposed that the amounts of Rs. 60,000/-was not advanced to the Defendant on 2.1.2001.

15. The version of the Plaintiff as put forth in the replication to the effect that the amount of earlier promissory note was repaid by the Defendant prior to the execution of the promissory note Ex.P1 stands fortified during the course of his cross-examination. The Plaintiff during his cross-examination has deposed to the effect that the amounts pertaining to the promissory note Ex.D2 and Ex.D4 were recovered by him without interest with the intervention of the panchayat about 25 days prior to the institution of the suit. This aspect of deposition of the Plaintiff

indicates that the amount of the promissory note Ex.D2 and Ex.D4 were not repaid prior to the execution of the promissory note Ex.P1. As such, it has to be construed that No. amount in cash was advanced to the Defendant on 2.1.2001 and the promissory note Ex.P1 was executed after settling the account with regard to the previous promissory notes. As per the deposition of the Plaintiff the amount was repaid to him 25 days prior to the institution of the suit and said amount could be only with regard to the amount due payable with regard to the promissory note Ex.P1 executed on 2.1.2001. No. illegality or irregularity is made out in the findings of the learned Lower Court and the same are affirmed.

19. Moreover, the learned Counsel for the Appellant-Plaintiff did not point out any material, much less cogent, to contend as to how and in what manner, the impugned judgments and decrees of the Courts below are illegal and would invite any interference in this relevant behalf.

20. Meaning thereby, the Courts below have taken into consideration and appreciated the entire relevant evidence brought on record by the parties in the right perspective. Having scanned the admissible evidence in relation to the pleadings of the parties, the trial Court as well as the first Appellate Court has recorded the above mentioned concurrent findings of fact. Such pure concurrent findings of fact based on the appraisal of evidence, cannot possibly be interfered with by this Court, while exercising the powers conferred u/s 100 Code of Civil Procedure, unless and until, the same are illegal and perverse. No. such patent illegality or legal infirmity has been pointed out by the learned Counsel for the Appellant-Plaintiff, so as to take a contrary view, than that of well reasoned decision already arrived at by the Courts below, in this regard.

21. No. other meaningful argument has been raised by the learned Counsel for the Appellant-Plaintiff to assail the findings of the Courts below in this respect. All other arguments, relatable to the appreciation of evidence, now sought to be urged on his behalf, in this relevant direction, have already been duly considered and dealt with by the Courts below.

22. Similarly, the entire matter revolves around the re-appreciation and re-appraisal of the evidence on record, which is not legally permissible and is beyond the scope of second appeal. Since No. question of law, muchless substantial, is involved, so, No. interference is warranted, in the impugned judgments/decrees of the Courts below, in view of the law laid down by Hon''ble Apex Court in case Kashmir Singh v. Harnam Singh and Anr. 2008 (2) R.C.R. (Civil) 688 : 2008 AIR (SC) 1749 in the obtaining circumstances of the present case.

23. No. other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

24. In the light of aforementioned reasons, as there is No. merit, therefore, the instant appeal is hereby dismissed as such.