Shamsher Singh Vs Amar Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 6, 2013

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 96
Negotiable Instruments Act, 1881 (NI) â€" Section 118

Hon'ble Judges: Mahavir S. Chauhan, J

Bench: Single Bench

Advocate: G.S. Punia, for the Appellant; Jagdev Singh, for the Respondent

Final Decision: Dismissed

Judgement

Mahavir S. Chauhan, J.
Respondent, Amar Singh (plaintiff in civil suit), had approached the trial court for recovery of Rs. 15,460/-(Rs.

10,000/- as principal and Rs. 5460/- as interest, calculated thereon at the rate of 1.56 percent per mensem) from Shamsher Singh, the appellant

(defendant before the trial Court) alleging that the appellant had borrowed from him an amount of Rs. 10,000/- on 04.08.1982 and had executed a

promissory note and receipt, thereby acknowledging receipt of the aforesaid amount and undertaking to return it on demand together with interest

at the rate of 1.56 percent per mensem but did not return the loan amount and the accrued interest, despite repeated requests. The appellant

resisted respondent''s plea and denied receipt of loan amount of Rs. 10,000/- from the respondent on 04.08.1982. He also came out with a plea

that he had leased out his land to the respondent for 06 crop seasons commencing from Kharif 1982 to Rabi 1985 on Chakota basis, for a total

Chakota amount of Rs. 20,000/-. He received advance of Chakota to the tune of Rs. 10,000/- in June, 1982 from the respondent followed by

another sum of Rs. 10,000/- as advance Chakota in August, 1982 and had executed receipts regarding receipt of Chakota amount. Furthermore,

according to the appellant''s plea in the written statement, the respondent had borrowed from him a sum of Rs. 35,000/- on 09.01.1985 and had

executed a promissory note and receipt in this regard in his favour.

2. While denying receipt of the loan amount vide promissory note and receipt in question, the appellant had prayed for dismissal of respondent''s

suit.

3. Pleadings of the parties resulted into the framing of following issues:-

1. Whether defendant executed pronote and receipt dated 4-8-82 in favour of the plaintiff? OPP

2. If issue No. 1 is proved, whether pronote and receipt are without consideration? OPD.

3. Whether plaintiff took the agricultural land of the defendant on chakota from Kharif 1982 to Rabi 1985 for the consideration of Rs. 20,000/-

and received Rs. 10,000/- in June, 1982 from the plaintiff? OPD

4. Whether the defendant is entitled to special costs? If so, to what extent? OPD

5. Relief.

4. Both the sides adduced evidence in respect of their respective pleas.

5. Court of Shri D.S. Malwai, Sub Judge, 1st Class, Nabha (Patiala) (hereinafter referred as "trial Court") afforded an audience to both the

parties, perused the record, returned findings on Issue Nos. 1, 2 and 4 in favour of the respondent and on Issue No. 3 in favour of the appellant

and, vide judgment and decree dated 22.04.1987 decreed suit of the respondent for the recovery of Rs. 13,600/-, i.e. Rs. 10,000/- as principal

and Rs. 3600/- as interest at the rate of 1% per mensem, with proportionate costs.

6. Aggrieved by the judgment and decree dated 22.04.1987 of the learned trial Court, the appellant preferred an appeal in terms of Section 39 of

the Punjab Courts Act and Section 96 read with Order XLI of the Code of Civil Procedure. The appeal, after contest, was dismissed and the

judgment and decree of the learned trial court were affirmed by the court of Shri M.L. Singhal, Addl. District Judge, Patiala (for short, "first

appellate court").

7. To assail findings recorded by the trial court, as affirmed by the First Appellate Court, the defeated defendant has brought this Regular Second

Appeal.

8. Respondent is contesting the appeal.

9. Learned counsel for the parties have been heard and record of the case has been examined.

10. Before setting out to dispose of the appeal, it needs to be stated that though the appeal is pending since the year 1988 but substantial questions

of law, if any, involved in this appeal have not been filed. It seems that the appellant has not been able to find out any substantial question of law

involved in the matter.

11. It is vehemently argued on behalf of the appellant that the very specific plea of the appellant in the written statement was that he did not borrow

the suit amount from the respondent and, in fact, had signed a receipt for Rs. 10,000/- which amount was received by him as advance payment (of

Chakota) in respect of the land leased out by him to the respondent on Chakota basis for six crop seasons commencing from Kharif 1982 and

ending with Rabi, 1985. Even otherwise, according to the learned counsel for the appellant, the respondent borrowed from the appellant an

amount of Rs. 35,000/- on 09.01.1985 and had executed a promissory note and receipt in that respect and were it that the appellant had

borrowed the suit amount from the respondent on 04.08.1982, the respondent would have insisted upon adjusting that amount while executing

promissory note and receipt in favour of the appellant. But having not done so a presumption against the plea put up on behalf of the respondent

ought to have been raised.

12. Learned counsel appearing on behalf of the appellant defends the findings recorded by the learned trial court and the learned first appellate

court.

13. After hearing learned counsel for the parties, and on perusal of the record, it is found that the appeal has no merit.

14. The respondent himself appeared as PW-3 besides examining PW-2, Gurdev Singh, the attesting witness of the promissory note and the

receipt Exhibits P-1 and P-2, respectively and PW-1, Raghbir Singh, who had scribed the promissory note and receipt, Exhibits P-1 and P-2,

respectively and thereby proved advancement of the loan by him to the appellant and execution of promissory note and receipt, Exhibits P-1 and

P-2, by the appellant in his favour. He, thus, has discharged the initial burden of proof of the loan transaction and execution of the promissory note

and receipt in question. Even otherwise, execution of promissory note, Exhibit P-1 having been proved, a presumption arises in terms of Section

118 of the Negotiable Instruments Act, 1881 that the promissory note, in question, was executed by the appellant for consideration.

15. Further, the appellant has not denied execution of the promissory note and receipt, in question, and has tried to wriggle out of the

consequences by stating that he, in fact, had executed a receipt of Rs. 10,000/-, which amount was received by him on account of advance

payment of Chakota. The contention, however, is far from being meritorious because the appellant has not been able to bring on record any

jamabandi or khasra girdawari or any other document of title to show that he was owner of some agricultural land. He has also failed to bring on

record any writing to show that any such land was leased out by him to the respondent on Chakota for a period of six crop seasons from Kharif

1982 to Rabi 1985. Further the contention raised on behalf of the appellant is factually, incorrect as in the receipt, Exhibit P-2, there is no mention

that it was a receipt of Chakota amount and, then, before executing the receipt, a promissory note was also executed and there is no defence,

whatsoever, for executing the promissory note because if it was the case of receipt of Chakota, the appellant would not have executed the

promissory note.

16. Faced with this situation, learned counsel for the appellant has raised an alternative argument to say that on 09.01.1985, respondent had

borrowed from the appellant an amount of Rs. 35,000/- and if promissory note and receipt, in question, were executed by the appellant in his

favour in the year 1982 in lieu of receipt of an amount of Rs. 10,000/- as loan, the respondent would have adjusted that amount and would not

have executed the promissory note and receipt in favour of the appellant for Rs. 35,000/- rather, he would have adjusted the outstanding loan

amount against the amount so received by him. The submission sounds lucrative but lacks substance because both transactions are independent of

each other and the appellant has not been able to establish any connection between the two. Rather, contrary to the contention that the respondent

borrowed from the appellant, an amount of Rs. 35,000/- in the year 1985 goes to show that the parties to the lis were on friendly terms and that

being so, the adjustment of the loan amount may not have been insisted upon by the respondent towards the loan raised by him.

17. Before parting with this judgment, it needs to be pointed out that the appellant appeared as DW-2 before the learned trial court, and denied

execution of promissory note, Exhibit P-1 and receipt, Exhibit P-2, as also receipt of loan amount. This conduct of the appellant reflects that he

had entered the witness box with a determination not to speak the truth. Such conduct certainly works against the plea of the appellant.

18. Nothing more has been urged on either side. In the consequence, it is held that the findings of fact recorded by both the courts below do not

call for interference, more so, when no substantial question of law is involved in this appeal. In the result, the appeal fails and is dismissed with

costs, while affirming the judgments and decrees of the courts below.