(2009) 12 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Ranbir Singh and Another — APPELLANT

Vs

Haryana Financial Corporation and Another — RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Citation : (2010) 158 PLR 131

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sham Sunder, J.—This appeal, is directed, against the judgment and decree, dated 18.07.07, rendered by the Court of Civil Judge (Junior Division), Rohtak, vide which, it dismissed the suit of the plaintiffs, and, the judgment and decree, dated 17.01.08, rendered by the Additional District Judge (Adhoc), Fast Track Court, Rohtak, vide which, it dismissed the appeal.

2. The facts, in brief, are that, the plaintiffs, were in possession of H. No. 556/29, situated at Tilak Nagar, Rohtak, having boundaries and dimensions of 440 sq. yards. The house, in question, was purchased, from one Angrej Singh son of Hari Narain, for a sale consideration of Rs. 1,10,000/-, vide registered sale deed. It was stated that the plaintiffs, received a notice, issued by defendant No. 1, stating therein, that plaintiff No. I, had stood guarantor for defendant No. 2, against the loan advanced, by it (defendant No. 1), and had deposited the original sale deed, in respect thereof, as collateral security. It was further stated that the house, in question, was jointly owned by the plaintiffs. It was further stated that, however, the notice had been issued, only to plaintiff No. 1, stating therein, that it was only he, who had offered his property, as collateral security, by way of deposit of original sale deed. It was further stated that the plaintiffs, never visited the office of defendant No. 1, nor did they deposit the original sale deed, as collateral security, nor they signed any document. It was further stated that the plaintiffs, were having cordial relations, with defendant No. 2, and somewhere, in the year 1994, they visited his house. It was further stated that,

at that time, plaintiff No. 1, was having an envelope, containing the original sale deed of the house, in question, alongwith certain documents. It was further stated that plaintiff No. 1, inadvertently left the envelope, in the house of defendant No. 2, and brought the same, on the next day. It was further stated that plaintiff No. 1, did not open the envelope, in good faith, and kept the same, in safe custody. It was further stated that it was only after receipt of the impugned notice, that he opened the envelope, and was astonished, to see, that instead of the original sale deed, a photocopy thereof, was kept therein. It was further stated that defendant No. 2, had committed breach of trust and cheated the plaintiffs. It was further stated that no opportunity of being heard, was afforded, to the plaintiffs, before issuance of the notice. It was further stated that the whereabouts of defendant No. 2, were not known. Defendant No. 1, was many a time, asked to treat the impugned notice, as illegal, null and void, but to no avail. Ultimately, a suit for declaration and permanent injunction, was filed.

3. Defendant No. 1, put in appearance, and filed written statement, wherein, it took up various objections, and contested the suit. It was admitted that a notice, had been issued to the plaintiff. It was stated that the plaintiffs, stood guarantors of defendant No. 2, against the loan, advanced by defendant No. 1, and, as such, they had mortgaged the house, in question, in its favour, by way of deposit of the sale deed, as collateral security. It was further stated that, besides submitting the aforesaid sale deed, with defendant No. 1, the plaintiffs, also filed an affidavit and other documents. The remaining averments, were denied, being wrong.

4. On the pleadings of the parties, the following issues were struck:

(i) Whether the notice Annexure A issued by defendant No. 1 is illegal, null, and void and not binding upon the rights of the plaintiff? OPP

(ii) If issue No. 1 is proved, whether the plaintiff is entitled for the relief of permanent injunction as claimed in the suit? OPD

(iii) Whether the suit is not maintainable in the present form? OPD

(iv) Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD

(v) Whether the plaintiffs have not come with clean hands before the Court and have suppressed the material facts from the Court? OPD

(vi) Relief.

5. After hearing the Counsel for the parties, and, on going through the record of the case, the trial Court, dismissed the suit of the plaintiffs.

6. Feeling aggrieved, an appeal was preferred, by the plaintiffs/appellants, which was also dismissed, by the Additional District Judge (Adhoc), Fast Track Court, Rohtak, vide judgment and decree dated 17.01.08.

7. Still feeling dissatisfied, the instant Regular Second Appeal, has been filed by the plaintiffs/appellants.

8. I have heard the Counsel for the parties, and have gone through the evidence, and record of the case, carefully.

9. The following substantial question of law arises, in this appeal, for the determination of this Court:

Whether the Courts below, recorded perverse findings, on account of misreading and misappreciation of evidence, that the plaintiffs/appellants, mortgaged their property, bearing H.No. 556/29, by deposit of title deeds, by way of collateral security, for the repayment of loan, advanced to defendant No. 2/respondent?

10. The Counsel for the appellants, submitted that the appellants, never mortgaged their property, by way of deposit of the title deeds of the house, in dispute, belonging to them, by way of collateral security, for the repayment of loan advanced, in favour of defendant No. 2/respondent. He further submitted that the envelope, containing the title deed of the plaintiffs/appellants, some how or the other, was left, in the house of defendant No. 2/respondent, and he, with a view to defraud them, gave the same, to the Haryana Financial Corporation. He further submitted that no cogent and convincing evidence, was produced, by the defendants, that these sale deeds, were deposited, by the plaintiffs/appellants, with an intention, to create mortgage, by way of collateral security, for the repayment of loan advanced, in favour of defendant No. 2/respondent. He further submitted that even the documents, attached with the title deeds, purportedly bearing the signatures of the plaintiffs/appellants, were sent, to the Forensic. Science Laboratory, Madhuban, Karnal, for comparison of their disputed signatures with their specimen signatures, and a report, was received, that the same, did not tally. He further submitted that, under these circumstances, the Courts below, recorded perverse findings, that the plaintiffs/appellants, mortgaged their property, by way of deposit of title deeds, by way of collateral security, for the repayment of loan advanced, in favour of defendant No. 2/ respondent. He further submitted that the findings of the Courts below, in this regard, being perverse, are liable to be set aside.

11. On the other hand, the Counsel for respondent No. 1, submitted that, in case, the sale deed, had not been deposited, by the plaintiffs/appellants, then how the same came to the office of the Haryana Financial Corporation, was for them, to explain. He further submitted that the plaintiffs/appellants, deposited these title deeds, to create mortgage, by way of collateral security, for the repayment of loan advanced, in favour of defendant No. 2/respondent. He further submitted that science, with regard to the comparison of hand-writing, is not conclusive, and, as such, report of the Forensic Science Laboratory, in this regard, was of no consequence. He further submitted that, in case, the plaintiffs/ appellants, had not deposited the title deed, and the same, some how or the other, was taken away, by defendant No. 2/respondent, and he deposited the

same with the Haryana Financial Corporation, then they could lodge a criminal case, against him, but they did not do so. He further submitted that the mere fact, that the plaintiffs/appellants, slept over the matter, for such a long time, without raising a little finger, in itself, was sufficient, to prove, that the title deeds, were deposited by them, with a view to create mortgage. He further submitted that, with a view to wriggle out of the liability and defraud the Haryana Financial Corporation, the suit, was filed, by the plaintiffs/appellants, denying their liability. He further submitted that the findings of the Courts below, being correct, are liable to be upheld.

12. After giving my thoughtful consideration, to the rival contentions, advanced by the Counsel for the parties, in my considered opinion, the appeal is liable to be accepted, for the reasons to be recorded, hereinafter. It is, no doubt, true that this Court, in the Regular Second Appeal, cannot interfere, with the concurrent findings of fact, recorded by the Courts below, until and unless, it comes to the conclusion, that the same, are the result of complete misreading and misappreciation of evidence, and law, on the point. In the instant case, the findings of the Courts below, to the effect, that the plaintiffs/appellants, deposited the title deeds of their house, to create mortgage, in favour of the Haryana Financial Corporation, by way of collateral security, for the repayment of loan, are based on complete misreading and misappreciation of evidence, and law, on the point. D1 and D2, are the documents, which were allegedly executed, by the plaintiffs/appellants, at the time of alleged deposit of the original sale deed, for the purpose of creation of mortgage, for the repayment of loan advanced, in favour of defendant No. 2/respondent. Ranbir Singh, one of the plaintiffs, when appeared, as PW2, in clear-cut terms, stated that he never deposited the title deeds of his house, with a view, to create mortgage, in favour of the Haryana Financial Corporation, by way of collateral security, for the repayment of loan advanced, in favour of defendant No. 2/respondent. He also stated that he did not sign the original of Dl. He also stated that he and the other plaintiff also did not sign the original of D2. Even, Dr. A.K. Gupta (Retired), Assistant Director, Documents, Forensic Science Laboratory, Madhuban, Karnal, appeared, as PW3. He compared the disputed signatures Q1, Q2, Q8, and Q9, on PW3/A, Q3 and Q10, on PW3/B, Q4 and Q11, on PW3/C, Q5 and Q12, on PW3/D, Q6 and Q13, and Q14 with the specimen signatures of Ranbir Singh and Suraj Kalan, and came to the conclusion, that the questioned and specimen signatures of the plaintiffs, did not tally with each other. No doubt, the disputed signatures, were appended, in the year 1995, and the specimen signatures, were appended, in the year 2001. However, that did not mean, that there could be complete dissimilarity, between the questioned and specimen signatures. There could be some variations, between the signatures appended by a person, a few year earlier, and the signatures, appended by him, after the gap of a few years of his earlier signatures. But, there cannot be complete dissimilarity, on account of the aforesaid reason. The statement of Ranbir Singh, plaintiff, that he never signed the documents, with a view to create mortgage, by way of deposit of title deeds,

was duly supported, by the report of the Hand-Writing and Finger Prints Expert. Not only this, no person, was examined, by the defendants, to prove, that the signatures, were appended, by the plaintiffs, in their presence, on the aforesaid documents. Daljit Singh, Assistant of the Haryana Financial Corporation, appeared, as DW1. He produced letter of mortgage DI, and letter dated 23.05.95 D2, as also the other documents. During the course of his cross-examination, he in clear-cut terms stated that, in his presence, the plaintiffs, did not sign the documents, regarding the deposit of title deeds. The person, who filled up these documents, and, in whose presence, the same, were signed, was not examined. The evidence of Daljit Singh, DW1, therefore, could not be said to be sufficient, to prove, that these documents, were signed by the plaintiffs/appellants. The mere fact, that the plaintiffs/appellants, did not lodge any complaint, against defendant No. 2/respondent, did not mean, that the liability, could be fastened upon them, which was otherwise not proved. The Courts below, recorded perverse findings, that the plaintiffs/appellants, created mortgage, in respect of the property, in dispute, by way of deposit of title deed as a collateral security, for the repayment of loan advanced, in favour of defendant No. 2/respondent. The same, are liable to be reversed.

13. The concurrent findings of fact, recorded by the Courts below, being based on the complete misreading and misappreciation of evidence, and law, on the point, suffer from illegality and perversity, and warrant interference of this Court. The same are liable to be set aside.

14. The substantial question of law, depicted above, is answered, in favour of the appellants.

15. For the reasons recorded above, the instant Regular Second Appeal, is accepted with costs. The judgments and decrees of the Courts below, are set aside. The suit of the plaintiffs, shall stand decreed.