

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****137****RSA-2399-2024 (O&M)****Date of decision: 05.02.2025****Shingara Singh****...Appellant(s)****Vs.****Tajinder Singh (now deceased) through his LRs****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. R.S. Mamli, Advocate
for the appellant.

NIDHI GUPTA, J.

The defendant is in second appeal against the judgments of the learned Courts below whereby the suit of the plaintiff/respondent herein, seeking recovery of Rs.49,56,000/- was partly decreed for principal amount of Rs.12 lakh along with interest @ 6% per annum from 28.04.2011 by the learned Additional Civil Judge, Senior Division, Sirsa vide judgment and decree dated 22.11.2022. Against the said judgment, two appeals were filed – one by the plaintiff and another by the defendants before the learned Additional District Judge, Sirsa. Vide judgment and decree dated 03.08.2024, both the said appeals have been dismissed.

2. Brief facts of the case as set out in the plaint are that the plaintiff and the defendant were known to each other. The appellant/defendant was in need of money. As such, the plaintiff advanced loan of Rs.1,20,000/- to the defendant vide registered Mortgage Deed No.3288 dated 26.05.2006 (Ex.P1) on which the defendant agreed



to pay interest at the rate of 2% per mensem. Thereafter, the plaintiff advanced an additional amount of Rs.80,000/- vide registered Mortgage Deed No.7572 dated 21.11.2006 (Ex.P3) to the defendant. A third loan of Rs.2 lakh on same terms and conditions was advanced by the plaintiff to the defendant. Thus, making the total amount payable against the defendant as Rs.4 lakh. The defendant again demanded an additional loan of Rs.4 lakh which was given by the plaintiff vide Mortgage Deed No.7227 dated 22.01.2010 (Ex.P7). Thereafter, another sum of Rs.4 lakh was extended to the defendant vide Mortgage Deed No.887 dated 27.04.2011 (Ex.P9). Thus, as on 27.04.2011, the principal amount due against the defendant was Rs.12 lakh. The defendant paid the interest as per the terms and conditions of the Mortgage Deed to the plaintiff up to 27.04.2011. However, thereafter, despite demand by the plaintiff, the defendant failed to make payment of interest. The total amount of interest due from 28.04.2011 till 10.08.2018 was stated to be Rs.37,56,000/-. As such, the plaintiff served legal notice dated 18.07.2017 through registered post to the defendant through his counsel. However, the defendant failed to respond to the same. As such, plaintiff filed the present suit on 11.8.2017 seeking recovery of Rs.49,56,000/- (Rs.12 lakh principal amount + Rs.37,56,000/- as interest thereupon) on the basis of registered Mortgage Deed No.887 dated 27.04.2011 in respect of mortgaged land measuring 19 kanal 0 marla as described in the plaint, along with interest @ 2% per mensem on the basis of 5 registered



Mortgage Deeds No.3288 dated 26.05.2006, No.7572 dated 21.11.2006, No.1969 dated 18.06.2007, No.7227 dated 22.01.2010 and No.887 dated 27.04.2011.

3. Upon notice, the defendant put in appearance and filed written statement and alleging that the plaintiff is a money lender and has got no licence under the Money Lending Act. It was further averred that the plaintiff had trapped many farmers in his clutches in the guise of running commission agency business. The plaintiff was getting fictitious documents by way of security from the farmers. The plaintiff was getting signatures on blank papers and stamp papers in the guise of security for the dealings of the commission agency of the plaintiff. It was averred by the defendant that the plaintiff in connivance with one Ashutosh Pal Singh Firangi s/o Komal Singh was running finance business in which they were getting signatures of unsuspecting farmers over blank papers and stamp papers in the guise of security for dealings of commission agency. As such, the plaintiff along with said Ashutosh Pal Singh Firangi was duping farmers of their lands by misusing such blank papers. The defendant being simpleton farmer had been believing the plaintiff and plaintiff has misused the alleged documents. It was denied that the defendant owed any money to the plaintiff and it was alleged that the Mortgage Deeds are the result of fraud and misrepresentation. It was further averred that the plaintiff had advanced only a sum of Rs.1,20,000/- to the defendant at the time of start of business in the year



2006 and the land was mortgaged by the defendant just by way of security of the said amount. On the promissory assurances of the plaintiff, the defendant had signed the said mortgage for Rs.1,20,000/- but had never agreed to pay interest upon the same. As such, Mortgage Deed has been misused by the plaintiff. The other advances of Rs.2 lakh and Rs.4 lakh etc. were denied by the defendant. It was alleged that the plaintiff never accounted for the sale of the crops of the defendant; whereas the defendant on the good faith had kept on selling his crop and used to take the sale price only from the plaintiff. In the year 2016, the defendant had demanded his account from the plaintiff; whereafter relations between them became strained leading to the filing of the present suit by the plaintiff on 11.08.2017. With these averments, the defendant prayed for dismissal of the suit.

4. Replication was not filed by the plaintiff. On the basis of pleadings of the parties, following issues were framed by the learned trial Court vide order dated 08.03.2018:-

- “1. Whether the plaintiff is entitled for recovery of Rs.49,56,000/- alongwith interest on the grounds taken in the plaint? OPP*
- 2. Whether the plaintiff has no locus-standi to file the present suit? OPD*
- 3. Whether suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD*
- 5. Relief.”*



5. On the basis of pleadings and oral & documentary evidence adduced by the parties, the learned trial Court partly decreed the suit of the plaintiff directing the defendant to pay the principal sum of Rs.12 lakh along with interest @ 6% per annum from 28.04.2011.

6. The said judgment and decree dated 22.11.2022 was challenged by the plaintiff as also the defendant before the Id. Additional District Judge, Sirsa by way of two separate appeals. Vide judgment and decree dated 03.08.2024, both the said appeals were dismissed by the learned First Appellate Court. Hence, the present second appeal.

7. Learned counsel for the defendant submits that the appellant/defendant is a simpleton farmer. On the other hand, the plaintiff is a commission agent running a commission agent firm under the name and style of M/s Tajinder Trading Company. The plaintiff regularly dupes and fraudulently commits fraud upon simple farmers. The J Forms were duly brought on record by the defendant. Moreover, the plaintiff had advanced only a sum of Rs.1,20,000/- to the defendant for agriculture purpose and it was promised that the mortgage will not be enforced against the defendant. The mortgage was just a security because the defendant was selling crop to the plaintiff. The plaintiff never advanced any other money to the defendant. No amount of Rs.4 lakh was paid to the defendant. There is no receipt against payment of the alleged amount. The loan was given only in the year 2006 and the land was mortgaged.



The subsequent Mortgages dated 21.11.2006, 18.06.2007, 22.01.2010 and 27.04.2011 are a result of fraud. It is accordingly prayed that the impugned judgments and decrees be set aside.

8. No other argument is made on behalf of the appellant.

9. I have heard learned counsel for the appellant and perused the case file in great detail.

10. It is the contention of the defendant that the impugned Mortgage Deeds were procured by the plaintiff by obtaining signatures of the defendant on blank papers which were subsequently misused by the plaintiff. It has also been submitted by learned counsel for the defendant that only a sum of Rs.1,20,000/- was given by the plaintiff to the defendant against the mortgage of land; and that no other amount of money was ever given to the defendant. However, the said contentions of the appellant/defendant are belied by the overwhelming evidence on record to the contrary. Perusal of record of the case shows that the plaintiff as PW2 and vide his sworn affidavit (Ex.PW2/A); as also evidence of PW1-Arjan Dev, Deed Writer, had proved that the Mortgage Deeds dated 26.05.2006, 21.11.2006, 18.06.2007, 22.01.2010 and 27.04.2011 (Ex.P1, Ex.P3, Ex.P5, Ex.P7 and Ex.P9) were scribed at the instance of the defendant in favour of the plaintiff. PW1 specifically deposed that after scribing the deeds, he read the contents of the same over to the parties whereafter, after understanding and admitting the contents of the said Deeds to be true, the parties appended their respective signatures over



the Deeds in the presence of witnesses. Necessary entries in this regard were also made by PW1 in his register as evident from excerpts (Ex.P2, Ex.P4, Ex.P6, Ex.P8 and Ex.P10). The Deeds in question were also proved by the evidence of PW3-Ashutosh Pal Singh Firangi who deposed as above. PW3 further deposed that the defendant had received the mortgage amount from the plaintiff in his presence; except on 27.04.2011 which amount was received by the defendant before the Sub-Registrar. From the above facts and findings, it is clear that the Mortgage Deeds were executed by the defendant in favour of the plaintiff. It is also clear that the argument of the defendant that the said Mortgage deeds were a result of fraud, is unfounded. Moreover, the original registered Mortgage Deeds duly endorsed by the Sub-Registrar, along with computerised photographs of both the parties were brought on record as Ex.P1, Ex.P3, Ex.P5, Ex.P7 and Ex.P9. Even the defendant as DW1 has admitted in his cross-examination that the said Mortgage Deeds (Ex.P1, Ex.P3, Ex.P5, Ex.P7 and Ex.P9) bear his signatures, and all the said Deeds were scribed by Arjan Dev. The defendant has further admitted that contents of the said Deeds were read over to him which were admitted by him whereafter he appended his signatures to the said Deed. It was admitted that even before the Sub-Registrar, the contents of the mortgage deeds were read over to him and after admitting the contents, he appended his signatures on the same. Thus, on the basis of the above said voluminous oral and



documentary evidence, it was established that each and every Mortgage Deed was executed for a separate loan transaction.

11. Learned counsel for the defendant has been at great pains to impress upon this Court that the plaintiff is a commission agent/money lender. To substantiate the said argument reference has also been made to the J Forms (Ex.D2 to Ex.D10). However, the record indicates that the said contention of the defendant also remained unsubstantiated as, mere placing on record of the J Forms would in no way establish that the same were issued by the plaintiff. As such, the defendant failed to establish that the plaintiff is a commission agent. It may also be noted that it has been argued on behalf of the defendant that the plaintiff had similarly duped many farmers. However, admittedly only bald assertions in this regard have been made by the defendant without examining any farmer to support the said contention. It has also come on record that the plaintiff and the defendant were known to each other since school time.

12. Accordingly, in view of the above, I find no ground is made out to interfere in the well-reasoned judgments of the Id. Courts below. The present appeal stands **dismissed**.

13. Pending application(s) if any also stand(s) disposed of.

05.02.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No