



## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1298-2019 (O&amp;M)

Kirpal Singh

...Appellant(s)

Vs.

Narinder Singh

...Respondent(s)

The date when the judgment is reserved:	10.02.2026
The date when the judgment is pronounced:	13.02.2026
The date when the judgment is uploaded on the website:	13.02.2026
Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced:	Full judgment

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. S.S.Rangji, Senior Advocate with Mr. Didar Singh and Mr. G.S.Kohli, Advocates for the appellant.

Mr. Deepak Bhardwaj, Advocate for the respondent.

**NIDHI GUPTA, J.**

Defendant is in Second Appeal against the concurrent judgments and decrees of learned District Courts; whereby suit filed by the plaintiff/respondent for recovery of Rs.9,92,835/- on the basis of Pronote and Receipt dated 18.09.2007, has been decreed by both District Courts.

2. It was pleaded in the plaint that on 18.09.2007 defendant/appellant had borrowed a sum of Rs.8,53,000/- from Khem Singh, father of the plaintiff. It was averred that appellant had executed



Pronote and Receipt dated 18.09.2007 against the said loan amount. Appellant had also agreed to pay interest of 2% per month. However, Khem Singh, father of the plaintiff had died on 03.09.2008. During his lifetime, Khem Singh had executed a Will dated 12.07.2008 on the strength of which, plaintiff was entitled to recovery of the said amount. It was alleged that plaintiff had visited defendant number of times with a request to repay the amount but to no avail. Accordingly, present suit was filed on 12.02.2009.

3. Upon notice, defendant had appeared and resisted the suit by filing written statement; wherein it was admitted that the appellant had borrowed a sum of Rs.8,50,000/- from Khem Singh. Defendant also admitted that Pronote and Receipt dated 18.09.2007 were executed by him in favour of Khem Singh. However, it was denied that the loan was still outstanding. It was stated that sum of Rs.8,50,000/- was duly repaid by the defendant to Khem Singh on 08.04.2008 in respect of which Writing dated 08.04.2008 was executed by Khem Singh in the presence of the witnesses. It was pointed out in the written statement that in the Writing dated 08.04.2008, Khem Singh had duly mentioned that original Pronote and Receipt were lost and in case original was found, no case would be filed against the defendant as the amount already stood repaid. It was contended that therefore, question of demanding amount by the plaintiff, does not arise. Accordingly, dismissal of the suit was prayed for.

4. In replication, averments made in the written statement were denied and those made in the plaint, were reiterated.



5. From the pleadings of the parties, following issues were framed by the learned Trial Court:-

*“1- Whether defendant borrowed Rs. 8,51,000/- from Khem Singh father of the plaintiff and executed pronote and receipt? OPP*

*2- If issue no.1 is proved, plaintiff is entitled to recover the suit amount along with interest, if so at what rate? OPP*

*3- Whether suit is bad for non joinder of parties? OPD*

*4- Whether suit is not maintainable? OPD*

*5- Relief.”*

6. Upon appraisal of the pleadings and the evidence led by the parties, issue No. 1 was decided in favour of the plaintiff and against the defendant; issue No.2 in favour of the plaintiff and against the defendant; issue No. 3 against the defendant and in favour of the plaintiff; issue No. 4 against the defendant and in favour of the plaintiff; and accordingly vide judgment and decree dated 04.08.2012, the Id. Additional Civil Judge (Senior Division), Kharar had decreed the suit of the plaintiff alongwith interest @ 9% PA w.e.f. 19.9.2007 till the filing of the suit and pendent-lite interest @ 6% PA from the date of filing of the present suit till date of decree and future interest @ 6% PA from the date of decree till the actual realization of decretal amount.

7. The Civil Appeal filed by the appellant was dismissed with costs by the learned Additional District Judge, SAS Nagar (Mohali) vide judgment and decree dated 30.05.2015. Hence, present second appeal by defendant.

8. It is *inter alia* submitted by Id. Senior Counsel for the appellant that the respondent/plaintiff has duly admitted in his evidence



that Khem Singh was a regular money lender. It is submitted that therefore, Khem Singh was required to have a moneylending license in terms of Section 3 of the Punjab registration of Money Lenders Act, 1938 (hereinafter referred to as "the Act, 1938"). Admittedly, Khem Singh, possessed no such license. As such, Civil Suit filed by the plaintiff was not maintainable.

9. Learned Senior Counsel further submits that plaintiff is basing his claim on the Will dated 12.07.2008 Ex.P3, as per which, respondent alone was appointed as sole beneficiary. Ld. Senior Counsel contends that first and foremost, the veracity of the said Will is seriously doubtful as the same is not a registered Will. Furthermore, the said Will cannot be relied upon also for the reason that plaintiff has failed to array the other legal heirs of Khem Singh as co-plaintiffs. Moreover, the said Will was not proved by the respondent in accordance with law. Even no legal issue was framed by the learned Trial Court regarding the execution and validity of the Will Ex.P3. Learned Senior Counsel argues that in view of the fact that the plaintiff was basing his claim and filing the suit on the foot of the Will, hence, it was mandatory on the part of the respondent to prove the same in accordance with law.

10. Learned Senior Counsel further points out that the Will makes for interesting reading as testator Khem Singh has anticipated his accident and has written in the Will that *"I do work of property dealing. In this work I often have to go out in buses/cars. Nowadays there is a lot of traffic on roads and loss of human life can occur at any point of time."*



Learned Senior Counsel contends that this very writing points to the fact that after the death of Khem Singh, the plaintiff manufactured this Will.

11. Learned Senior Counsel also points out that in the Will itself, it is mentioned by Khem Singh that plaintiff is entitled to recovery of money which testator has lent to anybody through Pronote or through any other document. It is contended that from this fact also, it is established that Khem Singh was money lender; and therefore, it was essential and necessary for Khem Singh to have obtained license of money lending from the concerned authorities under the Act, 1938.

12. Learned Senior Counsel further submits that plaintiff has also failed to satisfy requirements of Section 214 of the Indian Succession Act. For this reason, as well, the Civil Suit of the plaintiff was not maintainable. It is argued that it is unquestioned proposition of law that pronote and receipt relating to the loan money is moveable property. Under these circumstances, it was must on the part of the respondent either to obtain the letter of administration and succession obtained by certificate from the court. But no such certificate was obtained by respondent. Therefore, no relief could be given to respondent on the basis of pronote and receipt.

13. Learned Senior Counsel for the appellant submits that Scribe of the Pronote PW2 has admitted that the Pronote does not bear the signature of Khem Singh. It is submitted that Pronote Ex.P1 and the Receipt Ex.P2 do not bear the signatures of Khem Singh. It is pointed out that Scribe PW2 has categorically stated in his evidence that Khem Singh had signed the Pronote; whereas Pronote Ex.P1 and Receipt Ex.P2



produced by the plaintiff do not bear the signatures of Khem Singh; which shows that Ex.P1 and Ex.P2 are fabricated. Learned Senior Counsel contends that therefore, Pronote has been fraudulently produced by the plaintiff and is not the same which was previously executed between the appellant and Khem Singh.

14. Learned Senior Counsel lastly reiterates that the appellant had paid loan amount of Rs.8,50,000/- to Khem Singh vide Writing dated 08.04.2008 Ex.D1. It is submitted that in the said Writing, Khem Singh had duly recorded that the original Pronote is lost.

15. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of District Courts be set aside.

16. *Per contra*, learned counsel for the respondent/plaintiff controverts submissions of the appellant and submits that probate in terms of Section 214 of the Indian Succession Act is not required in the present case, as plaintiff had the Will dated 12.07.2008 in his favour. It is submitted that respondent had derived his right from the said Will, and therefore, probate in terms of Section 214 of the Succession Act, was not required.

17. It is further submitted that in view of the fact that the appellant has admitted the loan and has not denied the Pronote, the contention of the appellant in respect of requirements of Section 3 of the Act, 1938 are negated and also rendered irrelevant. It is further contended that the Pronote is not required to bear the sign of the lender, and therefore, Ex.P1 and Ex.P2 have been rightly relied upon by learned



District Courts in decreeing the suit of the plaintiff. Learned counsel for the respondent also submits that in any event, appellant has totally failed to prove his case/the writing dated 8.4.2008 as the alleged witnesses of the Receipt dated 08.04.2008 Ex.D1 Amar Singh and Swarn Singh and DW1 and DW3 respectively had only submitted their Affidavits and had not turned up for cross-examination. It is accordingly prayed that the present Appeal be dismissed; and the judgments of the learned District Courts be upheld.

18. Learned Senior Counsel for the appellant rebuts submissions of learned counsel for the respondent by submitting that witnesses to the Receipt Ex.D1 Amar Singh and Swarn Singh and DW1 and DW3 respectively had failed to turn up for cross-examination as they were won by the plaintiff. It is submitted that the appellant has only admitted that Pronote was executed; and has nowhere admitted the Pronote Ex.P1 and Receipt Ex.P2 produced by the plaintiff. It is further submitted that no finding has been given by both the Courts below regarding the Probate and requirement of Section 214 of the Indian Succession Act. He reiterates prayer that the present appeal be allowed; and the impugned judgments and decrees of the learned District Courts be set aside.

19. No other argument is raised on behalf of learned counsel for the parties. I have heard learned counsel and perused the case file alongwith District Courts Record in minute detail. I find merit in the submissions advanced on behalf of learned counsel for the appellant.



20. The first contention on behalf of the appellant is that the present suit is not maintainable as provision of Section 3 of the Punjab Registration of Money Lender's Act, 1938 has not been complied with. Said Section 3, reads as follows: -

*"3. Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall, after the commencement of this Act, be dismissed, unless the money-lender--*

*(a) at the time of the institution of the suit or presentation of the application for execution; or*

*(b) at the time of decreeing the suit or deciding the application for execution-*

*(i) is registered; and*

*(ii) holds a valid licence, in such form and manner as may be prescribed; or*

*(iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or*

*(iv) if he is not already a registered and licensed money-lender, satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending: provided that in such - a case, the suit or application shall not be finally disposed of until the application of the money-lender for*



*registration and grant of licence pending before the Collector is finally disposed of.”*

21. A bare reading of the above provision shows that for any person, who lends money on regular basis, it is mandatory as per law to obtain license of money lending from the concerned authorities. As per Section 3 of the said Act, all suits and applications by money lender are barred unless money lender is registered and licensed. It is admitted fact on record that Khem Singh did not possess a money lending license. Admittedly, respondent has never placed on record any money lending license obtained by his father Khem Singh. It has been contended by the plaintiff that Khem Singh was not a money lender. However, the respondent while appearing as PW1 has admitted in his cross-examination that *“He used to lend money to people. I know only five to ten persons to whom he has lend money as loan. .... I do not remember year, month and date when I visited the house of Kirpal Singh with my father for making demand of money.”* From this deposition, it is clear that plaintiff himself has admitted that Khem Singh used to lend money on regular basis. In this view of the matter, it was mandatory as per law for Khem Singh to have obtained money license under the Act, 1938. Therefore, as per Section 3 of the Act, 1938, suit of the plaintiff was barred.

22. In this regard, reference may be made to a judgment of this Court in **Balbir Singh v. Raj Krishan (P&H) : Law Finder Doc Id # 666069**, the relevant paras of which read as under: -



*"21. Another aspect of this case in the light of case set up by the complainant is that he used to advance loan to such agriculturalists, who sell or promise to sell their agricultural produce through him and interest was charged as per prevalent rate in the area of Mandi Abohar. It means that the complainant was dealing in money lending business to the public at large, however, is not having the money lender's licence. It would be apposite to reproduce Sections 3 and 4 of the Punjab Money- Lender's Act, 1938 :-*

***"Suits and applications by money-lenders barred, unless money-lender is registered and licensed.***

*3. Notwithstanding anything contained in any other enactment for the time being in force, a suit by a moneylender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall after the commencement of this act, be dismissed, unless the money-lender-*

*(a) at the time of the institution of the suit or presentation of the application for execution; or*

*(b) at the time of decreeing the suit or deciding the application for execution-*

*(i) is registered; and*

*(ii) holds a valid licence, in such form and manner as may be prescribed; or*

*(iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or*

*(iv) if he is not a registered and licensed moneylender, satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending; provided that in such a case, the suit or application shall not be finally*



*disposed of until the application of the money-lender for registration and grant of license pending before the Collector is finally disposed of.*

***Registration of Money-lenders***

*4. Every money-lender may apply for registration of his name at the office of the Collector of the District; and his name shall be registered on furnishing such particulars as may be prescribed and on payment of a fee of L 5."*

*22. The said sections provide that no money lender shall carry on the business of advancing loans unless he gets himself registered under sub-section (i). Any money lender, who contravenes these provisions, shall be liable on conviction to a fine not exceeding one thousand rupees for the first offence and two thousand rupees for every subsequent offence in this direction. As per the above referred provisions, a person is only competent to advance agricultural loan if he holds the valid licence/registration certificate under the provisions of the Punjab Money Lender's Licence Act, 1938. In the present case, the complainant is not having any such licence. Without having the aforesaid licence, the advancement of loan by the complainant to the petitioner-accused is not only illegal, but at the same time, he can also be prosecuted. The contention of learned counsel for the respondent that petitioner cannot raise a issue for the first time before this Court that the respondent is not having any licence under the Money-Lender's Act, is not sustainable, as this is a legal issue and can be raised any any stage. It has been admitted by the respondent in the complaint that he used to advance loans to the agriculturalists, who sell or promise to sell their agricultural produce through him and interest was charged as per prevalent rate in the area of Mandi Abohar."*



23. The above said view has been reiterated by this Court in **Mewa Singh v. Vipin Kumar, (P&H) : Law Finder Doc Id # 794806**. The relevant paras of the said judgment are as under: -

*“10. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the following substantial questions of law arise for determination in the present appeal:-*

*(i). Whether the plaintiff-firm was required to obtain the license under the Punjab Registration of Money Lender's Act, 1938 Act?*

*(ii). Whether the plaintiff firm was in fact, carrying on money lending business without the required license?*

*(iii). Whether both the Courts below mis-appreciated the evidence which resulted into erroneous findings?*

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*14. Undisputedly, the plaintiffs are doing the business of Commission Agent under the name and style of 'M/s Satya Traders' and used to advance loan to such agriculturists who used to sell or promise to sell their agriculture produce through it and they used to charge interest thereon. It is common practise that farmers used to put signatures/thumb impression on blank papers and cheques at the asking of Commission agents.*

*15. As per provisions of Sections 3 and 4 of the Act, no money lender shall carry on business of advancing loan unless he gets himself registered under the Act. Such a view was taken by a Co-ordinate Bench of this Court in **Balbir Singh v. Raj Krishan, 2015(2) RCR [Criminal] 812** and while referring to Sections 3 and 4 of the Act, this Court observed as under:-*



*"22. The said sections provide that no money lender shall carry on the business of advancing loans unless he gets himself registered under sub-section (i). Any money lender, who contravenes these provisions, shall be liable on conviction to a fine not exceeding one thousand rupees for the first offence and two thousand rupees for every subsequent offence in this direction. As per the above referred provisions, a person is only competent to advance agricultural loan if he holds the valid licence/registration certificate under the provisions of the Punjab Money Lender's Licence Act, 1938. In the present case, the complainant is not having any such licence. Without having the aforesaid licence, the advancement of loan by the complainant to the petitioner-accused is not only illegal, but at the same time, he can also be prosecuted..."*

*16. In the present case, the plaintiffs are not having any such license and without having the aforesaid license, the advancement of loan by them to the defendant is illegal. Both the Courts below have completely misread and misappreciated the evidence and completely ignored the legal and factual position which resulted into erroneous findings. Accordingly, the substantial questions of law posed in para No.10 of this judgment are answered in favour of the appellant and against the respondents."*

24. Thus, the suit of the plaintiff was *prima facie* not maintainable. However, this aspect of the matter has not been dealt with by the learned District Courts, at any stage.

25. Contention of learned counsel for the respondent that the suit was not barred under Section 3 of the Act, 1938 as appellant had admitted loan as well as the Pronote and Receipt Ex.P1 and Ex.P2 respectively, is misplaced; as appellant has only admitted that loan was



taken and Pronote was executed; and has nowhere admitted the Pronote and Receipt Ex.P1 and Ex.P2 respectively, produced by the plaintiff. On the contrary, in para 3 of the written statement, appellant has categorically stated as follows: -

*“3. That para no 3 is wrong and not admitted to be correct. In fact the father of the plaintiff has executed a receipt dated 8-4-08 of remaining all dues of pronote and receipt dated 1-9-07 of Rs. 8,50,000/- as payment of pronote and receipt was lost somewhere with promise that in case original is found no case will be filed. So the question of demanding amount with father is wrong and fake one.”*

26. Thus, attempt of the respondent to obfuscate the issue is misguided.

27. Furthermore, plaintiff has sought recovery from the appellant on the basis of Will dated 12.7.2008 Ex.P-3 allegedly executed by Khem Singh in favour of the plaintiff. It is to be noted that in the said Will Khem Singh has admitted lending money to people on regular basis. The Will Ex.P3 makes for interesting reading. The same is reproduced as under: -

*“I, Khem Singh son of Hakam Singh son of Partap Singh am resident of Village Jhingran Khurd, Tehsil Kharar, District Mohali.*

*That currently my age is about 60 Years. I have 3 daughters namely Ravinder Kaur, Amrit Kaur and Rajwinder Kaur. All three of them are married and are residing at their matrimonial houses. My son Narinder Singh is also married. He and his wife look after me and my wife and I am very happy with care and affection of my son and daughter-in-law.*



*That I do work of property dealing. In this work I often have to go out in buses/cars. Nowadays there is lot of traffic on roads and loss of human life in accident can occur at any point of time. Thus, I am executing this will deed on the name of my son Narinder Singh. Only my son Narinder Singh shall have right over my property situated in area of Village Jhingran Khurd and Rurki Kutchi, Tehsil Kharar, District Mohali. If in future I acquire any other property in Punjab or in India then my son shall have right over that property also. My son Narinder Singh shall also have right on my bank balance, balance/deposits in post office and money which I have lended to anybody through pronote or through any other document. I assign duty to my son Narinder Singh to recover my money from borrowers either with mutual consent or through court. After my death my son Narinder Singh shall fulfill his duties towards his mother and sisters.*

*After hearing and admitting the contents of this will deed as correct I have given my signature in presence of witnesses.*

*Date: 12.07.2008*

*Deed Writer: Sd/- Balwinder Singh S/o Darbara Singh*

*Executant: Sd/ Khem Singh*

*Witness No. 1:- Sd/- & Seal/- Lambardar Singhpura 101*

*Witness No. 2: Sd/ Kulvinder Singh S/o Bir Singh R/o Village Jhingran Khurd, Mohali."*

*(Emphasis mine)*

28. It is spooky that the Will was allegedly executed on 12.07.2008; whereas testator had died less than two months thereafter on 03.09.2008 *in a road accident*. Therefore, Khem Singh would have to be a clairvoyant to record in the Will dated 12.07.2008 that "*Nowadays*



*there is lot of traffic on roads and loss of human life in accident can occur at any point of time.”* Furthermore, admittedly, the said Will is not registered therefore, presumption of truth cannot be attached to the same. It is also my view that as the plaintiff was basing his claim upon the said Will, it was necessary for him to prove the same as per provision of Indian Evidence Act. All these factors lend credence to the version of the appellant that the Will dated 12.07.2008 Ex.P3 has been fabricated by the plaintiff after the death of Khem Singh.

29. Further, Id. Senior Counsel for the appellant has thwarted reliance of the respondent on the Will dated 12.7.2008 Ex.P-3 in view of Section 214 of the Indian Succession Act, 1925 which reads as under: -

***“214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.-****(1) No Court shall-*

*(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effect of the deceased person or to any part thereof,*

*(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of-*

*(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or*

*(ii) a certificate granted under section 31 or section 32 of the Administrator- General's Act,*



*1913 (3 of 1913), and having the debt mentioned therein, or*

*(iii) a succession certificate granted under Part X and having the debt specified therein, or*

*(iv) a certificate granted under the Succession Certificate Act, 1889) (7 of 1889), or*

*(v) a certificate granted under Bombay Regulation No. VIII of 1827, and, if granted after the first day of May, 1889 having the debt specified therein.”*

30. Thus, in light of Section 214 of the Indian Succession Act no suit is maintainable against debtor of deceased person unless the person claiming to be so entitled, furnishes a Probate, or Letter of Administration, or a Succession Certificate granted under Part X of the Indian Succession Act. It is not denied by learned counsel for the plaintiff that all the above said conditions as contained in Section 214(1)(b) have not been complied with by the respondent. Contention of learned counsel for the plaintiff that Probate under Section 214 was not required as the respondent has derived his right from the Will, is misplaced and contrary to the express mandate of the above said provision. For this reason, as well, suit of the plaintiff was not maintainable.

31. This is especially so in view of the fact that the appellant in his written statement has taken a clear objection as follows: -

*“2. That para no 2 is wrong regarding 'will' in case of will the plaintiff can't file present suit without having probate or*



*succession certificate and without impleading L.R's of Khem Singh."*

32. Thus, even though a specific objection had been taken by the appellant in respect of the Will relied on by the respondent, no issue in this regard was framed by the learned Trial Court; and even no finding in respect of this objection has been returned by both the learned District Courts. Thus, both the learned District Courts have failed to deal with an important aspect of the matter. The impugned judgments and decrees cannot be sustained for this reason as well.

33. Further, the District Courts have wrongly relied upon Will of Khem Singh Ex.P-3 when the compliance of Section 68 of Indian Evidence Act read with Section 63 of the Indian Succession Act has not been made; as no attesting witness of the Will has been examined. Both the Id. Courts have wrongly accepted the admission by PW-4 Pritam Kaur (widow of deceased Khem Singh). It is a well settled rule of law that compliance of Section 68 of Indian Evidence Act is mandatory, and Section 58 of Indian Evidence Act would not overrule Section 68 of Indian Evidence Act. PW-4 Pritam Kaur has only accepted the Will and not the due execution of Will. Hence, Section 214 of Indian Succession Act read with Order 7 Rule 4 of CPC would reveal that this suit is not maintainable; and hence Issue no.4 has been wrongly dealt with by both the learned Courts below.

34. Furthermore, another specific objection has been raised by the appellant from the very inception that the suit is bad for non-joinder of necessary parties when respondent cared not to array the legal heirs of



Khem Singh as co-plaintiffs. Both the Courts brushed aside this objection of the appellant by assigning reasons that Khem Singh during his lifetime executed Will dated 12.07.2008 Ex. P-3 under which respondent alone was appointed as sole beneficiary and in face of this Will it was not necessary and essential on the part of the respondent to join the legal heirs of Khem Singh deceased. Further according to both the courts below, respondent examined his mother PW-4 Pritam Kaur. Pritam Kaur was also the attorney holder of her 3 daughters; and said Pritam Kaur while mounting the witness box made a statement that her 3 daughters are agreeable to the execution of Will Ex.P-3 in favour of the respondent. Thus, according to the District Courts, in the face of Will Ex.P-3 and the statement of PW-4 Pritam Kaur it was not desired from the respondent to co-array the other legal heirs of Khem Singh as co-plaintiff. But this reasoning given by both the Courts below is not sound reasoning. Firstly, no legal issue was framed by the trial court regarding the execution and validity of the Will Ex. P-3. It is to be appreciated that it was open to the appellant to question the execution and validity of Will Ex P-3 when respondent was basing his claim of filing the suit at the foot of Will Ex. P-3. Moreover, Ex. P-4 is the photocopy of the Special Power of Attorney allegedly executed by three daughters of Khem Singh in favour of Pritam Kaur. But said Power of Attorney does not carry even a whisper about the execution of the Will by Khem Singh in favour of the respondent. Moreover, the said POA also carries no reference about the admission on the part of the executants (3 daughters of Khem Singh) regarding the Will



Ex.P-3. Thus, it was mandatory on the part of the respondent to join the other legal heirs of Khem Singh as co-plaintiff; and the suit in the absence of legal heirs is definitely bad, the said legal heirs being the necessary party.

35. Furthermore, it was the clear and unambiguous defence taken by the appellant in the written statement that he had returned the loan money to Khem Singh on 08.04.2008 and in this regard Writing Ex.D1 was drawn, which was duly signed by Khem Singh. Ex.D1 reads as follows:-

*"I, Khem Singh son of Sh. Hakam Singh son of Sh. Partap Ram am resident of Village Jhingran Khurd, Tehsil Kharar, District Mohali. That I had lended Rs. 8,50,000/-(Rupees Eight Lac Fifty Thousand Only) to Sh. Kirpal Singh son of Sh. Kura Singh son of Kandhara Singh resident of Village Budhanpur, Tehsil Rajpura, District Patiala through pronote dt. 18.09.2007. I have misplaced the original pronote somewhere at home, but I have received the afore-mentioned amount of Rs.8,50,000/-(Rupees Eight Lac Fifty Thousand Only) from afore-mentioned Sh.Kirpal Singh in cash in presence of witnesses. If in future I find the original pronote then I shall hand it over to afore-mentioned Sh. Kirpal Singh and on the basis of said original pronote I shall not initiate any kind of legal action against Sh. Kirpal Singh through Panchayat, police or court for recovery of amount. Both parties have get scribed this agreement/compromise with mutual consent to make afore-mentioned pronote dt. 18.09.2007 null and void, for the purpose of proof. Contents read over, heard, understood and admitted correct. Date:- 08.04.2008*

*Executant/Party No. 1: Sd/- Khem Singh*

*Party No. 2: Sd/- Kirpal Singh*



*Witness No. 1: Sd/- Swaran Singh son of Sukhdev Singh resident of Village Budhanpur*

*Witness No.2:-Sd/- Amar Singh son of Joginder Singh resident of Village Budhanpur.”*

36. However, the above said Writing has been rejected by both the learned District Courts on the ground that witnesses Swaran Singh and Amar Singh, who have witnessed the execution of this document, had only tendered their affidavits by way of examination-in-chief; however, they had not stepped into witness box for cross-examination; and, therefore, the learned District Courts held that affidavits of these witnesses could not be read into evidence. However, in holding as above, both the learned District Courts ignored the evidence that Sale Deed Ex.D2 was admittedly executed by Khem Singh and bears the signatures of Khem Singh, which signatures tally with the signature of Khem Singh on Ex.D1. This is visible from the naked eye that the signature on Ex.D1 tallies with the admitted signature of Khem Singh on Ex.D2. The learned District Courts have also ignored the fact that Writing Ex.D1 has been executed on a stamp paper which was purchased by Khem Singh himself.

37. It is also my view that the learned Trial Court was in error in not framing a specific issue regarding the return of loan money by the appellant. It is trite law that the primary object of framing issues in a suit is to ascertain the controversy and rival contentions between the parties. However, on account of omission on part of the learned Trial Court to frame a specific issue on the point of return of loan money, the impugned judgments cannot be upheld. In the absence of a specific issue in this



regard, learned District Courts have failed to appreciate that burden of proving Ex.D1 could not have been solely put upon the appellant; and appellant was only required to raise preponderance of probability, which he discharged by exhibiting Ex.D1. It has also come on record that Ex.D1 was duly put to the plaintiff PW1 as also to Scribe PW3, both of whom have feigned ignorance regarding the same. In any event, irrespective of the fact, whether appellant was able to or not able to prove Ex.D-1, case of the plaintiff has to stand on its own legs and cannot derive from any weakness of the defendant. In the present case, in view of the factors as already noticed above, it is clear that suit of the plaintiff was not maintainable, and therefore, could not have been decreed.

38. As regards the Pronote and Receipt Ex.P1 and Ex.P2 respectively, learned District Courts have also ignored the fact that Scribe of the Pronote and Receipt namely Balwinder Singh PW2 has categorically admitted in his cross-examination that *"I have seen Ex.P1 and Ex.P2 which does not bear the signature of Khem Singh."* Contention of learned counsel for the respondent that is not necessary for the Pronote to bear the signatures of lenders, is misguided. This would lend credence to the case set up by the appellant and supported by Khem Singh in his Writing Ex.D1 that original Pronote and Receipt were lost, and, therefore, Ex.P1 has been fabricated by the plaintiff.

39. This Court is well aware of the legal position that findings of fact cannot be disturbed by this Court in Second Appeal. However, as is evident from the discussion above, in the present case the findings of the



District Courts are patently perverse, contrary to the evidence on record, and based on a flagrant misreading of the evidence on record, while also ignoring relevant provisions of law. Such findings cannot be sustained.

40. In view of the above discussion, the present Regular Second Appeal is **allowed**; and the impugned judgments and decrees of the District Courts are set aside. Resultantly, the suit of the plaintiff stands dismissed.

41. Pending applications, if any, stand disposed of.

**13.02.2026**

Divyanshi

**(NIDHI GUPTA)**

**JUDGE**

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