

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1210 of 2009

Date of Decision: October 14, 2015

Baldev Singh

..... Appellant

Versus

M/s Kamboj Brothers and and others

..... Respondents

RSA No. 1461 of 2009

Baldev Singh

..... Appellant

Versus

M/s Kamboj Brothers and and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. HNS Gill, Advocate
for the appellant.

Mr. B. R. Mahajan, Senior Advocate with
Mr. Satish Singla, Advocate
for respondent Nos. 1 and 2.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (Oral)

This order of mine shall dispose of two appeals bearing RSA No. 1210 and 1461 of 2009 filed at the instance of the plaintiffs as common question of law is involved in both the appeals.

The appellant-plaintiff filed the suit for recovery of an amount of ₹4,00,257/- (₹3,57,207/- as principal amount and ₹33,050/- as interest @ of 18% per annum). The trial court held that the appellant-plaintiff is entitled to recover an amount of ₹1,55,384/- by taking into consideration kacha parchies (Ex.P4 to P-6) and discarded form 'J' Ex.P-1 to P-3. Both the parties feeling aggrieved

against the aforementioned judgment and decree filed their respective appeals. The appeal filed by the defendant has been allowed whereas that of the plaintiff has been rejected. In essence, the suit of the appellant-plaintiff has been dismissed in toto. Learned counsel for the appellant submits that the lower appellate court has committed illegality and perversity in not rendering the finding as per provisions of Order 41 Rule 31 CPC, being the last court of fact and law. The appeal has been allowed by totally focusing upon the execution of kachha receipts Ex.P-4 to Ex.P-6 whereas Form 'J' Ex.P-1 to Ex.P-3 have completely been ignored, much less have not been referred, therefore the following substantial questions of law arise for determination by this Court.

- i) Whether the lower appellate court was enjoined upon an obligation being last court of fact and law to refer each and every evidence i.e. oral and documentary?
- ii) Whether judgments and decrees passed by the courts below are perverse, as both the courts below have not considered whole of evidence on record?
- iii) Whether the courts below have mis-read the statement of plaintiff/appellant and has given finding without critically examining it which amount to mis-reading of evidence?
- iv) Whether non consideration of circumstances surrounding the entries in the account books,

amount to no consideration of the evidence?

Mr. B. R. Mahajan, learned Senior counsel assisted by Mr. Satish Singla, Advocate appearing on behalf of respondent Nos. 1 and 2 submits that there is no illegality and perversity in the finding rendered by the lower appellate court. The lower appellate court has assigned the reasons while non-suiting the appellant-plaintiff which are based on appreciation of oral and documentary evidence.

I have heard learned counsel for the parties and appraised the paper book.

The lower appellate court after discussing the evidence, both oral and documentary in paragraph 14 of its judgment rendered a finding as under:-

“So from the evidence on file it is clear that plaintiff has stated that he sold the crop lastly to the defendant firm in the year, 2000 and after that he never sold the crop to the defendant firm, but from the entries in the Heap Register Ex.D47 Rokar Bahi Ex.D45 and 'J' Form Ex. D44 and entry in Rokar Bahi Ex.D42 and zimidara Bahi Ex.D43, it is proved that plaintiff lastly sold wheat crop to the defendant firm on 22.4.2001. Even from copy of receipts Exs.P4 to P6 it is clear that these are cash memos and in these cash memos it is no where mentioned that any paddy crop was sold by the plaintiff to the defendant firm. In these cash receipts even the

name of defendant firm has not been mentioned. The defendants have admitted that these kacha receipts are issued by their Munim/Accountant and these were obtained by the plaintiff for settling the accounts with his Seeri Gurdeep Singh. So from the documents placed on file, which are duly proved and the documents/accounts which are maintained by the defendant firm in ordinary course of their business, which are regularly kept by the defendant firm, it is clear that accounts have been maintained by the defendants firm during the course of its business and all the accounts are also shown in income tax returns. Counsel for the defendants has placed reliance on case titled M/s Kula Transport Cooperative Society Ltd., Kulu versus M/s Arora Traders, Gurdaspur Road, Pathankot, Vol.LXXX.1978 Punjab Law Reporter 503, in which it has been held by Hon'ble Punjab and Haryana High Court that no doubt entries in the account books maintained by creditors are not made by themselves to attach liability to the creditor, but they can be used to corroborate the evidence given by the creditor that the payments had been made and a decree can be passed on the basis of such corroborated evidence. So, the evidence adduced on file by the defendants is corroborated by other

evidence and it is proved that nothing is due to the plaintiff. The trial court has wrongly held that crop was sold by the plaintiff to the defendant firm through kacha receipts Ex.P4 to P6. The plaintiff has even concealed the sale of wheat crop by him to the defendant firm on 22.4.2001, which has been duly proved by the defendant firm and it is also proved that entire payment has been made by the defendants to the plaintiff. So, from the evidence on file it is proved that no amount is due towards the plaintiff from the defendant firm/defendants.”

On perusal of the aforementioned finding, it is seen that there is no reference to form 'J' Ex.P-1 to P-3 which were relied upon by the appellant-plaintiff for claiming the relief.

In my view, the lower appellate court has committed illegality and perversity in not referring to the aforementioned documents, being last court of fact and law, therefore, it is a fit case for remand.

Accordingly, the impugned judgment and decree of the lower appellate court is set aside. The matter is remitted back to the lower appellate court. In essence, the appeals are restored back to its original number.

The parties through their counsel are directed to appear before the District Judge, Patiala on 16.11.2015, who shall either hear the matter on his own or assign to any other competent

court having jurisdiction. It is expected that the matter shall be decided as expeditiously as possible, preferably within a period of four months from the date of receipt of certified copy of this order.

The record of the court below be also sent back for adjudication of the matter.

The appeals stand disposed of.

(AMIT RAWAL)
JUDGE

October 14, 2015
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