

**IN THE HIGH COURT OF PUNJAB AND HARYANA,
CHANDIGARH**

206

**RSA-4331 OF 2010
DATE OF DECISION:07.12.2015**

RAUNAK RAM BANARSI DASS AND ANR.

....Appellants.

VS.

JAGDISH SINGH

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sherry K. Singla, Advocate
for the appellants.

Mr. Tarun Vashishta, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-defendant in regular second appeal against the concurrent findings of fact whereby a suit for recovery of amount of Rs.60,000 along with interest at the rate of 12% per annum on the balance amount of rabbi crop of 2005 along with future interest and costs has been decreed.

Mr. Sherry K. Singla, learned counsel appearing on behalf of the appellant-defendant submits that the respondent-plaintiff has failed to prove the case as alleged recovery was based upon the oral evidence only. He has drawn the attention of this Court to the statement of plaintiff as well as of the witnesses to show that when the money of Rs.1.5 lacs was received by him there was no one present whereas the other witnesses stated that he was present, thus there is inconsistency and this fact has not been noticed by both Courts below thus a substantial question of law arises for determination.

Learned counsel appearing on behalf of the respondent-plaintiff submits that the pleadings in paragraph 2 of the plaint have not been denied and rather it has been stated, all the payments have been made to the plaintiff, thus the onus shifted upon the defendant, but it has not been discharged.

It would be apt to produce paragraph 2 of the plaint which reads:-

“That during the Raby Crop of 2005 the plaintiff sold his wheat to the defendants to the tune of Rs.2,10,000/- (Rupees Two Lacs Ten Thousand) and the defendants paid a sum of Rs.1,50,000/- (Rupees One Lac and Fifty Thousand only) to the plaintiff and request him to receive the balance amount of Rs.60000/- (Rupees Sixty Thousand Only) after some months alongwith interest @ 12% per annum. This deal between the plaintiff and defendants was done in the preence of Sh. Jit Singh S/o Charan Singh of Swajpur Tehsil and Distt. Patiala, Jang Singh Ex. Sarpanch of Village Old Swajpur, Tehsil and Distt. Patiala and of many other agriculturalist those also sold their agricultural products to the defendants and other Commission Agents. During the month of January 2006, the plaintiff visited the defendants time and again and requests the defendants to make the payment of his above said balance amount of Rs.60000/- (Rupees Sixty Thousand Only) due towards defendants. But the defendant no.1 postpones the matter on one pretext or the other.”

Para 2 of the plaint in the written statement which reads:-

“That para No.2 of the plaint is correct to the extent that the plaintiff has sold the wheat and all the payments have been made to the plaintiff. All the allegations alleged in this para are false and vague. In fact, the plaintiff wants to grab the advanced amount, which has given to the plaintiff.”

On perusal of the aforementioned pleadings, I am of the view that onus shifted upon the defendant as to whether all the payments alleged to have been made by him to the plaintiff had actually been paid or not. No evidence in this regard has been led, whereas the witnesses of the plaintiff, have been inconsistent with regard to the balance amount. In the absence of

specific denial much less being evasive and vague, defendant has failed to lead any evidence qua discharge of liability.

Keeping in view the aforementioned observations, I do not find any illegality and perversity in the findings rendered by both the Courts below, as it is based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises to be determined by this Court. .

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 07, 2015.
SwarnjitS