

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.625 of 2010 (O&M)
Date of Decision: 19.03.2015**

Narinder Singh

..... Appellant

Versus

Pushpinder Singh and another

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manish Kumar Singla, Advocate,
for the appellant.

Mr. S.S. Salar, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

Transactions inter-parties reflected in the Bahi Khatas of the commission agent [decedent father of the appellant] now sought to be produced as additional evidence under Order 41 Rule 27 CPC for the first time in second appeal in proof of payment of the crop sold in the market yard, signed by respondent Pushpinder Singh in the ledger of the appellant's father, late commission agent M/s Nirbhai Singh and Company, does not merit acceptance only to re-open the trial in the face of proof of 'J Forms' in the evidence adduced by the parties. J Forms were issued by Nirbhai Singh/commission agent [father of appellant] to the respondents and duly exhibited from public record of day to day transactions maintained by the Market Committee, Bhawanigarh supporting the fact that the crop was purchased from the respondent farmers but sale price was not paid, and

hence the Bahi Khatas/ledgers allegedly maintained by the late father of the appellant would be of no help to him or for this Court to order a fresh trial on the basis of these documents produced for the first time in this appeal.

Mr. Salar, appearing for the respondents has pointed out specifically to the statement of DW-2 Jasbir Singh, the Munim of M/s Nirbhai Singh and Company, who categorically stated that the J Forms are forged. The alleged forgery has not been proved on the basis of any conclusive evidence. The story that Nirbhai Singh died in 2002 and only thereafter the suit was instituted a short while later by the plaintiff-respondents and the appellant was not aware of the Bahi Khatas of his father and chanced upon them from his aunt's house said to be undergoing renovation in a different village is not safe to rely on as a plausible or a readily believable one. Come what may, the decretal amount stands paid to the respondents since the concurrent findings and decree of both the Courts below in respondent's favour was not stayed by this Court in this appeal and it is well settled that mere preferring an appeal does not operate as a stay on the decree or order appealed against which remains executable. Worse still, the decree is one for money. The ingredients of Order 41 Rule 27 CPC are not found satisfied in this case on the materials on record as these Bahi Khatas are not really essential to pronounce judgment by the court nor can it be said that they could not be produced despite due diligence during the trial and first appeal proceedings. The decision of both the Courts below based on concurrent findings of fact are not liable to be interfered with in Regular Second Appeal since no question of law, much less a substantial one, arises in this case and, consequently, the appeal is dismissed and sent to the record

room, however, without any order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

19.03.2015
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