

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Regular Second Appeal No.3397 of 2011 (O&M)

Date of decision: 21.4.2015

I.

Nachhattar Singh and others

... Appellants

Versus

Amar Singh and another

... Respondents

II.

Regular Second Appeal No.3398 of 2011 (O&M)

Nachhattar Singh and others

... Appellants

Versus

Amar Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.G.S.Punia, Sr. Advocate with
Mr.Harveen Kaur, Advocate
for the appellant.

Mr.Surjit Singh Swaich, 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.

On 5.12.2012, this Court passed the following order in RSA

No.3397 of 2011 the decision on which would also govern the connected

appeal : -

“Suit filed by respondents/plaintiffs against appellants/defendants (18 in number) was partly decreed by the trial Court against defendants No.1 to 6 only for recovery of ₹ 1,25,000/-. Defendants No.1 to 6 preferred first appeal wherein plaintiffs filed cross-objections. Learned lower appellate Court dismissed the appeal of defendants No.1 to 6 and allowed the cross-objections of plaintiffs and decreed the suit for recovery of ₹ 78,500/- in favour of plaintiff No.1 and ₹ 66,800/- in favour of plaintiff No.2 against all the defendants. Feeling aggrieved, these two connected second appeals have been preferred by all the defendants.

Counsel for the appellants contended that since defendants No.7 to 18 had not preferred the first appeal, cross-objections by plaintiffs could not be allowed against defendants No.7 to 18.

As regards defendants No.1 to 6, it was argued that there was no sufficient evidence for decreeing the suit of the plaintiffs. However, this contention cannot be accepted. There is concurrent finding recorded by both the Courts below in this regard. The said finding is not shown to be perverse or illegal or based on misreading or misappreciation of the evidence on record. Consequently there is no merit in these two second appeals on behalf of defendants No.1 to 6. Dismissed qua them.

Notice of motion on behalf of defendants-appellants No.7 to 18 only be issued to respondents for 23.04.2013.

Record of the Courts below be requisitioned.

Execution of the decree of the lower appellate Court against defendants No.7 to 18 shall remain stayed.”

The twin appeals qua defendants No.1 to 6, who were held liable to pay damages for loss of crop of the plaintiffs, has been dismissed qua them and they became judgment debtors. Notice of motion in the

present appeal was issued limited to hear the defendants-appellants No.7 to 18 who had been mistakenly roped in amongst the JDs.

The error occurred in para. 17 of the judgment of the learned Additional District Judge, Fatehgarh Sahib dated 19.4.2011 where plaintiffs No.1 and 2 were held entitled to recover the amounts due to each of them from the “defendant” along with interest @ 6% per annum from the date of filing of the suit till realization. Learned lower appellate Court upheld the findings of the learned trial Judge recorded that defendants No.1 to 6 alone were responsible for payment of damages. As the remaining defendants 7 to 18 were not aggrieved by the decree not being responsible for the loss there was no obviously no occasion for them to file an appeal. However, with the use of the word “defendant” in singular, complications arose as the net of damages were spread jointly across the defendants. The problem was compounded when in the appellate decree sheet drawn the word, “defendants” was used in the plural. I am sorry to say that this mistake could have been checked and corrected by the learned Additional District Judge, Fatehgarh Sahib himself quite easily but since the decree came into existence an appeal had to be filed. Since the matter is in appeal since 2011 on such a small point, this Court would exercise its jurisdiction under Section 100 CPC as *ex facie*, a substantial question of law certainly arises occasioned by mistake of Courts due to a casual approach adopted which has unnecessarily led to the present appeal. It is well settled that a mistake of Court will injure no one, which is a principle preserved in the latin maxim *actus curiae neminem gravabit*. Applying those principles, the decree is ordered to be confined to appellants No.1 to 6 as judgment

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debtors and the burden of the same is removed from appellants No.7 to 18 who have nothing to do any longer with the *lis*. Both the appeals stand disposed of accordingly by modification of the decree as ordered above.

**(RAJIV NARAIN RAINA)
JUDGE**

April 21, 2015

Paritosh Kumar