IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO. 1390 OF 2012 (O&M)
DECIDED ON : 06.07.2015

Santokh Singh and others
...Appellants
versus

M/s Chanan Ram and Company and others
...Respondents

CORAM : HON'BLE MR. JUSTICE K.C .PURI

Present : Mr. Avnish Mittal, Advocate.

K. C. PURI, J.

Some of the defendants/appellants have directed this regular second appeal against the judgment and decree dated 22.12.2011 passed by Shri Sarbjit Singh Dhaliwal, Additional District Judge, Sri Muktsar Sahib, vide which the appeal preferred by the plaintiffs/appellants against the judgment and decree dated 30.05.2007 passed by Shri M. P. Singh, Civil Judge (Senior Division), Muktsar, was dismissed.

Brief facts of the case as gathered from the record are that M/s Chanan Ram and Company filed a suit for recovery of ₹9,22,312/- with the allegations that the plaintiff firm was a registered partnership firm under the name and style of M/s Chanan Ram and Company and was running the business of commission agent at New Grain Market at Muktsar. The defendants were having accounts with the plaintiff firm under the name as Santokh Singh Harjodh Singh son of Naranjan Singh. Defendants No.2 to 4 are sons of Santokh Singh-defendant No.1. Harjodh Singh died on 30.01.1994 and defendants No.5 and 6 are his sons. The defendants used to take loan from the plaintiff firm on various occasions. The defendants had also directed the plaintiff firm to advance loan through their representatives/drivers/servants and as such, on some occasions they had also taken loan on their behalf.

It was further pleaded that on 30.03.1991, the accounts between the parties were settled and ₹5,00,299/- was outstanding against the defendants. A sum of ₹44,701/- also became due on account of interest on the settlement of account. ₹5000/- was taken as cash loan by Santokh Singh and ₹5,50,000/- became outstanding against the defendants. A writing to this effect was also made in the khata of plaintiff firm. Santokh Singh signed the same after admitting it to be correct and wrote in his own handwriting that a sum of ₹5,50,000/- was due from them. It was further pleaded that the defendants had been taking loan from the plaintiff firm, as detailed in the plaint. The defendants paid some of the loan amount and as such, a sum of ₹5,92,312/- was outstanding against the defendants. The entries regarding repayment of loan were also made. Hence, the suit for recovery of ₹9,22,312/- was filed.

Upon put to notice, defendant No.1-Santokh Singh appeared and filed written statement taking preliminary objections that the date of birth of Sukhpal Singh is 05.02.1977, Gurpal Singh is 11.12.1974 and Jagpal Singh is 01.01.1976 and as such, all the defendants were minor at the time of filing the suit. Therefore, the suit is liable to be dismissed. It was further pleaded that defendants No.2 to 4 were having no account with the plaintiff firm. They have neither sold their crops to the plaintiff firm nor obtained any loan at any point of time from the plaintiff firm. The other averments of the plaint were denied.

Defendant No.1 also filed counter claim for rendition of accounts qua crops sold by the defendants through the shop of plaintiff firm from the year 1987 onwards.

Defendants No.2 to 4 filed separate written statement taking preliminary objection of minority of defendants Sukhpal Singh, Gurpal Singh and Jagpal Singh. The other averments were denied.

Defendant No.5 filed separate written statement taking preliminary objection that his date of birth is 05.02.1977 and the date of birth of defendant No.6 is 14.06.1980 and as such, both the defendants No.5 and 6 were minor at the time of filing the suit. The other averments were denied.

Defendant No.6 filed separate written statement taking preliminary objection of limitation; that the entries are forged and fabricated. The other averments were denied.

Replication was filed. From the pleadings of parties, following issues were framed :-

1) Whether the plaintiff is a registered partnership firm under the name and style of M/s Chanan Ram and Company and whether the suit is filed by competent person ? OPP

2) Whether the plaintiff is entitled to the recovery of ₹9,22,312/- from the defendants ? OPP

3) Whether the plaintiff is entitled to interest, if so, at what rate ? OPP

4) Whether the suit is within limitation ? OPD

5) Whether the bahi entries are forged and fabricated, if so, its effect ? OPD

6) Whether the suit is not maintainable ? OPD

6-A) Whether assignment deed produced by plaintiff is forged and fabricated, if so, its effect ? OPD

6-B) Whether the defendant No.1 is entitled for rendition of accounts as prayed in the counter claim ? OPD

6-D) Whether the defendants Sukhpal Singh, Gurpal Singh and Jagpal Singh were minors at the time of filing of the suit. If so, its effect ? OPD

6-E) Whether the counter-claim of the defendants is time barred ? OPP

6-C & 7) Relief.

In order to prove its case, plaintiff firm examined Roshan Lal Dabra as PW-1, Anil Kumar Ahuja as PW-2, Vijay Kumar as PW-3, Vimal Bansal as PW-4, Anil Kumar Gupta as PW-5 and closed the evidence.

On the other hand, the defendants examined Jagpal Singh as DW-1, Sukhpal Singh as DW-2, Santokh Singh as DW-3, M.N.Sharma as DW-4, Naranjan Singh as DW-5, Makhan Singh as DW-6 and closed the evidence.

The learned trial court, after adjudication, decreed the suit of plaintiff for recovery of ₹5,92,314/- along with interest @ 12% per annum from 01.12.1991 till the date of decree and future interest @ 6% per annum. It was further held that the future interest will be recoverable on principle amount of ₹5,92,314/-. All the defendants No.1, 5 and 6 were jointly and severally held liable to pay the amount. It was further held that defendants No.5 and 6 were not personally liable to pay the amount and the recovery of the amount be recovered from the property inherited by them from Harjodh Singh-since deceased. The suit qua defendants No.2 to 4 was dismissed.

Feeling dissatisfied with the above said judgment and decree dated 30.05.2007 passed by Civil Judge (Senior Division), Muktsar, the defendants No.1, 5 and 6 preferred first appeal. The said appeal was dismissed vide judgment and decree dated 22.12.2011 passed by Additional District Judge, Sri Muktsar Sahib.

Still feeling aggrieved by the judgments and decrees dated 30.05.2007 passed by Civil Judge (Senior Division), Muktsar and judgment and decree dated 22.12.2011 passed by Additional District Judge, Sri Muktsar Sahib, defendants No.1, 5 and6 /appellants have preferred the instant regular second appeal.

Learned counsel for the appellants, in para no. 15 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal ?

1) Whether the judgments and decrees passed by the learned courts while decreeing the suit of the plaintiff are perverse being misreading and non-reading of evidence in record ?

2) Whether the suit filed by partnership firm for the transactions when it was not in existence, is maintainable or not ?

3) Whether a decree can be passed for an amount which has not been claimed ?

4) Whether a contract with minors is void or not ?

5) Whether the plaintiff has to stand on his own legs to prove his case ?

I have heard learned counsel for the appellants and have gone through the records of the case carefully.

Learned counsel for the appellants has submitted that the partnership firm was not a registered firm at the time of advancing loan and as such, the suit is not maintainable.

I have considered the said submission but do not find any force in the same.

The requirement of law is that unregistered firm cannot file suit. However, at the time of filing the suit, the firm was registered. It is not requirement of law that at the time of advancing loan, the firm should be registered. So, the above said contention is merit-less.

Learned counsel for the appellants has further submitted that judgments and decrees of both the courts below are perverse, being the result of misreading and misinterpreting the evidence on record. It is contended that the entries have not been proved in accordance with law and as such, no liability can be fastened against the defendants/appellants.

I have carefully considered the said submissions but do not find any force in the same.

It is proved on record that balance was confirmed in the account books by one of the defendants. There is nothing on record to show that the judgments and decrees of both the courts below are the result of misreading and misinterpreting the evidence available on file.

Learned counsel for the appellants has further contended that the contract with minors is void and cannot be taken into consideration.

I have considered the said submission but do not find any force in the same as no decree against the minor has been passed. So, this contention is merit-less. The suit qua minors had already been dismissed by the courts below.

Learned counsel for the appellants has further contended that interest granted is on higher side.

I have considered the said submission but do not find any force in the same.

The interest has been granted @ 12% per annum till the date of decree and future interest has been allowed @ 6% per annum. So, that amount cannot be said to be excessive.

So, in view of the above discussion, I have no hesitation in holding that the substantial questions of law raised by the appellants stand answered against the appellants in the manner mentioned above. Consequently, the appeal is without any merit and the same stands dismissed.

JULY 06, 2015 **(K. C. PURI)**
shalini **JUDGE**