

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

RSA No. 1005 of 2013 (O&M)
Date of decision 10.08. 2015.

Shubeg Singh and others

..... Appellants.

versus

Pardhan Kaur and others

..... Respondents.

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

1. Whether Reporters of Local Newspapers 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?

Present : Mr. Veneet Sharma, Advocate for the appellants.

K.C.PURI, J.

CM No.2708-C- 2013

For the reasons mentioned in the application, the same stands allowed and exemption from filing the certified copies of judgment and decree stands granted.

CM No.2709-C- 2013

2. In view of above decision in the regular second appeal, the present misc. application stands dismissed as having been become infructuous.

MAIN CASE.

3. Shubeg Singh and others-appellant-defendants have directed the present appeal against the judgment and decree dated 18.10.2012 passed by Shri Kishore Kumar, learned District Judge, Amritsar vide which the appeal against the judgment and decree dated 15.01.2010 passed by Shri B.S.Deol, learned Additional Civil Judge (Senior Division), Ajnala was dismissed.

4. Brief facts of the present case are that plaintiffs filed suit for recovery of Rs.6,00,000/- under Fatal Accident Act against the defendants on the allegations that on 19.12.2002, plaintiffs along with their father were at village Punj Garayan with their relatives and at about 2pm Harinder Singh came to see his maternal grandfather Shri Gurbax Singh. He informed Gurbax Singh that when he was coming from his fields towards the house and near the outer haveli, Amandeep Singh started littering facing towards him and told him that he should not do like this. There was exchange of hot words. At that time defendant No.1 armed with .12 bore gun, defendant no.2 also armed with .12 bore double barrel gun, defendant No.3 armed with sword, defendant No.4 armed with dang, defendant No.5 armed with sword, defendant Nos. 6 to 8 having dangs came from the house of Shubeg Singh. Amandeep Singh raised lalkara that Harinder Singh be not left alive and Shubeg Singh opened fire in order to kill Harinder Singh and Gurbax Singh and shot hit Gurbax Singh on both his legs. Gurbax Singh raised alarm and after hearing the fire shots, Amrik Singh and Mohan Singh, who were present in the house of Gurbax Singh came out to save him when they were near the main gate, Shubeg Singh

fired twice from his gun, aiming at Amrik Singh which hit on his chest and left hand and Amrik Singh fell down on the spot. Thereafter, Sonu fired from his 12 bore rifle aiming at Mohan Singh, which hit him at his left arm near the muscle, Harinder Singh and Gurbax Singh were continuously raising alarm and Jaswinder Singh alias Jass attacked Gurbax Singh with his sword which hit him on his right leg and Kanu attacked him with his sword which hit him on his left leg. Gurmukh Singh gave dang blows, Jasmail Singh and Pappu raised lalkaras and shouted that no body should escape alive. Similarly, Amandeep Singh also gave dang blows to Harinder Singh. Sonu also fired at Gurbax Singh which hit at his back. Satnam Singh also came on the spot and on raising alarm by the injured, the defendants fled away from the spot. Injured were transported to the hospital, where doctor declared Amrik Singh brought dead. Post mortem was conducted and FIR No.283 under Sections 302, 307, 452, 324, 323, 148, 149 of the IPC was registered against the accused. Amrik Singh was able bodied having 35 years of age. Therefore, a compensation of Rs.6lacs was claimed. Hence, the suit was filed.

5. On put to notice, defendants contested the suit by filing written statement taking preliminary objections having no locus standi or cause of action to file the suit and that plaintiffs are estopped by their own act and conduct from filing the suit. On merits, all the averments made in the plaint were denied.

6. The plaintiffs filed replication reiterating the stand taken by them in the plaint and denied the averments made in the written statement.

7. From the pleadings of parties, following issues were framed :-
- 1) Whether defendants committed murder of Amrik Singh son of Sawaran Singh, as alleged ? OPP
 - 2) Whether plaintiffs are entitled to damages on account of death of Amrik Singh son of Sawaran Singh ? If so, to what extent ? OPP
 3. Whether suit is not maintainable ?OPD
 4. Whether plaintiffs have no cause of action to file the suit ?
 5. Whether the plaintiffs have locus standi to file the suit ? OPD
 6. Whether the plaintiffs are estopped by their act, conduct to file the suit ?OPD
 7. Whether the suit is properly valued for the purpose of court fee and jurisdiction ?OPP
 - 8) Relief.
8. The parties had led their respective evidence on the aforesaid issues. After appraisal thereof, the trial Court decreed the suit of the plaintiffs vide judgment and decree dated 15.01.2010 decreed the suit of the plaintiffs for recovery of Rs.4,00,000/- against defendant Nos.1 to 6 and dismissed against defendants No.7 and 8.
9. Feeling dissatisfied with the aforesaid judgment and decree dated 15.01.2010, the defendants have directed the First Appeal, which was dismissed by learned Additional District Judge, Amritsar vide judgment and decree dated 18.10.2012 after re-appraisal of the evidence.
10. Still feeling dissatisfied with the judgment and decree dated 15.01.2010 and judgment and decree dated 18.10.2012, the present regular second appeal has been directed.

11. The appellants in paragraph No.10 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (a) Whether the suit filed by the respondents was maintainable ?
- (b) Whether the quantum of compensation has been wrongly assessed by the Courts below ?
- (c) Whether the pendency of the appeal against the Judgment of conviction would have an affect on the outcome of the suit filed by the respondents ?
- (d) Whether the suit filed by the respondents is barred in view of the provisions of section 357 Cr.P.C. ?
- (e) Whether the Id. Civil Court ought to have weighed and sifted the material before it to come to a conclusion as to whether it was the complainant party who had tried to take forcible possession at the time of the incident ?
- (f) Whether the rate of interest awarded to the respondents is on the higher side ?

12. I have heard learned counsel for the appellant and have gone through the records of the case.

13. Learned counsel for the appellant has submitted that appeal against the judgment dated 16.10.2004 passed by the Additional Sessions Judge, Amritsar vide which the accused/appellants has been convicted is still sub-judice before this Court. It is submitted that the plaintiffs have failed to prove the factum of murder by appellant before the trial Court. The appellant might be acquitted by the High Court and as such both the Courts below have committed error by decreeing the suit of the plaintiffs.

14. I have carefully considered the said submission but do not find any force in that submission.

15. Mere pendency of appeal against the order of conviction is not a ground for interference in the concurrent finding of fact recorded by both the Courts below. The plaintiffs have been able to prove the occurrence by producing cogent and convincing evidence. That finding returned by Shri B.S.Deol, PCS, Additional Civil Judge (Senior Division), Ajnala were affirmed by the Court of Shri Kishore Kumar, Additional District Judge, Amritsar vide judgment and decree dated 18.10.2012. So, this Court, cannot interfere in the judgment and decrees of both the Courts below only on the ground that the same are the result of misreading and misinterpreting the evidence on the file. In the grounds of appeal, quantum of compensation has been challenged but having realized the amount of compensation is not on higher side. Counsel for the appellant during the course of argument has not argued on that point. Mere fact that under Section 357 of the Cr.P.C., some amount can be granted by the Criminal Court, is not a ground for interference in the findings of both the Courts below. The Criminal Court may or may not consider the factum of Civil Court decree regarding compensation.

16. Learned counsel for the appellant further submitted that in case the Court is not inclined to interfere, the judgment and decrees of both the Courts, in that case, the appellant may be allowed to make the payment of decretal amount in instalments.

17. I have carefully considered the said submission but do not find any force in that submission.

18. The appellant has remedy to approach the Executing Court for

the said relief. Moreover, it is made clear that the executing Court shall pass the order in accordance with law but shall not be bound to grant said relief of installments, in view of the observations made above.

19. So, no questions of law mentioned in paragraph No.10 of the grounds of appeal is the question of law much-less the substantial question of law. The question before the Courts below was whether the defendants-appellants wrongfully committed the murder of Amrik Singh ? There is concurrent finding of fact recorded by both the Courts below in favour of the plaintiffs against the defendants. That concurrent finding does not call for any interference, more-so, when there is no material on the record to interfere in that findings. The question of fact based upon the cogent and convincing evidence, cannot be interfered in the regular second appeal.

20. So, in view of the above discussion, the appeal is meritless and the same stands dismissed.

21. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

August 10 , 2015

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