

In the High Court of Punjab and Haryana at Chandigarh

.....

R.S.A. No.1079 of 2013 (O&M)

.....

Date of decision:23.3.2015

Kulwant Singh and others

.....Appellants

v.

Tejinder Singh and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. N.S. Sodhi, Advocate for the appellants.

.....

Inderjit Singh, J.

This regular second appeal has been filed by the appellants-defendants aggrieved against the impugned judgment and decree dated 8.10.2012 passed by the learned District Judge, Moga, affirming the impugned judgment and decree dated 13.12.2011, except for the modification that plaintiff No.2 Gian Kaur would be entitled to get the damages worth ₹1,97,000/- from the defendants along with interest @6% per annum from the date of decree till its realization, passed by the learned Civil Judge (Senior Division), Moga, whereby the civil suit filed by plaintiffs-respondents has been decreed.

I have heard learned counsel for the appellants and have gone through the record.

As per the record, Pal Singh and Gian Kaur-plaintiffs filed suit for recovery of ₹2,10,000/- as damages against Hari Singh, Jugraj Singh, Jagdish Singh alias Kali, Kulwant Singh and Surjit Singh-defendants. During the pendency of the civil suit, Pal Singh died and his LRs filed an application for impleading his legal heirs, namely, Tejinder Singh, Iqbal Singh and Gian Kaur, which has been dismissed.

As per the case of the plaintiffs, the land was purchased by plaintiff-Pal Singh and his brother Kulwant Singh vide registered sale deed dated 9.5.2003. Gurmander Singh (since deceased) son of the plaintiff was born on 9.5.1982 and he studied in Government Primary School Kokri Kalan upto 28.2.1994. On 4.6.2003 at about 4/5.00 p.m., Tejinder Singh and Gurmander Singh sons of plaintiff were irrigating the land purchased from Harmander Singh and Harbans Singh. Hari Singh son of Mohan Singh armed with 'Gandasa', Jugraj Singh son of Hari Singh armed with 'Toka', Jagdish Singh alias Kali son of Pritam Singh empty handed, Kulwant Singh son of Darshan Singh empty handed, Surjit Singh son of Rattan Singh, who was driving Maruti car, came there at the spot, where Gurmander Singh and Tejinder Singh were irrigating the land. Surjit Singh-defendant No.5 kept standing near his car and raised 'Lalkara' to teach a lesson for carving out a 'Khal'. All the defendants started abusing Gurmander Singh and Tejinder Singh and started demolishing the 'Khal'. Gurmander Singh tried to stop the defendants from demolishing the 'Khal', then Jagdish Singh alias Kali caught hold of Tejinder Singh. Kulwant Singh caught hold of Gurmander Singh and Jugraj Singh gave 'Toka' blow behind right ear and in the head

and he fell down. Hari Singh gave 'Gandasa' blow from blunt side on his right hand. Tejinder Singh tried to save his brother Gurmander Singh, then Hari Singh gave 'Gandasa' blow on his head, Jugraj Singh gave 'Toka' blow on the right hand of Tejinder Singh. When Tejinder Singh raised alarm, Hari Singh gave another 'Gandasa' blow on his scapular. The entire incident was witnessed by Iqbal Singh brother of Tejinder Singh and Gurmander Singh. All the defendants thereafter ran away with their respective weapons in the Maruti car of Surjit Singh. Iqbal Singh arranged conveyance, but Gurmander Singh died on the way to hospital. Tejinder Singh was admitted in Civil Hospital, Moga. FIR No.46 dated 4.6.2003 was registered on the basis of statement of Tejinder Singh recorded in the hospital. Post-mortem examination on the dead body of Gurmander Singh alias Gurbinder Singh alias Gurvinder Singh was conducted by Dr. Naresh Kumar on 5.6.2003. It is stated that the plaintiffs are entitled to ₹2,10,000/- as damages from the defendants as the plaintiffs were dependents on Gurmander Singh for their maintenance.

The learned Civil Judge (Senior Division), Moga, after appreciating the evidence decreed the suit of the plaintiffs for ₹1,97,000/- recoverable from the defendants and all the defendants were directed to pay the same within three months failing which the plaintiffs were held entitled to get interest @6% per annum from the date of decree till realization. The plaintiffs were also held entitled to get the damages in equal shares and all the defendants were jointly and severally held liable to pay the above said amount to the plaintiffs. The appeal was filed by defendants Hari Singh,

Jugraj Singh, Jagdish Singh alias Kali, Kulwant Singh and Surjit Singh before the learned District Judge, Moga, who vide judgment and decree dated 8.10.2012 upheld the findings recorded by the learned trial Court and dismissed the appeal by modifying the judgment of the learned Civil Judge (Senior Division), Moga, to the extent that only plaintiff No.2 Gian Kaur is entitled to damages worth ₹1,97,000/- from the defendants-appellants along with interest @6% per annum.

At the time of arguments, learned counsel for the appellants firstly argued that the judgment of the learned Civil Judge (Senior Division), Moga is incorrect as the suit had been decreed in favour of both the plaintiffs whereas the LRs of Pal Singh-plaintiff No.1 had not been impleaded by the lower Court. He further argued that the appeal against the conviction of the appellants in criminal case is pending before this Court. He further argued that there is documentary evidence on record especially Ex.D.6 to show that the 'Khal' was already demolished and proceedings regarding restoration of that 'Khal' have been decided much earlier to the occurrence. He further argued that as Pal Singh one of the plaintiffs had already died, therefore, this compensation amount should have been half now as only one plaintiff is left.

After hearing learned counsel for the appellants and after going through the record, I find that learned counsel firstly has not pointed out which substantial question of law arises in this regular second appeal. He is contesting the findings of fact which have been concurrently given by both the Courts below. On the face of it, there is nothing on the record that the

evidence has been misread by the Courts or the findings are perverse. As regards the argument that learned Civil Judge (Senior Division) had decreed the suit in favour of both the plaintiffs though LRs of Pal Singh had not been impleaded in the case, that mistake had already been corrected by the learned District Judge in its judgment and only Gian Kaur was held entitled to the damages of ₹1,97,000/- from the defendants-appellants.

The dispute is that the appellants-defendants committed the murder of Gurmander Singh alias Gurvinder Singh, therefore, the motive for the occurrence etc. is of no consequence. Learned counsel for the appellants has not contested the findings that the appellants caused the injuries to Gurmander Singh. Otherwise also, in the criminal case, the trial Court has already convicted the accused and the appeal is pending before this Court. It is a civil suit and in the civil suit the plaintiffs are to prove the case independently and the plaintiffs have proved the same by leading evidence. Otherwise also, as per the case of the plaintiffs, the defendants raised 'Lalkara' that they would teach a lesson for restoring the 'Khal'.

As regards the excess amount and that it should be half as Pal Singh had already died, again I find that the learned first appellate Court had discussed the evidence on record in right perspective. The deceased was of 25 years age as per copy of the post-mortem report, as income has been assessed at ₹2,000/- only. Only ₹1,97,000/- has been given by applying the multiplier of 12. In no way, it can be held that excessive amount has been calculated.

Therefore, from the above, I find that the findings recorded by

the Courts below are correct and as per law and no question of law, much less any substantial question of law arises in the present regular second appeal.

Nothing has been shown that the concurrent findings recorded by the learned Courts below suffer from any infirmity or are contrary to the record, which are correct and as per law. These do not require any interference from this Court and the same are upheld.

Finding no merit in the present regular second appeal, the same is dismissed.

March 23, 2015.

(Inderjit Singh)
Judge

hsp