

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

**R.S.A. No. 281 of 2015 (O&M)
Date of Decision:- 21.04.2015**

Mohammad Salim

.....Appellant

Versus

Market Committee, Ahmedgarh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Sunny K. Singla, Advocate for the appellant.

SHEKHER DHAWAN, J.

Present Regular Second Appeal against the judgment and decree dated 01.11.2014, passed by Additional District Judge, Sangrur, whereby the appeal against the judgment and decree dated 21.04.2015, passed by Civil Judge, Malerkotla was dismissed.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance.

3. The detailed facts of the case have already been discussed in the judgment of the Courts below. Relevant facts for the purpose of

decision of present regular second appeal that plaintiff-respondent had filed a suit for mandatory injunction on the ground that appellant-defendant No.1 is a firm and carrying on business of sale and purchase of fruit, vegetables etc., which are agricultural produce, without getting a license issued from the plaintiff committee under Section 6(3) of the Punjab Agricultural Market Produce Act, 1961 (hereinafter to be referred as 'the Act') and without paying market fee, Rural Development Fund to the plaintiff, as envisaged under Section 10 of the Act and without submitting return on form 'M'. For that purpose, the plaintiff issued notice to defendant No.1 on different dates.

4. Defendant-appellant took the plea that the suit is not maintainable, as defendant No.2 was not carrying on the business of selling vegetables and fruits in the name and style of M/s Salim Sabzi Wala. Rather defendant No.2 was carrying on the business of selling fruits and vegetables of agriculturist on commission basis as Hawker and his monthly income is ₹3,000/-. He is just a retail shopkeeper and as such he was not required to get any license or pay any fee to the plaintiff. Plaintiff just wanted to harass the defendant(s), so, the suit be dismissed. On these facts the Court of first instance settled following issues and parties were put to trial: -

1. Whether the plaintiff is entitled to mandatory injunction directing the defendant to issue license u/s 6(3) of Punjab Agricultural Produce Market Act 1961 as detailed in the plaint? OPP
2. Whether the suit of plaintiff is not maintainable in the present

form? OPD.

3. Whether the plaintiff has not come to the court with clean hand ? OPD
4. Whether the plaintiff is stopped by his act and conduct from filing the present suit? OPD.
5. Whether the plaintiff has no cause of action and locus-standi to file the present suit ? OPD
6. Relief.

5. After recording the evidence and appreciation of the evidence, the Court of first instance decreed the suit of plaintiff, thereby issuing mandatory injunction against the defendants to get license under Section 6(3) for the purchase and sale of fruit, vegetable etc. and to pay market fees, as required under the law.

6. Defendant No.2 has challenged the said judgment and decree before the Court of first instance and remained unsuccessful. Hence, the present regular second appeal.

7. Mr. Sunny K. Singla, Advocate, learned counsel for the appellant mainly took the plea that as per Section 6 of the Act, defendant was not required to obtain any license if his income was not exceeding Rs.3 lacs. More so, as per Section 37 of the Act there is a penal provision under the Act itself, that in case any dealer does not obtain any license he shall be liable for penalty. Appellant-defendant is just a Hawker and not in a position to furnish bank guarantee, as required under the terms and conditions for obtaining license and his income does not exceed ₹3 lacs. So, there was no ground for issuing mandatory injunction on this point.

More so, if defendant commits any default, then he is liable for penal

provisions. Both the Courts below have not appreciated these legal provisions and fell in error while recording the findings of fact and as such, said findings to be reversed and appeal be accepted.

8. Having considered the contentions raised by learned counsel for the appellant, this Court is of the considered view that there is no dispute on the fact that the appellant-defendant is carrying on the business of sale and purchase of fruits and vegetables etc.

9. The Courts below have already appreciated the oral and documentary evidence, led in this case and returned the findings, that defendant-appellant was carrying on the business of sale and purchase of fruits and vegetables etc. on commission basis. He was issued to legal notices but no reply was filed. The plaintiff committee produced certified copy of purchase register of defendant firm which is Ex.P5 and the same establish the fact that the transactions of defendant's shop was making out a case that he used to earn more than ₹100 per day.

10. The Court of first instance rightly recorded the observations that as per Section 18(2) of the Act, if a dealer importing agricultural produce from outside the state of Punjab, he shall not be treated as Hawker or a petty retail shopkeeper and as such the case of the defendant falls within the provisions of Section 18(1) of The Punjab Agricultural Produce Markets Act 1961. As regards the plea taken by learned counsel for the appellant that as there was a provision of penalty in case of any violation, suit for mandatory injunction was not maintainable and the same was rightly negated. Learned counsel for the appellant placed

reliance upon judgment of this Court in case **Darshan Lal Vs. State of Punjab, 2003 (1) RCR (Criminal) 813** and the same was also relied upon before the Court of first instance. However, no reliance upon said case was placed, as the facts of said case are entirely distinguishable and the order was passed on a revision petition in a criminal case.

11. Otherwise also the present being Regular Second Appeal against the concurrent findings of both the Courts below. There is no substantial question of law involved in this case calling for interference by way of present regular appeal. The regular second appeal is without any merit and the same is dismissed.

April 21, 2015
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(**SHEKHER DHAWAN**)
JUDGE