

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : August 21, 2015

1. R.S.A. No. 852 of 2014 (O&M)

Jaswant Singh and others	... Appellants
vs.	
Baljeet Kaur and others	... Respondents

2. R.S.A. No. 1402 of 2014

Jaswant Singh and others	... Appellants
vs.	
Gurmeet Kaur and others	... Respondents

3. R.S.A. No. 1429 of 2014

Jaswant Singh and others	... Appellants
vs.	
Partap Singh and others	... Respondents

4. R.S.A. No. 1438 of 2014

Jaswant Singh and others	... Appellants
vs.	
Swaran Singh and others	... Respondents

5. R.S.A. No. 1439 of 2014

Jaswant Singh and others	... Appellants
vs.	
Rajinder Singh and others	... Respondents

6. R.S.A. No. 1440 of 2014

Jaswant Singh and others	... Appellants
vs.	
Angrej Singh and others	... Respondents

7. R.S.A. No. 1443 of 2014

Jaswant Singh and others

... Appellants

vs.

Gurdeep Kaur and others

... Respondents

8. R.S.A. No. 2143 of 2014

Jaswant Singh and others

... Appellants

vs.

Kuldeep Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate
for the appellants.

Surinder Gupta, J

1. All the above mentioned appeals have been taken up together as the point in issue in all the appeals is almost the same and these appeals have been filed by the same appellant, though the contesting respondents are different.
2. The respondents in all the appeals filed suit for recovery against the appellants and performa respondents, which are tabulated as follows :-

Sr.No.	R.S.A. No.	Title of civil suit	Amount sought to be recovered	Decision of the courts below
1	852 of 2014	Baljit Kaur vs. M/s Gurtej Singh and Company and others	₹75,920/-	Suit decreed. First Appeal dismissed.
2	1402 of 2014	Gurmeet Kaur vs. M/s Gurtej Singh and Co. & ors.	₹82940/-	Suit decreed. First Appeal dismissed.
3	1429 of 2014	Partap Singh vs. M/s Gurtej Singh & Co. and others	₹11,84,000/-	Suit decreed. First Appeal dismissed.
4	1438 of 2014	Swaran Singh vs. M/s Gurtej Singh & Co. & Ors.	₹9,09,020/-	Suit dismissed. First appeal allowed.
5	1439 of 2014	Rajinder Singh vs. M/s Gurtej Singh & Co. & Ors.	₹10,22,075/-	Suit decreed. First Appeal dismissed.

<i>Sr.No.</i>	<i>R.S.A. No.</i>	<i>Title of civil suit</i>	<i>Amount sought to be recovered</i>	<i>Decision of the courts below</i>
6	1440 of 2014	Angrej Singh vs. M/s Gurtej Singh & Co. & ors.	₹11,79,578/-	Suit decreed. First Appeal dismissed.
7	1443 of 2014	Gurdeep Kaur vs. M/s Gurtej Singh & Co. & ors.	₹1,53,400/-	Suit dismissed. First appeal allowed.
8	2143 of 2014	Kuldeep Singh vs. M/s Gurtej Singh & Co. & ors.	₹4,48,733/-	Suit decreed. First Appeal dismissed.

For the sake of convenience the parties shall be referred as 'plaintiffs and defendants' as mentioned in civil suit no.73 of 2007 titled as 'Baljit Kaur vs. M/s Gurtej Singh & Company and others' and reference to facts and evidence, except in RSA No. 1443 and 1438 of 2014, shall be from above case.

Brief facts

(RSA Nos. 852, 1402, 1429, 1439, 1440 and 2143 of 2014)

3. The plaintiff (s) claimed recovery of amount as mentioned in table in para no.2 above on the basis of writing dated 1.4.2006 issued on behalf of M/s Gurtej Singh and Company by its partner Ashok Kumar. The case of plaintiff (s), in brief, is that the above writing was issued after settlement of the account by defendant firm describing the amount due to the plaintiff.
4. In written statement filed on behalf of firm, its partner Ashok Kumar and Shanti Devi, who are defendants no.2 and 6 (defendant no.1 firm M/s Gurtej Singh and Company was also sued through Ashok Kumar as its partner), the claim of plaintiff was contested and controverted, *inter alia*, pleading that company M/s Gurtej Singh and Company, which was partnership firm was dissolved w.e.f. 2.12.2005 and the assets and liability of the firm were taken by Gurtej Singh son of Jang Singh alone. As such, they had no concern and communication with the firm on the date of issuance of alleged receipt. About the writing dated 1.4.2006, it was alleged that the same was taken under force, coercion and threat by Gurtej Singh. No amount was deposited with the firm and the alleged writing is just a paper work got done forcibly by Gurtej Singh from Ashok Kumar. The plaintiff never deposited any amount with the firm, as such, there was no

liability of the firm or the partners of firm to pay the suit amount.

5. Defendants No.3 and 5 (Appellants Jaswant Singh and Mukhtiar Kaur) filed separate written statement taking up similar stand as taken by defendants No.1, 2 and 6. Defendant No.4-Durga Ram and defendant No.7-Leela Rani (appellants) also filed separate written statement pleading that they were partners of M/s Gurtej Singh and Company which was dissolved and legal notice dated 16.5.2007 was issued by their counsel Mr.O.P.Garg to all the partners, as such, they were not liable for the suit amount in their individual capacity.

6. Rejecting the pleas raised by the appellants and other defendants, learned Additional Civil Judge (Sr. Division), Dabwali observed in para no.71 of the judgment (civil suit no.73 of 2007) as follows :-

“71. In these circumstances, it is clearly established that writing Ex.P1 is legal document and the plaintiff is entitled to recover the amount in pursuance of the writing Ex.P1. The plaintiff has also served a legal notice upon the defendants individually which is not denied or disputed but despite notice no payment has been made.”

7. While delving on the plea that the firm had already been dissolved on 2.12.2005, it was observed in para no.77 that the firm was not dissolved as alleged by the defendants. The findings of the trial court were affirmed by the first appellate court while dismissing the appeal filed by the appellants.

R.S.A. No. 1443 of 2014

8. The case of plaintiff (respondent No.1) Gurdeep Kaur, in brief, is that she deposited a sum of ₹1,30,000/- on 8.2.2006 on interest @ 8% per annum with firm M/s Gurtej Singh and Company and writing dated 8.2.2006 on the letter head of M/s Gurtej Singh and Company admitting that her amount was deposited in the account of M/s Amar Nath and Jaswant Singh was issued. However, this amount was not paid by either of the firm despite legal notice dated 3.3.2007. In this suit also, the defendants took the plea that firm M/s Gurtej Singh and Company had been dissolved on 2.12.2005 and about writing dated 8.2.2006 it was alleged that the same

was taken under force, coercion and threat by Gurtej Singh, who had taken over the firm after its dissolution.

9. The trial court dismissed the suit filed by Gurdeep Kaur with the observations in para no.54 of the judgment which reads as follows :-

“54. In the light of above circumstances, it is clear that plaintiff has failed to prove that any amount was deposited by her with the defendants as being alleged by her. It is possible that her father might have running account with the defendant's firm but she has not claimed recovery on the basis of transactions between her father and the defendants but she has come to the court claiming her independent right for recovery from the defendants on the allegations that she has deposited the amount of ₹1,30,000/- with Gurtej Singh but her claim in this regard as evident from cross- examination of this witness is in contradiction with her pleadings and is beyond pleadings wherein she has claimed that she has deposited the amount but she has not disclosed either the firm or the name of the person with whom she had deposited the amount and she has astutely taken a stand that at that time all the partners were present. She has failed to prove that any such amount was deposited by her with the defendants. She has also failed to prove and to show that the defendant No.2 Ashok Kumar was competent to either acknowledge the outstanding liability of the firm M/s Amar Nath Jaswant Singh or to issue any receipt on behalf of that firm regarding deposit of any amount with it as being projected by the plaintiff by way of pleading her case on the basis of Ex.P10. Even if it is assumed for the sake of arguments that any such receipt was voluntarily executed by defendant no.2 then also the firm M/s Amar Nath Jaswant Singh and its defendants cannot be made liable. She has categorically stated in her pleading that the amount was deposited with M/s Amar Nath Jaswant Singh so the firm M/s Gurtej Singh & Co. and its partners cannot be made liable.

She has further taken a stand that she has handed over the amount to Gurtej Singh, who had got prepared a receipt from AshokKumar, implying thereby that there is a possibility that there should be some dealing between her and Gurtej Singh but for which she has not pleaded in her case and in these circumstances the version advanced by the defendants that writing is a product of threat, coercion and undue force, fraud, misrepresentation and concealment seems highly probable and accordingly no liability on the basis of Ex.P10 can be fastened upon the defendants.”

10. Appeal filed by Gurdeep Kaur was accepted by learned District Judge, Sirsa and the plea of appellant in this regular second appeal that the firm M/s Gurtej Singh and Company was dissolved was discarded. The first appellate court while holding appellants and other defendants liable to pay the suit amount observed in para no.14 and 17 as follows :-

“14. The plea advanced on behalf of respondents that PW2 Smt.Gurdeep Kaur appellant in her deposition changed her stand from firstly saying to have herself paid the amount of Rs.1,30,000/- and afterwards told her father to have paid said amount to Gurtej Singh, a partner of firm M/s Gurtej Singh and Company, to this court is held to be of no much significance as the receipt Ex.P10 in the shape of a document when legibly written and signed by Ashok Kumar, one of the partners of respondent no.1 and respondent no.8 firms, thereby, acknowledging the receipt of Rs.1,30,000/- from Gurdeep Kaur appellant and holding respondent no.8 firm M/s Amar Nath Jaswant Singh Kalanwali liable to pay the same in future was sufficient to determine liability of all partners of the two firms besides the firm in form of respondent no.1 and respondent no.8.

15 & 16 xx xx xx xx xx

17. Since receipt dated 8.2.2006 Ex.P10 was issued on the letter head of respondent no.1 firm M/s Gurtej Singh and

Company, Kalanwali under signatures of Ashok Kumar; a partner of said firm as well as of respondent no.8 firm M/s Amar Nath Jaswant Singh, Kalanwali, which inter-alia recites liability of respondent no.8 firm M/s Amar Nath Jaswant Singh, Kalanwali of Rs.1,30,000/- in future to Gurdeep Kaur depositor/appellant, therefore, the two firms as well as their partners impleaded as respondents-defendants in the appeal and suit are held jointly and severely liable to pay the suit amount together with interest.”

R.S.A. No. 1438 of 2014

11. The suit of plaintiff Swaran Singh that the writing dated 1.4.2006 issued after settlement of the account with M/s Gurtej Singh and Company for recovery of ₹9,09,020/- was dismissed by the learned Additional Civil Judge (Sr. Division), Dabwali with the observations in para no.48 of the judgment which reads as follows :-

“48. From the above discussions, it is established that the amount of Rs.7,80,275/- was lying deposited (of the) with the defendants' firm after the settlement of account on 1.4.2006 vide Ex.PW2/B and that amount was paid by the defendants to the plaintiff as evident from his cross examination. There may be other possibility that no amount would have been lying deposited by the plaintiff with the defendants and the receipt might have been manipulated in the mode and manner as being alleged by the defendants but the evidence in that regard is not convincing. On the other hand, the evidence in the shape of the admission on behalf of the plaintiff is more sound and convincing regarding the such possibility that liability under Ex.PW-2/B stands discharged. If the plaintiff has advanced any amount as being alleged by him in his cross examination as loan to the defendant then certainly he was having a remedy to recover the loan but the plaintiff has not come to the Court in the present case on the basis of his said claim of recovery under Ex.PW2/B, which stand discharged by the defendants

even by the admissions of the plaintiff in his cross-examination and as such it is clear that he is not entitled to any recovery as being alleged. Resultantly, this issue is decided against the plaintiff.”

12. On appeal, the first appellate court reversed the findings of the lower court with the observations in para no.16 to 19 of the judgment which reads as follows :-

“16. As already noted, respondents have not either disputed or denied signatures of Ashok Kumar, one of the partners in the firm on receipt Ex.PW2/B but by way of proof of its execution by Ashok Kumar, one of the partners, appellant has examined PW1 Shri Anil Kumar Gupta, Handwriting and Finger Prints Expert, who as per report Ex.PW1/A, after comparison held appearance of signatures of Ashok Kumar on receipt Exc.PW2/B. Needless to repeat that respondents no.1, 2 and 6 also never denied signatures of Ashok Kumar on the referred document nor denied him to be the working partner of the firm. Moreover, defendants no.3 & 5 pointedly pleaded Ashok Kumar, defendant No.2 to be carrying out whole business transactions of the firm and this fact has also not been disputed by defendants No. 4 & 7 in their jointly filed written statement.

17. The other plea raised on behalf of respondents that Jaswant Singh, respondent no.3, Durga Ram, respondent no.4 Shanti Devi, respondent no.6 and Reema Rani respondent o.7 being sleeping partners in the firm were not liable to pay the suit amount, on consideration is held bereft of merit as in a partnership firm sleeping partners are as much liable as managing partners are and further more DW2 Jaswant Singh in cross-examination squarely admitted Ashok Kumar to be looking after business of respondent no.1 firm M/s Gurtej Singh and Company.

18. Neither in their written statement nor in the adduced

evidence in the form of deposition of DW1 Durgra Ram (defendant no.4) and DW2 Jaswant Singh (defendant No.3), the defendants never disputed or denied defendants No.2 to 7 as partners of defendant no.1 firm namely M/s Gurtej Singh & Company.

19. Since receipt dated 1.4.2006 Ex.PW2/B was issued on the letter head of respondent no.1 firm M/s Gurtej Singh and Company Kalanwali under signatures of Ashok Kumar, a partner of said firm, which inter-alia recites liability of respondent no.1 firm M/s Gurtej Singh and Company in the sum of Rs.7,80,275/- in future favouring Swaran Singh depositor/appellant, therefore, the respondent no.1 firm as well as its partners impleaded as other respondents-defendants are held jointly and severally liable to pay the suit amount together with interest.”

13. I have heard Mr. Akshay Bhan, Sr. Advocate for the appellant and perused the paper book and the judgments of the courts below with his active assistance.

14. The first plea raised by the appellants that firm M/s Gurtej Singh and Company was dissolved on 2.12.2005 finds no support from evidence on record and was rightly discarded by the courts below. Firstly, there was no deed of dissolution of the firm; secondly, no intimation was sent to the Registrar of firm about the dissolution of M/s Gurtej Singh and Company; thirdly, the income tax return submitted for the subsequent years, after 2.12.2005, reflected that the firm M/s Gurtej Singh and Company still existed. This fact is not disputed that appellants were the partners of M/s Gurtej Singh and Company. The decree in this case has not been passed solely against the defendants-appellants but also against the firm. The firm has not come up with appeal against the decree, which has become final and the appellants being the partners of the firm are liable to pay the decretal amount jointly and severely. Fourthly, the receipt propounded by the plaintiff-respondent, which were issued by Ashok Kumar as partner of M/s Gurtej Singh and Company were duly proved. The defendants including the

firm produced no evidence to prove that the amount mentioned in the writing issued by Ashok Kumar were in fact not due. Even the account book of the firm were not produced. The contention was raised that these receipts were obtained by Gurtej Singh under force, coercion and threat from Ashok Kumar. However, the appellants failed to prove this plea by leading any cogent and convincing evidence on record. Interestingly, Ashok Kumar who raised this plea has not filed any appeal and the decree passed by the courts below has become final against him.

15. On perusal of the judgments of the courts below, I find no legal and factual infirmity therein calling for any interference.

16. No substantial question of law requiring determination arises in these appeals.

17. These appeals have no merits. Dismissed.

(Surinder Gupta)
Judge

August 21, 2015
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