

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

R.S.A. No.2955 of 2009 (O&M)

Date of decision: 11.04.2016

Nathi Ram

..Appellant

Versus

M/s Shiv Kumar Kiran Singh

..Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashish Gupta, Advocate for
Mr. Vikram Singh, Advocate for the appellant.

Mr. K. K. Chaudhary, Advocate for
Mr. Sanjiv Gupta, Advocate for the respondent.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 21.04.2009, passed by learned Additional District Judge, Karnal (for short, the 'first Appellate Court') whereby, the appeal filed by the defendant-appellant, against the judgment and decree dated 20.03.2007, passed by learned Additional Civil Judge, (Sr. Divn.), Karnal, (for short, the 'trial Court') decreeing the suit of the plaintiff-respondent, has been partly allowed.

The learned counsel for the appellant contends that the appellant had taken the advances from the respondent and cleared the same after selling of his crop to the shop of the respondent and if any amount stands outstanding, the same would be paid with the sale

proceeds of the next crop. The learned Courts below have failed to appreciate the fact that the appellant had cleared his all accounts with the respondent from the sale consideration, which he received after selling his land to one Meham Singh at the instance of the respondent. Lastly, he states that the suit is time barred as the amount was borrowed in the year 1998, whereas suit was filed in the year 2004 and the respondent has to claim the amount upto the year 2000.

On the other hand, the learned counsel for the respondent refers to the entries in the account books and states that the advances, made by the respondent have been duly acknowledged by the appellant, who has appended his signatures/thumb mark in token thereof. He further states that a sum of ₹1,44,865.58 paise was due against the appellant and as per the custom of the market, interest @ 2% per month was charged on this amount. Therefore, the learned trial Court has rightly passed the impugned judgment and decree.

I have heard the learned counsel for the parties and carefully perused the entire record on the file.

The appellant himself has admitted the factum of outstanding amount. The case of the appellant is that the outstanding amount was paid by him after selling his land to one Meham Singh by executing an agreement to sell at the instance of the respondent. Though the respondent admitted that the appellant had entered into an agreement to sell with one Meham Singh, however, he

vehemently denied that the same was executed at the instance of the respondent and the appellant has repaid the outstanding amount. Further, the appellant has failed to prove that out of the sale consideration, he paid the outstanding amount to the respondent and cleared his all accounts with the respondent. The learned Ist Appellate Court has held that since there was no evidence of charging the interest @2% per month, the learned trial Court should have treated the amount due i.e. ₹1,44,865.58 paisa as principal and ought to have awarded the interest on that amount. This Court feels that the learned Ist Appellate Court has rightly analyzed and appreciated the facts and circumstances of the instant case.

On consideration, this Court finds that the contentions of the learned counsel for the appellant only relate to the appreciation of evidence. Neither any evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for.

Dismissed.

11.04.2016

ashok

(JITENDRA CHAUHAN)
JUDGE