

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

**Regular Second Appeal No.2224 of 2015 (O&M)
Date of Decision: April 27, 2016.**

Manzoor Singh Lalwa

.....APPELLANT(s).

VERSUS

Jiwan Kumar

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kuldip Sanwal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal against the judgment passed by learned Additional Civil Judge (Senior Division), Samana, whereby suit filed by appellant-plaintiff for recovery of ₹1,48,000/- was dismissed and the counter claim filed by respondent-defendant was partly allowed for recovery of ₹4,72,000/- with proportionate costs and interest @ 9% per annum w.e.f. 01.03.2004.

2. Appellant-plaintiff sought recovery of ₹1,02,155/- towards price of his crop sold to defendant on 23.10.2003, 29.10.2003 and 30.10.2003. Plaintiff alleged that defendant, who is a commission agent, issued *kachi parchies* for the sale of crop instead of J-form and thereafter, did not pay the price of the crop. He claimed ₹45,970/- as interest on the above amount @ 18% per annum.

3. The defendant denied the sale of crop as alleged by the plaintiff and filed counter claim for recovery of ₹5,58,000/- with the plea that plaintiff

had taken advances from him from time to time. A sum of ₹6,44,000/- was outstanding against him, out of which he paid ₹86,000/- and remaining amount of ₹5,58,000/- was due against him.

4. Learned Additional Civil Judge recorded the finding that the plaintiff had failed to prove his plea that he sold crop worth ₹1,02,155/- to the defendant. It was, however, proved on record that the plaintiff had sold crop worth ₹86,344.83 on 28.10.2003. On the basis of account books and cash register, a sum of ₹4,72,000/- was found due against the plaintiff.

5. Plaintiff preferred appeal which was also dismissed by learned Additional District Judge, Patiala. However, the future interest was reduced from 9% per annum to 6% per annum.

6. Learned counsel for the appellant has argued that the Courts below have committed two error while decreeing the counter claim; firstly, the original account books were not produced and copies of the account books were taken into consideration while reaching the conclusion that suit amount was due. Secondly, the defendant denied the sale of crop by the plaintiff through his firm and in such circumstances, advancing of such a huge amount as claimed in the counter claim, without any security, cannot be believed.

7. So far as the first contention of learned counsel for the appellant that original record was not produced, is concerned, the same is not supported by evidence. The defendant while appearing as DW1 has brought the original record. No objection was ever raised by the plaintiff at the time of exhibiting the copies of account books on the ground that the original account books were not produced. In the affidavit (Ex.DW1/A) of DW1

book, which is written in the hand-writing of his accountant Chanan Singh. Even at the time of his cross-examination, he has produced this cash book. The entries of advancing of money to the plaintiff were recorded in the cash book, which was duly thumb marked by him. No evidence was brought by the appellant-plaintiff that thumb impression in the cash book were not his thumb impressions.

8. Plaintiff, while appearing as PW1, has admitted that he had been selling the crop in the year 2003 with the defendant. Even earlier to 2003, he had sold his agricultural produce through defendant. This shows that the plaintiff had dealings with the defendant who was a commission agent and it is a usual practice in this part of country that commission agent make advances to the agriculturists which are adjusted in the crop price usually sold at the shop of commission agent. This contention of learned counsel for the appellant-plaintiff that version of defendant about advances made to plaintiff can not be believed on the ground that these were made without security, as such, is without merit.

9. No other point has been raised by learned counsel for the appellant.

10. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

11. No substantial question of law requiring determination arises in this appeal, which has no merits.

12. Dismissed.

April 27, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE