

101

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

RSA No.3741 of 2015

Date of decision: March 11, 2016

The Bhaini Mehraj Agriculture Services Society Ltd.
and others

.....Appellants

Versus

Avtar Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sumeet Puri, Advocate
for the appellants.

SABINA, J

Respondent No.1 had filed suit for declaration challenging the order dated 09.03.2005 passed by Assistant Registrar, Cooperative Societies, Barnala (defendant No.2) and order dated 27.02.2006 passed by Deputy Registrar, Cooperative Societies, Sangrur (Defendant No.3).

The case of respondent No.1-plaintiff was that he was not the employee/member/borrower of defendants-society. Defendant No.4 was working as a Secretary with Defendant No.1-Society. Defendant No.4 was uncle of respondent No.1-Avtar singh. Vide order dated 09.03.2005, defendant No.2 attached the salary of respondent No.1-plaintiff on the basis of an arbitration award. Respondent No.1-plaintiff was not a party before the arbitrator nor any notice had been issued to him. The order dated 09.03.2005

was passed by defendant No.2 without affording any opportunity of hearing to respondent No.1-plaintiff. The basis of order dated 09.03.2005 was affidavit dated 24.07.2001 alleged to have been executed by respondent No.1-plaintiff, whereas, the said affidavit was a forged and fabricated document. Defendant No.4 had joined the services of defendants No.1 to 3 on 01.12.1976, whereas, the alleged security in the shape of affidavit executed by respondent No.1-plaintiff was submitted by defendant No.4 to defendants No.1 to 3 on 24.07.2001.

Defendants No.1 to 3 in their written statement averred that respondent No.1-plaintiff was not the employee/member/borrower of the Society. Defendant No.4 was an employee of the Society and respondent No.1-plaintiff was uncle of defendant No.4. It was averred that the impugned orders had been passed in accordance with law.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether plaintiff is entitled for declaration to the effect that the order dated 09.03.2005 passed by defendant No.2 and order dated 27.02.2006 passed by defendant No.3 are illegal, null and void without jurisdiction and not binding upon the plaintiff, as alleged, if so its effect? OPP
2. If issue No.1 is proved, whether plaintiff is

entitled to the relief of permanent injunction as prayed for?OPP

3. Whether suit is not maintainable in the present form? OPD
4. Whether suit is bad for non-issuance of notice U/s 80 CPC? OPD
5. Whether civil court has got no jurisdiction to try the present suit? OPD
6. Whether plaintiff has not come to the court with clean hands and has suppressed material facts? OPD
7. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 06.02.2014 decreed the suit of the plaintiff-respondent No.1. The said judgment/decreed were upheld in an appeal preferred by defendants No.1 to 3-appellants by the First Appellate Court vide judgment/decreed dated 16.05.2015. Hence, the present appeal by defendants No.1 to 3-appellants.

I have heard learned counsel for the appellants and have gone through the record available on the file carefully.

Respondent No.1-plaintiff in order to establish that affidavit dated 24.07.2001 (Exhibit D1) was a forged and fabricated document, examined PW1 Dr. Inderjit Singh handwriting expert who examined the alleged signatures of

respondent No.1-plaintiff on the affidavit with the specimen signatures of respondent No.1-plaintiff taken before the Court. The said witness gave his opinion that the signatures on the affidavit were not of respondent No.1-plaintiff. It has been noticed by the Courts below that as per resolution dated 03.01.2005 (Exhibit D2) passed by the Society, defendant No.4 Hans Raj had embezzled ₹14,07,000/- and it was passed that the said amount in question be recovered by attaching the salary of respondent No.1-plaintiff. In appeal, vide order Exhibit D3, it was ordered that the recovery be got affected by sale of property of defendant No.4 Hans Raj prior to attachment of salary of respondent No.1-plaintiff. However, Society did not take any steps to recover the amount in question by sale of property of Hans Raj before passing the impugned order. In these circumstances, the Courts below rightly restrained the defendants-Society from recovering the amount in question by attaching the salary of respondent No.1-plaintiff except in due course of law.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

**(SABINA)
JUDGE**

March 11, 2016
mahavir