

**In the High Court of Punjab and Haryana at Chandigarh**

**R.S.A. No. 480 of 2015 (O&M)  
Date of Decision: January 15, 2016**

*Raj Kumar Gupta*

*... Appellant*

*Versus*

*Ishwar Chand and others*

*... Respondents*

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH  
DHALIWAL**

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

**Present:** Mr. Vinod Bhardwaj, Advocate,  
for the appellant.

**Paramjeet Singh Dhaliwal, J. (Oral)**

**CM-1337-C-2015**

Having heard learned counsel for the appellant and for the reasons recorded in the civil misc. application, same is allowed. Delay of 16 days in filing the appeal is condoned.

**RSA No. 480 of 2015**

This regular second appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 09.04.2013 passed by learned Civil Judge (Junior Division), Narwana, whereby suit filed by the appellant/plaintiff for permanent and mandatory injunction has been dismissed, as well as, against the judgment and decree dated 03.09.2014 passed by learned District Judge, Jind, whereby appeal preferred by the appellant/plaintiff has also been dismissed.

For convenience sake, hereinafter parties will be referred to as

they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for permanent and mandatory injunction against the defendants on the ground that Sohan Lal, father of the plaintiff and Ishwar Chand-defendant no.1 together started their business as Commission Agents in Old and New Anaj Mandi, Narwana and they got registered a firm in the name of M/s Sohan Lal Ishwar Chand in the office of defendant no.2. Said Sohan Lal expired on 08.03.2008 and thereafter only defendant no.1 remained owner of the aforesaid firm. Plaintiff asked defendant no.1 to delete the name of his father from the aforesaid firm, whereupon the defendant undertook that he would not use the name of said firm in future and would get his new firm registered by March 2009 and would delete the name of his deceased father. However, defendant no.1 with mala fide intention did not get deleted the name of his father. Moreover, he continued taking benefit of goodwill of his father and got renewed the licence of the aforesaid firm for the year 2009-10. Defendant no.2 is adamant to allot the shops of new Anaj Mandi, Narwana by misusing the name of his father and defendant no.3 is also adamant to allot the shop to defendant no.1 in the name of the aforesaid firm, for which they have no right. Hence, suit for permanent & mandatory was filed.

Upon notice, defendants appeared and filed their separate written statements. Defendant no.1 in his statement alleged that he and Sohan Lal together never did the work of commission agent. He was doing the business of commission agent under the name and style of “M/s Sohan Lal Ishwar Chand” and he is the sole proprietor of the firm. Deceased Sohan

Lal did not have any concern with the said firm. In the written statement of defendant no.2, it is averred that the firm in question was not registered with defendant no.2 under the provisions of Indian Partnership Act, 1932. Vide memo no. Spl.1/MS(ETO) dated 3.2.2010, the office of Excise and Taxation Officer, Narwara has intimated that firm M/s Sohan Lal Ishwar Chand Narwana RC No. 5686 was established on 7.3.1989 as a partnership firm having two partners, namely, Sh. Ishar Chand son of Sh. Harphool and Shmt. Bhagwanti Devi wife of Sohan Lal. In the written statement of defendant no.3, it has been submitted that draw of lots of shops had already been completed on 25.11.2009 under the conditions and regulations laid down in the notification dated 10.03.2000. All the more, first of all after survey and spot inspection a list was prepared of ineligible and eligible license holders for joining them in the draw of lots for allotment of shop and on the basis of eligibility list draw of lots had been held on 25.11.2009 and shops were allotted to the rightful licensees successful in draw.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

- “1. *Whether plaintiff is entitled for decree of permanent injunction and mandatory injunction as prayed and on the grounds taken in the plaint? OPP*
2. *Whether plaintiff has not come to the court with clean hands? OPD*
3. *Whether suit is barred under Order 2 Rule 2 CPC? OPD*
4. *Whether plaintiff has no locus standi and cause of action to institute the suit? OPD*
5. *Whether suit is bad for non service of mandatory notice? OPD*
6. *Whether suit is bad for mis-joinder of parties? OPD*
7. *Whether suit is false and frivolous? OPD*
8. *Whether suit is not maintainable against defendants no.2 and*

*3? OPD*

9. *Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, dismissed the suit vide judgment and decree dated 09.04.2013. Against that, plaintiff preferred an appeal, which has also been dismissed by the lower appellate Court vide judgment and decree dated 03.09.2014. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 14 of grounds of appeal, arise for consideration in this second appeal:-

- “i) Whether the learned Courts below have wrongly dismissed the suit of the appellant/plaintiff without applying its judicial mind?*
- ii) Whether the learned Courts below acted illegally in not considering the evidence brought on record by the appellant/plaintiff?”*

Learned counsel for the appellant contended that the impugned judgments and decrees passed by both the Courts below are the result of misreading of evidence on record. The judgments and decrees of both the Courts below are based on conjectures and surmises. Therefore, the impugned judgments and decrees are liable to be set aside.

I have considered the contentions raised by learned counsel for the appellant and perused the record.

There is categorical finding recorded by both the Courts below that it is not the father of the plaintiff, rather it was his mother Bhagwanti Devi, who joined hands with Ishwar Lal together to run the business in the

name of M/s Sohan Lal Ishwar Chand as a partnership firm which commenced its business on 07.03.1989. From the perusal of Ex.D2, which is partnership deed between Ishwar Chand and Bhagwanti Devi, it reveals that it was a partnership at will and goodwill of the firm belonged to both the partners equally. It has also been recorded that Bhagwanti Devi retired from the partnership in the year 1996 and till filing of present civil suit in the year 2009, no whisper was raised by any of the family members of Bhagwanti Devi with regard to the user of name of the father of the plaintiff in the name of the said firm. Since the partnership was at will, all the partners were entitled for goodwill of the firm and it can very well be presumed that Bhagwanti Devi had settled all her accounts including goodwill as well, otherwise, she or her husband Sohan Lal would have raised the issue, but it was not done so.

Learned counsel for the appellant has failed to show that the findings of fact recorded by both the Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

In view of concurrent findings of fact recorded by both the Courts below, I do not find any illegality or perversity in the impugned judgments and decrees passed by both the Courts below. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

**January 15, 2016**  
vkd

**[Paramjeet Singh Dhaliwal]**  
**Judge**