

RSA No.5652-2015

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

RSA No.5652-2015 (O & M)

Date of Decision: 16.02.2016

The Market Committee, Mamdot

... Appellant (s)

Versus

Sewa Singh and others

... Respondent(s)

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

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

Present: Mr. R.D.Bawa, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J.

This regular second appeal of the defendant is against the judgment and decree dated 14.05.2014 passed by learned Addl. Civil Judge (Sr. Divn.), Ferozepur whereby suit filed by respondent No.1-plaintiff for declaration has been decreed and against the judgment and decree dated 23.07.2015 passed by learned Additional District Judge, Ferozepur whereby appeal preferred by the appellant and proforma respondents i.e. defendants has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

RSA No.5652-2015

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that on 27.12.2014, Mukhtiar Kaur wife of the plaintiff suffered a snake bite while working in the field. She was immediately admitted in Civil Hospital, Ferozepur, where she died on the same day and to this effect medical certificate was issued by Chief Medical officer, Civil Hospital, Ferozepur. As per policy of Market Committee, the person who meets with an accident while working in the agricultural fields/mandies, are given financial help by the Market Committee. After the death of Mukhtiar Kaur, information regarding her death by snake bite was given to the defendants, but no action was taken by them. Thereafter, he again approached and requested the defendants to make the payment of death claim of his wife as per policy of Market Committee and completed the requisite documentary formalities, but they put off the matter on one pretext or the other and ultimately they refused his claim on the grounds that post-mortem examination on the dead body of his wife was not conducted and there was no proof of snake bite. On asking of the officials of the defendants he moved applications to the Deputy Commissioner and higher police authorities for conducting inquiry regarding death of his wife. Thereafter, during inquiries by the Deputy commissioner and higher police authorities, it was found that his wife had actually died due to snake bite. He submitted the inquiry reports to

RSA No.5652-2015

the defendants with the request to make payment of death claim but even then they did not pay any heed. Then he served legal notice upon the defendants but to no avail. Hence, suit was filed.

Upon notice, defendants resisted the suit and filed written statement taking various preliminary objections. On merits, it was pleaded that they have no knowledge regarding death of Mukhtiar Kaur due to snake bite. No information was given by the legal heirs of Mukhtiar Kaur to them except on 11.12.2009. The plaintiff was bound to inform them within a period of two months from the date of occurrence. The plaintiff was asked to produce post-mortem report but he failed to produce the same as a result of which his claim was not entertained. The panchayatnama is not sufficient to establish the death due to snake bite and finally prayed for dismissal of the suit.

Replication was filed. On the basis of pleadings of parties, the Court of first instance framed following issues:

- “1. *Whether the plaintiff is entitled for declaration as prayed for?OPP*
2. *Whether the suit of the plaintiff is within period of limitation?OPD*
3. *Whether the suit of the plaintiff is not maintainable in the present form?OPD*
4. *Whether the plaintiff is estopped to file the present suit by way of his own act and conduct?OPD*
5. *Relief.”*

After appreciating the evidence, the Court of first instance,

RSA No.5652-2015

vide impugned judgment and decree dated 14.05.2014, decreed the suit and the plaintiff has been held to be entitled to the death claim of his wife Smt. Mukhtiar Kaur, who died due to snake bite, from the defendants as per the policy of Market Committee. Against that, the defendants preferred an appeal which has been dismissed by the lower Appellate Court vide impugned judgment and decree dated 23.07.2015. Hence, this regular second appeal.

Learned counsel for the appellant has referred to following substantial questions of law formulated in the grounds of appeal in para 14 for consideration by this Court:

- (i) *Whether in the facts and circumstances of the case, the impugned judgments and decrees of the courts below are illegal and perverse and are unsustainable being based on misreading of evidence on record and rather overlooking the evidence on record especially in view of the fact admitted by the plaintiff/respondent himself that at the time of snake bite his wife was not working in the field and rather she was working at home for mud coating courtyard of her house for which she went to take toori from toori room made in her house itself where when she was collecting toori she suffered snake bite on her hand?*
- (ii) *Whether both the courts below have illegally held that suit is not time barred by taking the cause of action w.e.f. 29.08.2008 when the Registrar Cooperative Societies submitted his report in response to an enquiry marked by the Deputy*

RSA No.5652-2015

Commissioner ignoring the fact that the said application Mark E (Annexure A-2) herein marked to Registrar Cooperative Department is for claim of insurance of the wife of plaintiff-respondent and not for the claim of compensation in question. The right forum is the office of defendant-appellant to which he admittedly approached on 11.12.2009, whereas the limitation of 3 years expired on 27.12.007?

- (iii) Whether the courts below illegally ignored concealment of material fact by the plaintiff-respondent regarding the incident which was not connected with agricultural operations disentailing the plaintiff-respondent to maintain the suit?*
- (iv) Whether the courts below exceeded their jurisdiction while relying upon the photocopy of medical certificate which is not admissible in evidence and illegally ignored the fact that the post mortem is not conducted to show that the victim died of snake bite?*

I have heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant submitted that both the courts below have not properly appreciated the evidence and there is misreading of material evidence by the courts below. The wife of plaintiff suffered a snake bite while she was taking toori (fodder) from fodder room made in the house at 5.30 P.M. On 26.12.2004. She was

RSA No.5652-2015

not doing any work connected with agricultural activity at the time of snake biting. No post-mortem examination of Mukhtiar Kaur was conducted to determine the fact that she died because of snake bite and the document relied upon by the courts below is only a photocopy of medical certificate.

I have considered the contentions of learned counsel for the appellant.

To prove the fact that his wife expired on 27.12.2004 due to snake bite while working in the fields, the plaintiff himself appeared into witness-box as PW 1 and categorically supported his version. He also stated that he approached defendant Nos.2 and 3 and moved application in this regard. The panchayatnama, Mark L, which bears the stamp and signatures of the whole panchayat of village Khunder Uttar and also statements of Sunder Singh and Arjan Singh recorded by ASI Jasbir Singh on 31.12.2004 clearly show that Mukhtiar Kaur died due to snake bite while working in the fields. Both the courts below have rightly concluded that non-conducting of post mortem examination on the dead body of Mukhtiar Kaur is not disentitled the plaintiff from claiming the relief of compensation.

Perusal of file reveals that the plaintiff ran from the post to pillar for receiving the death claim from the defendants-department for the death of his wife due to snake bite while she was working in the fields. Initially, the statement of plaintiff was recorded on 31.12.2004

RSA No.5652-2015

and thereafter, he submitted an application to the Deputy Commissioner, Ferozepur upon which the inquiry was conducted by the defendant department and the same was submitted to the Deputy Commissioner, Ferozepur by the Deputy Registrar Cooperative Society, Ferozepur on 09.06.2008 wherein a finding has been categorically given that death of the wife of respondent-plaintiff Sewa Singh occurred due to snake bite and the compensation should be granted to him. Thereafter when he had not received any compensation, he was compelled to file the civil suit on 14.05.2010. In such circumstances, both the courts below have rightly held that suit of the plaintiff is within limitation.

Learned counsel for the appellant has failed to show that findings recorded by the courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, the concurrent findings recorded by the courts below do not warrant interference in regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

16.02.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge