

**Sr. No. 207**

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

**RSA No.3774 of 2011(O&M)  
Decided on:26.07.2017**

**M/s Jagpreet Commission Agents Village Deep Singh Wala  
.....Appellant(s)**

**versus**

**Virpal Kaur  
.....Respondent(s)**

**RSA No. 3779 of 2011(O&M)  
M/s Jagpreet Commission Agents Village Deep Singh Wala  
.....Appellant(s)**

**versus**

**Baldev Singh(deceased) through legal heirs  
.....Respondent(s)**

**Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

**Present:** Mr. Vinod K.Kataria, Advocate,  
for the appellant.

Mr. H.S.Bhullar, Advocate  
for respondent No.1.

**Rajbir Sehrawat, J.**

This order shall dispose of two appeals i.e. RSA No. 3774 of 2011  
and RSA No. 3779 of 2011.

These two appeals have emanated from two different suits one  
filed by Baldev Singh and another filed by Virpal Kaur, his daughter against  
the appellant Commission Agent firm and its partner Ranjit Singh, since  
deceased, for recovery of their amounts. Since parties in both the cases were  
same and controversy was also similar therefore, both the suits were tried  
together and were decided by separate judgment and decrees. However, in

appeal a common judgment was delivered and against that these two appeals have been filed.

It deserves mention here that during the pendency of the suit defendant Ranjit Singh had died after filing of the written statement but before his statement could be recorded before the Court in his place his legal representtives stepped into the proceedings. Since the judgment by the lower appellate court is common, therefore, both the appeals are being decided by common order.

The brief facts as emanating from the pleadings and the record are that Baldev Singh claimed that he had advanced an amount of ₹15,92,000/- on 1.06.2000 to the firm through Ranjit Singh and Ranjit Singh executed a writing in this regard and promised to repay the amouont after a period of six months i.e. on 1.12.2000. It was further pleaded that plaintiff had come to know that since the amount was taken for the firm therefore, the entry of this amount was also made in the account books of the firm. However, since the amount was not returned by the firm, therefore, the suit was filed for claiming the amount back with interest @ 12% per annum and therefore, a total amount of ₹17,35,300/- was claimed in the suit. In the suit filed by Virpal Kaur all the other pleadings were same but the amount stated to have been advanced was ₹37,000/- and the total amount claimed was ₹40,350/- by adding the interest. The defendant denied their liability to pay the amounts sought to be recovered on the ground that no such transactions had taken place and no money was borrowed by them from the plaintiffs.

However, the courts below decreed the suit by minutely analysing the evidence. The courts recorded the findings that the plaintiffs have been able to prove the transaction in question and that the writing in question

which was Ex:P-3 in case of Baldev Singh and Ex:P-5 in case of Veerpal Kaur were duly proved. The courts relied upon the finger print expert examined by the plaintiff who proved on record the signatures of Ranjit Singh on the writing. Not only the court itself had also compare the signatures on the writings in question, the partnership deed of the firm and on the written statement and power of attorney and came to the conclusion that the signatures on the writing in question were of Ranjit Singh only. Further, the Court recorded a finding that since despite repeated opportunities being granted to the defendants they withheld their account books from the court and therefore, an adverse inference has to be drawn against them. In view of the above, relying upon the evidence lead by the plaintiffs, the suits were decreed.

Learned counsel appearing for the appellant has submitted that both the courts below have gone wrong and the findings recorded by them are perverse and hence not sustainable. He has argued that the finger print expert examined by appellant had given an opinion that the signatures on the writing in question do not tally with the admitted signatures. He further, argued that the alleged writing was not admissible in evidence because it did not have any revenue stamp nor was attested by any witnesses. He has further argued that witness Anish Kumar who was the account keeper (munim) of the firm has not proved the signature on the writing to be of Ranjit Singh. He has further argued that the plaintiffs had no capacity to advance this money to the firm because it has come on record that the plaintiffs were small land owner and were selling the agriculture produce to the appellants/defendants for petty amounts from time to time.

The arguments have been heard and the record perused.

The writing in question vide which the amounts were advanced have been duly proved on record. The finger print expert produced by the plaintiffs have opined that the signatures on the writings of advancement of money tally with the admitted signatures of Ranjit Singh. Not only this even the court had examined the signatures on the said writing and on the partnership deed of the firm and after comparing the same came to the conclusion that signautes were of Ranjit Singh only. This Court also made an attempt to compare the signatures on the writing with the signatures on the partnership deed and written statement in the present case. On perusal of the same, it was found that although the signatures differed in some formations but specific characteristics of signatures in all the three appear to tally with each other. On bare looking at the signatures it is clear that signatures on the writing are of Ranjit Singh only. Therefore, the transaction of advancement of money stands proved by the plaintiff, which could have been disproved by the appellant by leading some evidence. However, no evidence has been lead by the appellants to rebut the writing.

A perusal of the judgment of the lower appellate court shows that Gurnarain Singh, son of Ranjit Singh, appeared as DW-2 and he in cross-examination accepted the receipts in question and identified the signatures thereon. The Court came to the conclusion that DW-1 Anish Kumar i.e. the Accountant(munim) of Ranjit Singh obviously was not telling truth to the court because he became evasive to such an extent that he deposed that he was unable to identify the sigantaure of Ranjit Singh and his entire effort was to exonerate the firm being employ of it. However, the testimony of Gurnarain Singh demolished the deposition of Anish Kumar.

Since the stand of the plaintiff was that money was obtained from

the firm and he came to know that the entries in this regard were made in the accouts of the firm as well, therefore, the appellant/defendants had every opportunity to produce his accounts to rebut the claim of the plaintiff and to show that no such entry existed in his account books. However, lower courts have recorded finding that despite opportunities being given and summoning of the record pertaining to the accounts of the defendant firm, the defendants remain obstinate and did not produce the accounts of the firm. Therefore, the courts below have rightly drawn the adverse inference against the defendant for withholding the best possible evidence.

No other argument was raised.

In view of the above, both the appeals filed by the appellants failed and are hereby dismissed.

**26<sup>th</sup> July, 2017**

Shivani Kaushik

**[RAJBIR SEHRAWAT]  
JUDGE**

*Whether speaking/reasoned*    *Yes*

*Whether Reportable*                      *Yes*