

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

**RSA No.2280 of 2015 (O&M)
Date of Decision:20.11.2017**

Jagdev Singh and another

...Appellants

Versus

The Secretary, Civil Food & Supplies Department, Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs are in regular second appeal against the concurrent findings of fact arrived at by the courts below. Plaintiffs had filed a suit for recovery of Rs.10,83,239.42 paisa against the Secretary, Civil Food and Supplies Department, Punjab, Shri H.S.Mokha, the then District Food & Supplies Controller, Patiala, Shri Suresh Pal, Chairman MARKFED, Punjab and the then District Manager, MARKFED.

Plaintiff was claiming damages on account of loss suffered by them due to non supply of paddy for custom milling. Under the custom milling, paddy is supplied by government agency to the rice mills for dehusking and return of rice. It is a sort of job work, which is assigned to rice mills. It is not disputed before me that the plaintiff and defendant No.4 were having an *inter se* dispute and after the allotment of paddy in favour of the plaintiff, the same was cancelled on the application filed by defendant No.4.

Both the courts below, after appreciating the evidence available on the file, dismissed the suit filed by the plaintiffs.

Learned counsel for the appellants has submitted that even if the finding of the courts below with regard to remaining defendants is correct, the suit qua defendant No.4 could not be dismissed. This Court pointedly asked counsel for the appellants to show that such an argument was ever raised before the courts below. However, learned counsel has submitted that since the suit was filed against all the defendants, therefore, it includes defendant No.4.

I am afraid that such argument cannot be accepted. Once before the courts below, plaintiff did not draw the attention of the courts with regard to alleged fault of defendant No.4, this Court first time in regular second appeal cannot permit the appellant to segregate his cause of action against defendant No.4.

For the reasons recorded above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

Dismissed.

20.11.2017
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No