

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.5952 of 2015

Date of decision:24.8.2017

Balraj Singh and another

...Appellants

Versus

Jarnail Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.P.K.S.Phoolka, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Present regular second appeal, at the hands of unsuccessful defendants, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby suit for recovery filed by the plaintiffs was decreed by the learned trial court, vide its impugned judgment and decree dated 20.11.2014 and first appeal of the defendants was also dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 28.4.2015, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in paras 2 and 3 of the impugned judgment, are that the plaintiffs filed a suit with the averments that they were parents of Jasvir Singh (since deceased) who was an agriculturist by profession. Plaintiffs had two children namely Jasvir Singh and Lakhvinder Kaur. Jasvir Singh was aged 23/24 years, while Lakhvinder Kaur was aged 19 years. The house of the

defendants Balraj Singh and Harbhajan Singh was adjacent to the house of the plaintiffs at village Bhucho Kalan and daughter of defendant Balraj Singh and sister of defendant Harbhajan Singh namely Harpreet Kaur @ Priti was in love with Jasvir Singh son of plaintiffs. Due to this fact, defendants nursed a grudge against Jasvir Singh and regarding the affairs of Jasvir Singh and Harpreet Kaur, defendant Balraj Singh had complained to plaintiff Jarnail Singh that he should prevail upon his son not to indulge in such acts. Plaintiff had informed the defendant 3 Balraj Singh that his daughter Harpreet Kaur was making phone calls to his son and she was insisting that he should marry her, otherwise she would consume poison. On 2.10.2008 at 9.30 p.m Jasvir Singh went out of his house for a stroll after taking his meal, but he did not returned back. Plaintiff Jarnail Singh alongwith his nephew Ranjeet Singh went in search of him, but he could not be traced. Thereafter, they came to know from the ladies of the neighbourhood that Jasvir Singh had been abducted by defendants. Thereafter Jarnail Singh alongwith his nephew Ranjeet Singh went to Police Station Cantt. Bathinda to report the matter and the police officials met them near the police station and Jarnail Singh got recorded his statement. Thereafter, FIR No.69 dated 3.10.2008 was registered under Section 364/34 of the Indian Penal Code at Police station, Cantt, Bathinda against defendants. On 3.10.2008 Balraj Singh was arrested by the police and thereafter on the same day, he got recovered the dead body of Jasvir Singh on the basis of his disclosure statement that he and his son Harbhajan Singh had thrown the dead body of Jasvir Singh in the minor canal in the area of village Chak Ram Singh Wala after murdering him. The dead body was got recovered by Balraj Singh defendant in the presence of Ranjeet Singh son of

Naib Singh resident of Bhucho Kalan and after recovery of the dead body, offence under Section 302/201 of the Indian Penal Code were added in the case. On 5.10.2008 Harbhajan Singh defendant got recovered the handle of the spade which was used in the murder of Jasvir Singh by him and his father Balraj Singh alongwith one mobile phone belonging to Jasvir Singh and another mobile phone belonging to Harpreet Kaur. He also got recovered Maruti car bearing No.PIK-0714 used in the commission of the offence for dumping the dead body in the minor canal. The postmortem examination on the dead body was conducted by Dr.Parminder Singh Kular, Medical Officer, civil hospital, Bathinda on 4.10.2008 and the cause of death was declared to be injuries which were anti-mortem in nature present on the body of the deceased and sufficient to cause death in ordinary course of nature. Defendants were presently confined in Central Jail, Bathinda in the criminal case registered against them for the murder of Jasvir Singh. Plaintiff further stated that their son Jasvir Singh was hale and hearty and was not suffering from any vices. He was maintaining good health and he used to cultivate 20 acres of agricultural land in total out of which he owned 2 acres and 8 acres of land was owned by his father Jarnail Singh and the rest of the land he used to take on lease from his co villagers and besides land he was rearing milk cattle and used to sell milk. Hence from all sources he earned Rs.4 lacs per annum. Jasvir Singh was aged about 23 years and he was a good kabaddi player and he was the only son of the plaintiff. With his untimely death, at a young age, plaintiffs suffered a great shock and were confined to their house. They were unable to cultivate the land and they had to give their land for cultivation on share basis to the other villagers which had resulted in loss of income. Plaintiffs were fully dependent on their son

and they were enjoying all the comforts of their lives. They were hopeful of good times as Jasvir Singh was making untiring efforts for the marriage of his only sister who was of marriageable age but after his death, plaintiffs were left alone to fend for themselves and they were facing financial constraints as income diminished. Jasvir Singh was the only son of plaintiffs and he was the only source of strength in their old age. Defendants were responsible for the murder of Jasvir Singh son of plaintiff by their actionable wrongs and tortuous acts. Plaintiff, who were wholly dependent on Jasvir Singh, so they were entitled to compensation, damages from defendants for their actionable wrong and tortuous acts. Plaintiffs had requested defendants to pay compensation, but to no effect. Even now defendant No.1 was trying to dispose of the suit property illegally and forcibly and he be restrained from doing so.”

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether plaintiffs are entitled to recovery of Rs. 4 lacs as compensation/damages on account of pecuniary loss occasioned to the plaintiffs by actionable wrong of the defendants ?OPP
2. Whether plaintiffs are entitled to permanent injunction as prayed for ?OPP
3. Whether plaintiffs have no cause of action and locus standi to file the present suit ?OPD
4. Whether the suit is not maintainable in the present form ? OPD
5. Whether plaintiffs are estopped by their act and conduct from filing the present suit ?OPD

6. Whether plaintiffs have not come to the court with clean hands ?OPD
7. Whether suit is not properly valued for the purpose of court fee and jurisdiction ?OPD
8. Whether suit has been filed on the basis of forged and fabricated documents ?OPD
9. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have duly proved their case by producing cogent and convincing evidence. Accordingly, suit for recovery of Rs.4 lacs was decreed by the learned trial court along with interest @6% per annum, vide its impugned judgment and decree dated 20.11.2014. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 28.4.2015. Hence, this regular second appeal, at the hands of the unsuccessful defendants.

Heard learned counsel for the appellants.

Allegation against the appellants leveled by the plaintiffs-respondents was that the appellants caused murder of Jasvir Singh son of the plaintiffs. From the facts referred to hereinabove, it seems that it was a case of honour killing. Accordingly, FIR No.69 dated 3.10.2008 was initially registered under Section 364/34 IPC at Police Station Cantt Bathinda. Thereafter, offence under Section 302/201 IPC was added.

Accused were tried by the learned court of competent jurisdiction and after

conclusion of the criminal trial, defendants-appellants came to be convicted and sentenced by the learned trial court, vide its judgment of conviction and order of sentence dated 14.1.2010. On the basis of the above-said undisputed facts and circumstances of the case in hand, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below will make it crystal clear that the plaintiffs produced on record detailed, cogent and convincing evidence so as to prove their pleaded case, which was primarily based on documentary evidence. Deceased Jasvir Singh was the only son of the plaintiffs. Learned counsel for the appellants wanted this Court to find fault with the judgment of conviction and order of sentence recorded against the appellants, which is not permissible in law. It is so said because on the basis of evidence brought on record by the prosecution, learned court of competent jurisdiction has recorded its satisfaction before passing the judgment of conviction and order of sentence.

This Court would be exceeding its jurisdiction, while commenting upon the findings recorded by the learned trial court in recording the conviction of the appellants. It is so said because the criminal appeal of the appellants is stated to be pending consideration before this Court. So far as the instant suit for recovery filed by the plaintiff-respondent was concerned, it has been duly proved on record as per the pleadings of the parties. Having said that, this Court feels no hesitation to

conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Learned Additional District Judge, before arriving at his judicious conclusion, re-considered the facts of the case as well as evidence available on record, in the correct perspective. Relevant observations made by the learned first appellate court in para 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“So, FIR has been registered against the defendants and they have been convicted and it had also been proved on the record. Similarly, there is no dispute regarding the death of deceased Jasvir Singh, because due to death of Jasvir Singh, both defendants have been convicted by the court of Sh.Kuldeep Singh, learned Sessions Judge, Bathinda vide order dated 14.1.2010. Defendants had stated that plaintiffs are not entitled to recovery of Rs.4 lacs, because he had not suffered such a huge loss, but it is clear that deceased Jasvir Singh was in young age of 23/24 years as plaintiffs stated that his age was 23/24 years and this fact is also clear from FIR Ex.Pw1/AD and postmortem report ExPw1/AE. It is proved on record that deceased Jasvir Singh had about 2 acre of land and his father had also agricultural land and plaintiffs had stated that deceased Jasvir Singh also had cattle and he used to sell milk. Plaintiffs had claimed only Rs.4 lacs. Even counsel for plaintiffs stated that plaintiffs have suffered a huge loss, because they lost their only son and they have claimed small amount from defendants as compensation, because they have suffered huge loss, because there is no one to look after them in their old age and they have lost their only earning hand. So, it is clear that plaintiffs had filed suit for recovery of Rs.4 lacs. Although, defendants had stated that they are not entitled to recover Rs.4 lacs, but it is clear that there is no document to

rebut record produced by plaintiffs. Thus, from the above discussion, it is clear that plaintiff Jarnail Singh himself supported his case and stated that defendants have caused the death of his son Jasvir Singh. PW2 Ranjit Singh, PW3 Sukhdev Singh and PW4 Gurbachan Singh had duly supported case of plaintiffs. Plaintiffs had proved FIR Ex.Pw1/AD, postmortem report of Jasvir Singh Ex.Pw1/AE, judgment passed by the court of Sh.Kuldeep Singh, learned Sessions Judge, Bathinda Ex.Pw1/AB. Plaintiffs had also proved copy of jamabandi Ex.Pw1/AC. So, plaintiffs had proved that defendants had caused the death of Jasvir Singh. Plaintiffs had proved the fact that when Jasvir Singh was murdered on 2.10.2008, then his age was 23/24 years and this fact is also clear from FIR Ex.Pw1/AD and postmortem report of Jasvir Singh Ex.Pw1/AE in which age of Jasvir Singh has been mentioned as 23/24 years. Plaintiffs had proved jamabandi Ex.Pw1/AE which proves that deceased Jasvir Singh has agricultural land. Plaintiffs had also proved the fact that they have also agricultural land. So, plaintiffs had proved the fact that due to murder of Jasvir Singh, they have suffered huge financial loss, because their earning hand i.e. their only young son Jasvir Singh was murdered by defendants. Plaintiffs have proved that now they are unable to cultivate their land and they have suffered huge financial loss. Similarly, plaintiffs had also proved that due to murder of their only son Jasvir Singh, they have suffered emotional loss also. Plaintiffs had claimed only Rs.4 lacs. So, the learned lower court has rightly held that the plaintiffs are entitled to recover Rs. 4 lacs along with interest @ 6% per annum from the date of decree till its realization. Thus, there appears to be no illegality in the judgment and decree, impugned by the defendants, in this appeal.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in both the impugned

judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is sine qua non for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Both the impugned judgments and decrees have been found based on cogent findings recorded by the learned first appellate courts and the same deserve to be upheld, for this reason as well. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286 and Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

24.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No