

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1230 of 2012 (O&M)
Date of decision : April 27, 2018

Sukhwinder Singh

..... Appellant

Versus

M/s Ram Parkash Sham Sunder Jain and Co.

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.P. Soi, Advocate
for the appellant.

Mr. Ramesh Sharma, Advocate
for the respondent.

KUDLIP SINGH, J (oral).

Impugned in the present Regular Second appeal is the judgment and decree dated 17.11.2011 passed by the learned District Judge, Jalandhar reversing the judgment and decree passed by learned Civil Judge (Junior Division), Nakodar dated 16.2.2010 whereby suit of the plaintiff was decreed against defendant No.3 for recovery of ₹1,29,978.32 along with interest @ 9% per annum from the date of last 'J' form dated 9.10,2001 till the filing of the suit and @ 6% per annum from the date of filing of the present suit till realization was also decreed. However suit against defendant No. 1 and 2 was dismissed.

Facts of the case are that plaintiff had filed amended suit for recovery of ₹1,57,675.08 which include principal amount of ₹1,29,978.32 claiming that he had taken his crop to the firm M/s Ram Parkash-Sham Sunder Jain and Company and sold the same on 3.10.2001 to the firm amounting to ₹46,649.12 and the defendant had issued J-form

No.68 to the plaintiff. Again the crop was sold on 9.10.2001 to the said firm for ₹83,329.60 and the firm issued Form-J No.92 on 9.10.2001 to defendant No.1 but the money has not been paid. It also comes to notice that initially defendant No.2 namely M/s Ram Parkash Sham Sunder Jain as well as M/s Ram Parkash Sham Sunder Jain and Company were made parties. However, during recording of evidence it came out that the crop was infact sold to firm M/s Ram Parkash Sham Sunder and Co., therefore the application was filed under Order 6 Rule 17 read with Order 1 Rule 10 CPC on 15.10.2009 and the said firm was also impleaded as defendant No.3. Defendant Nos. 1 and 2 in the written statement denied that the plaintiff had ever sold the crop of their land. However, defendant No.3 in the written statement took up a plea that the crop was sold on 3.10.2001 and 9.10.2001 but claimed that entire amount has been paid by defendant No.3 to the plaintiff. From the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled for recovery of ₹ 157675.08 alongwith pendent lite and future interest at the rate of 12% from defendant No.3? OPP
2. Whether the suit is properly valued for the purpose of court fee and jurisdiction?OPP
3. Whether the suit of the plaintiff is within the limitation?OPP
4. Whether the plaintiff has filed the present suit by suppressing the material facts from the court?OPP
5. Relief.”

The trial Court after considering the evidence of Mohan Lal, Supervisor in the Market Committee PW-3 and Harbhajan Singh, Clerk in the Market Committee PW-4 came to the conclusion that plaintiff sold his crop on firm Ram Parkash Sham Sunder Jain & Company bearing license No. 942 on 1.4.1997 and accordingly decreed the suit against defendant No.3 firm.

In the appeal, a plea was raised that suit is time barred against respondent No.3. The lower appellate court has considered that defendant No.3 was impleaded on 15.10.2009 and held that limitation against defendant No.3 will run from the date of amendment of the plaint and that the suit filed in the year 2002 against the defendant No.3 is time barred. Accordingly the judgment and decree of the trial court was reversed and the suit was decreed.

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

So far as the findings of both the courts below are concerned, the findings are consistent is that plaintiff had sold the crop to M/s Ram Parkash Sham Sunder Jain and Company defendant No.3 on 3.10.2001 and 9.10.2001. Defendant No.3 had pleaded that the entire payment has been made. However, they failed to produce any receipt that the plaintiff had received the payment. Therefore, the said fact has been otherwise proved from the statement of Mohan Lal, PW-3 Supervisor, Market Committee and Harbhajan Singh, PW-4 Clerk, Market Committee who brought the relevant record of Market Committee to prove that the crop was sold on the said firm which is bearing license No.942.

The question which now arises is that whether the suit is time barred against defendant No.3. After going through the evidence, I am of the view that the lower appellate court erred in holding that the suit is time barred. In this case, M/s Ram Parkash Sham Sunder Jain is having License No.941 and M/s Ram Parkash-Sham Sunder Jain and Company bearing License No. MCL/942. The first firm having license No.941 and other firm having license No.942 are stated to have adjoining shops. Proprietor of defendant No.3 is son of Ram Parkash partner of first firm. It is not that the plaintiff was told that it is a different firm than the firm Ram Parkash Sham Sunder Jain. Statement of Sham Inder Jain, proprietor of firm M/s Ram Parkash Sham Sunder Jain and Company was recorded and it is stated therein that on J-Form No. 68 the word 'and company' is missing due to printing mistake and the same omission was also found in the books of the said firm. Meaning thereby that M/s Ram Parkash Sham Sunder Jain and Company was representing that it is infact M/s Ram Parkash Sham Sunder Jain, who is defendant No.1 and 2 firm.

I am of the view that in such circumstances, when defendant No.3 concealed its identity, the limitation will start from the date when the plaintiff came to know that the fraud has been committed upon him and defendant No.3 has infact different name. Sham Inder Jain has stated in his examination-in-chief and cross examination that the said omission on J-Form is a printing mistake whereas word 'and company' is missing even in the books. It appears that a novel method was deployed by the defendants. The same name of the firm was mentioned in J form so as to defraud the innocent farmers about the identity of the firm. The plaintiff will naturally go by the name mentioned in the J-Form and , therefore filed

the suit against M/s Ram Parkash Sham Sunder Jain in which the family members are partners. Sham Inder Jain is son of Ram Parkash Jain who is partner in the first firm. Therefore, this Court comes to the conclusion that since defendant No.3 defrauded the plaintiff about its real name, therefore limitation will start from the date on which it is disclosed by the officials of the Market Committee that infact the crop was sold on the firm namely M/s Ram Parkash Sham Sunder Jain and Company wherein the word 'and company' has been intentionally omitted to mislead the poor and innocent farmers. The suit was amended immediately on coming to know about the real identity of defendant No.3 and when deceit and misrepresentation of name of defendant firm was detected. It is to be noted that defendant No.3 has taken the stand that the crop was sold to his firm but pleaded that entire payment was made which defendant No.3 has failed to prove. As such findings of the lower appellate court are reversed.

In view of what has been discussed above, the judgment and decree dated 17.11.2011 passed by the learned District Judge, Jalandhar is hereby set aside and the judgment and decree passed by learned Civil Judge (Junior Division) dated 16.2.2010 is restored.

Consequently, the appeal is allowed with costs.

Since the main appeal is disposed of all the pending applications are also disposed of.

(KULDIP SINGH)
JUDGE

April 27, 2018
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Whether speaking/reasoned
Whether Reportable

Yes
Yes