

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

RSA No.1723 of 2016 (O&M)

Date of Decision: February 14, 2018

Pawan Kumar and another

...Appellants

Versus

Baldev Singh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Sushil Kumar Verma, Advocate for
the appellants.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the courts below whereby the suit of the plaintiffs-respondents has been decreed.

The case of the plaintiffs-respondents No. 1 and 2 was that they were running the brick-kiln bearing the trade name '*Gill Eant Bhatta*' which they had taken on lease from its previous owner namely Raghbir Singh Gill as per agreement dated 01.01.2010. Accordingly, they had been selling bricks and receiving the payments for the same from the customers. It was their case that the defendants No.1 and 2 (appellants herein) were Government contractors engaged in the work of construction of government buildings. They had purchased 58,000 bricks from the plaintiffs at the rate of Rs.2000/- per thousand. The bricks were purchased on credit through defendant No.3 Puran Chand Mistri, who had been taking delivery of the

bricks which were used in construction of water course in village Gilla

Khera in the month of June, 2010. In regard to the purchase of the bricks the plaintiffs had been issuing receipts.

Defendants No.1 and 2 denied the purchase of any bricks from the plaintiffs and hence claimed that there was no liability to make any payment.

To prove their case the plaintiffs examined Plaintiff No.1 Baldev Singh as PW-1, Om Parkash as PW-2, Jagdeep Singh as PW-3 and Anil Kumar Gupta, Finger Print Expert as PW-4. On the side of the defendants, defendant No.1 appeared as DW-1 and Raghbir Singh appeared as DW-2.

PW-4 Anil Kumar Gupta, Handwriting and Fingerprints Expert proved the signatures of defendant No.3 Puran Chand Mistri on the receipts Ex.PW4/11 to Ex.PW4/35. DW-2 Raghbir Singh, in his testimony stated that defendant No.1 Pawan Kumar Thekadar used to purchase the bricks from the brick-kiln. In his cross-examination, he categorically stated that he had no concern with the transaction of the brick-kiln in question. Defendant No.1 Pawan Kumar Thekedar appearing as DW-1 admitted that for the construction work undertaken by them they entrust the entire work to a Mistry. He admitted that Puran Chand Mistri, defendant no.3 used to arrange the entire labour for the construction of the water course. He also admitted that defendant No.3 used to give order for the bricks as per requirement. He also admitted that the bricks were purchased from the brick-kiln owned by Raghbir Singh Gill. Though, he stated that he had made the payment of the bricks to Raghbir Singh Gill, the owner of the brick-kiln however, he admitted that he had not taken any receipts from him. Based on this evidence, learned Trial Court concluded that it had been proved that the construction work had been done by Puran Chand Mistri,

defendant no.3 for and on behalf of defendants no.1 and 2, who had also purchased bricks on their behalf. Accordingly, the defendants were held liable to pay the amounts of Rs.1,62,400/- with interest @ 10% per annum from 7.10.2010 till its realization.

The learned Lower Appellate Court affirmed the findings of learned trial Court with modification that the plaintiffs were held entitled to recover a sum of Rs.1,16,000/- with interest @ 9% per annum from the date of filing of the suit till realization.

Learned counsel for the appellants contended that though the plaintiffs had taken the brick-kiln on lease from 01.06.2010 to 30.09.2014, however, the lease was cancelled on 27.09.2010 and the suit was filed thereafter on 07.10.2011 when they had no concern with the said brick- kiln. Hence, the suit on their behalf was not maintainable.

It is not possible to accept the aforesaid contention of learned counsel for the appellants. The bricks were purchased during the period when the brick- kiln was on lease with the plaintiffs. The owner of the brick-kiln Raghbir Singh Gill appearing as DW-2 had stated that he had no concern with the transactions of the brick-kiln in question. He also stated that he had no concern whatsoever as to whether the contractor of the brick-kiln sells the bricks on cash or credit. He accordingly did not raise any claim regarding the payments due against the sale of bricks in question. The purchase of the bricks having been proved to be made by defendant no.3 for and on behalf of defendants no.1 and 2 to be used for the construction of the water course for which they admittedly were contractors, there is no reason to hold that the plaintiffs who were operating the brick-kiln under a

valid lease and had delivered the bricks to defendant no.3 during the subsistence of the lease, could not institute a suit for recovery of the sale price.

Thus, there is no ground to interfere with the concurrent findings of fact recorded by the learned courts below.

No substantial question of law arises for consideration in the present regular second appeal. Hence, the same is dismissed.

February 14, 2018

(HARINDER SINGH SIDHU)

JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No