

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.1203 of 2015
Date of Decision.16.05.2018

Satpal

.....Appellant

Vs

Subhash and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parminder Singh, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court whereby the judgment and decree of the trial Court partly decreeing the suit of the appellant-plaintiff has been set aside.

Mr. Parminder Singh, learned counsel appearing on behalf of the appellant submitted that the plaintiff filed the suit seeking decree of rendition of account directing the defendants to render the account of the plaintiff by affixing the court fee of ₹25/- on the premise that the plaintiff had been selling the agricultural produce to the respondent-defendant and instead of issuing Form J, he was issuing temporary receipts (*kacha parchi*). According to the averment in the plaint, a sum of ₹5,64,300/- was due to the plaintiffs from the defendants. The plaintiff prayed the defendant to render the account in the month of March, 2008 but the same was refused, giving cause of action to file the present suit.

The aforementioned suit was contested by defendant

No.2 and 3 by filing separate written statement taking preliminary

objections qua limitation and maintainability etc. On merits, it was stated that plaintiff and his son Praveen Kumar used to take loan from defendant No.3 being close relative and defendant No.3 never took any thumb impression/signature of plaintiff qua any transaction. Praveen Kumar took a loan of ₹55,630/- from defendant No.3 for construction of house and nothing was due to the plaintiff from defendant No.3. Rather the plaintiff was to pay a sum of ₹55,630/- to defendant No.3.

In order to prove their respective case, the plaintiff tendered documents Ex.P1 to P7 copies of Form H and Ex.P8 letter dated 19.5.2009 whereas the defendants brought on record Ex.DW2A/1 i.e. Form J in the name of plaintiff.

The trial Court partly decreed the suit by granting preliminary decree but the lower Appellate Court reversed the said finding. The finding rendered by the lower Appellate Court is not sustainable in the eyes of law, for, the judgment relied upon by the lower Appellate Court with regard to non-maintainability of the suit is not applicable to the facts and circumstances of the case, for, as per the evidence brought on record, the plaintiff admitted the exact amount due to him from the defendants and therefore, in that circumstances, the plaintiff was non-suited for non-maintainability of the suit. In the instant case even Form J were not brought on record, therefore, there is illegality and perversity.

I have heard learned counsel for the appellant and appraised the paper book. In my view, the appellant-plaintiff was not advised properly to institute the suit in the manner and mode as

indicated above, for, the once the *kutchha parchi* showed the outstanding amount, nothing prevented him to take the alternative relief of recovery of amount by affixing the court fee. The defence taken by the defendant that the Form J had been issued from time to time and payment had been made, it was incumbent upon the appellant-plaintiff to render the aforementioned evidence by summoning the record from the Market Committee as all the Form J are endorsed by the Committee. The appellant had brought on record only Form H alleged to have been issued by the Market committee.

At this stage, a request had been made by Mr. Parminder Singh, learned counsel appearing on behalf of the appellant-plaintiff for converting the suit into the suit for recovery, which cannot be permitted, for, a valuable right *vis-a-vis* limitation has accrued in favour of the defendants. Affixing of court fee cannot be related back to the filing of the suit. The suit for rendition of account was not maintainable.

In view of the aforementioned, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No