

RSA No. 4371 of 2015 (O&M)

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

**RSA No. 4371 of 2015 (O&M)
Date of decision: 14.5.2018**

Roor Singh and others

... Appellants

Versus

M/s Lalli Commission Agent and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. C.M. Munjal, Advocate
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiffs was dismissed by the trial court, vide judgment and decree dated 8.2.2013. As even the appeal preferred against the said decree failed, and was dismissed on 8.9.2014, they are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs filed a suit for recovery of Rs.8,40,918/-, i.e. Rs.3,82,278/- towards principal amount plus Rs.4,58,640/- as interest w.e.f. 26.9.1999 to 26.9.2009 @ 12% per annum, along with pendente lite and future interest.

Briefly, the case set out by the plaintiffs was that they constituted a joint family and were agriculturists by profession. The

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plaintiffs would sell their crops through the commission agency of the defendant firm. They had a common account in the name of plaintiff-Roor Singh with the defendant. Plaintiff No.1 sold his paddy crop through the defendant firm, weighing 1436.25 quintals @ Rs.520/- per quintal on 20.9.1999. Similarly, 164.45 quintals of paddy was sold on 23.9.1999. Thus, in all, paddy crop worth Rs.1,61,564/- was sold. Likewise, Gurdial Singh@ Gurinder Pal Singh-plaintiff No.2 sold his paddy crop weighing 211.25 quintals on 20.9.1999, for a total price of Rs. 1,09,850/-. And, even plaintiff No.3 sold his crop valuing Rs.1,10,864/- on 20.9.1999. Thus, in all, the plaintiffs sold paddy worth Rs.3,82,278/- through the defendant. Though, the entire crop was sold in the joint account of Roor Singh, but the names of all the plaintiffs were separately mentioned in the Heep Register and form-M, maintained by the Market Committee. The defendant did not issue form-J, but only a katcha parchi. The plaintiffs continued to approach the defendant to realise the amount they were entitled to, but to no avail.

In the written statement filed on behalf of the defendant, it was not specifically denied that the plaintiffs would sell their agriculture produce through the defendant firm. However, it was maintained that as the firm was closed in the year 2000, the plaintiffs must have received the payment, if any, for the crop that was sold.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that defendant No.2, while appearing as DW1, conceded that name of his firm was Lalli Commission Agents. He also admitted that the plaintiffs had sold their crops through the defendant firm. Even from the document (Ex.P1), it was established that 146.25 quintals of paddy @ Rs.520/- per quintal, was sold through the

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defendant, and the price thereof was calculated as Rs.3,82,278/-. Nothing could be brought on record either to show if any payment was made to the plaintiffs by the defendant in this regard. However, as per the case set out by the plaintiffs themselves, the amount in question had fallen due on 26.9.1999. No payment was made by the defendant, despite the matter was reported to the Office of District Mandi Officer. Rather, vide letter dated 28.7.2004, the District Mandi Officer advised the plaintiffs to initiate proceedings against the defendant in the civil court, as the case was quite old. The plaintiffs had accordingly issued a notice to the defendant on 9.10.2004, but no suit was instituted to recover the amount. Instead, nearly after four years, they moved an application to the Deputy General Manager, Ludhiana Circle, Punjab Mandi Board on 29.1.2008 as regards their grievance. The plea that the cause of action to recover the amount in question was recurring in nature, therefore, the suit could not be held to be time barred, was rejected, for as in civil claims, the period of limitation commences when the cause of action first accrues. Concededly, it is the case set out by the plaintiffs themselves that cause of action had first accrued on 26.9.1999. Further, even if it was assumed that plaintiffs were pursuing their cause in the wrong forum, even then the period of limitation commenced on 28.7.2004, when vide letter (Ex.P1), office of District Mandi Officer had advised the plaintiffs to approach the civil court against the defendant. Though, the plaintiffs had even served the notice, dated 9.10.2004, upon the defendant, but yet filed the suit after over five years on 28.10.2009. Whereas, the period of limitation to recover any such amount was three years. Thus, the suit was time barred. As regards the letter, dated 29.1.2008, issued by the Deputy General Manager, Ludhiana Circle, Punjab Mandi

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Board, it was observed that once the period of limitation to institute the suit had commenced on 21.9.1999 or on 28.7.2004, the plaintiffs were required to approach the court within the time prescribed from the date the cause of action had arisen. Thus, the letter dated 29.1.2008 was inconsequential. On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusion arrived at by both the courts was either contrary to the record or suffered from any material illegality.

No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

14.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO