

RSA No. 865 of 2016(O&M)
Date of Decision: 17.07.2018

M/s Dashmesh Trading Company

---Appellant

versus

Chetan Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. R.K.Kakkar, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for recovery of Rs. 8,82,853.21/- was decreed by the trial court vide judgment and decree dated 24.3.2014 by the Addl. Civil Judge (Senior Division), Ferozepur and findings recorded by the trial court were affirmed in appeal on 20.8.2015.

The sole submission made by counsel for the appellant is that the respondents/plaintiffs filed the suit for recovery based upon 'J' forms purportedly issued by the appellant, commission agent. It is argued that one of the 'J' forms marked as Ex. P3 was denied to be issued by the appellant with a specific plea that the same is the result of forgery. The respondents/plaintiffs failed to adduce sufficient much less cogent and convincing evidence to establish as to the person who issued 'J' form Ex. P3 and the person who appended his signatures thereon. In addition, it is argued that the said 'J' form has been issued by a firm of Mandi Jhandiana, Moga but the appellant is working in Sulhani Mandi, Sub Tehsil

Talwandi Bhai, District Ferozepur.

I have heard counsel for the appellant, perused the paper book particularly the judgments passed by the courts.

Be that as it may, it is undisputed position in law that it is not open for the Court in second appeal to re-appreciate the evidence to record a finding different from what has been consistently held by the courts unless judgments suffer from perversity or raise a question of law that needs determination in regular second appeal. In the case at hand, the appellant raised a plea that a particular 'J' form out of various 'J' forms relied upon by the respondents/plaintiffs is the result of forgery. The partnership firm did not produce its accounts books in order to substantiate its plea that crop mentioned in 'J' form Ex. P3 was never sold through agency of appellant-firm. In view of the fact that the appellant withheld the best documentary evidence i.e. Account books, admittedly maintained by the firm, an adverse inference is liable to be drawn against the appellant. In view of the above, I do not find any reason to interfere in the concurrent findings recorded by the courts.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merit, application for grant of stay is rendered infructuous.

(Rekha Mittal)
Judge

17.07.2018

PARAMJIT	Whether speaking/reasoned	: Yes
	Whether reportable	: Yes/No