

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

Regular Second Appeal No. 370 of 2017(O&M)

Date of Decision: October 11 , 2018.

Ram Saran

..... APPELLANT (s)

Versus

Shiv Kumar and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. J.S.Saneta, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellant/plaintiff is aggrieved of judgments and decrees dated 25.03.2014 and 01.10.2015 passed by the learned Civil Judge(Junior Division), Panipat and the learned Additional District Judge, Panipat, respectively, whereby the suit filed by him for recovery of sum of ₹27,939/- has been dismissed.

The appellant/plaintiff filed a suit for recovery of a sum of ₹27,939/- alongwith interest at the rate of 12% per annum from the date of filing of the suit till realization. It was pleaded that the plaintiff is a skilled mason (Raj Mistri) and was working as such in the construction of buildings. Defendant/respondent No.1 was stated to be a building contractor. Defendants/respondents No.2 and 3

were the landlords/owners of House No.707-R, Model Town, Panipat. The defendants were pleaded to have engaged the plaintiff on 18.05.2012 for plaster work of their house, which was a built-up three storied house. Rate of plaster work was mentioned in the plaint. Plaintiff commenced execution of the work and completed the same to the satisfaction of the defendants. The plaintiff himself worked alongwith another mason and two labourers. Part payment from time to time amounting to ₹30,850/- was made to the plaintiff. Total value of the work rendered was ₹65,789/-. ₹34,939/- remained to be paid to the plaintiff. The defendants promised to make good the amount within a week. Sum of ₹7,000/- (4,000 and 3,000) was given by defendant No.1 to the plaintiff, therefore, a sum of ₹27,939/- remained due from the defendants. Despite various requests, the amount was not paid to the plaintiff. Hence, the suit was filed.

The defendants/respondents resisted the suit. Various preliminary objections were taken in the written statement, averments on merit were controverted. It was denied that the plaintiff was engaged as a mason or the work was done to their satisfaction. Dismissal of the suit was prayed for. Replication was not filed.

From pleadings of the parties, the following issues were framed by the learned trial court:-

1. Whether the plaintiff is entitled to a decree for recovery as prayed for in the prayer clause in the plaint? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the plaintiff has not come with clean hands to the Hon'ble court? OPD
4. Relief.

Evidence was led by both the parties to substantiate their case.

The learned trial court concluded that the plaintiff has failed to prove his case, consequently the suit was dismissed. Appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Panipat vide judgment and decree dated 01.10.2015. Aggrieved therefrom, present appeal has been filed by the plaintiff.

Learned counsel for the appellant vehemently argues that it is succinctly proved by the evidence on record that the appellant is entitled to recovery of ₹27,939/- on account of the plaster/masonry work done by the plaintiff at the house of the defendants/respondents No.2 and 3. Both the learned courts below have grossly erred in dismissing the suit filed by the appellant. It is, thus, prayed that this appeal be allowed, impugned judgments and decrees dated 25.03.2014 and 01.10.2015 passed by the learned Civil Judge (Junior Division), Panipat and the learned Additional District Judge, Panipat, respectively, be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file.

It is to be noted that there is admittedly no documentary evidence on record to prove that the services of the plaintiff were ever engaged by defendant No.1 or defendants No.2 and 3 for plaster work of the abovesaid house. Reliance has been placed on Ex.P1 which is a mere bill/document prepared by the plaintiff himself. It does not bear the signatures of either the plaintiff or any of the defendants. Plaintiff while appearing as PW1 has clearly admitted that there was no written agreement for the work which was carried out by him. He could not even reveal the boundary of the house on which he carried out the work.

Defendants No.2 and 3, on the other hand, have proved the written agreement with the contractor Surinder Gauri. DW2 Pankaj deposed that the contract for the construction of the entire house was given to one Surinder Gauri for ₹20,00,000/-. The plaintiff was never engaged by the defendants for any plaster work. Defendant No.1 was stated to be a worker of Surinder Gauri. Entire payment, it was stated, was given to Surinder Gauri.

PW2 Ram Phal son of the plaintiff stated that the plaintiff was in fact engaged by respondent/defendant No.1. However as noticed earlier there is no evidence, whatsoever, on record of the agreement, if any, between the plaintiff and defendants No.2 and 3 or even defendant No.1. There is nothing on record to show that any amount was paid to the plaintiff by the defendants as part payment of the work allegedly carried out by the plaintiff. Both the learned courts below have rightly held that the oral testimony of the plaintiff's son PW2 Ramphal is not sufficient to prove the case of the appellant. Suit filed by the plaintiff has thus been rightly dismissed.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the learned courts below have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 25.03.2014 and 01.10.2015 passed by the learned Civil Judge

(Junior Division), Panipat and the learned Additional District Judge, Panipat, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

October 11 , 2018.
'om'

(**LISA GILL**)
JUDGE

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