

RSA-3315-2017 (O&M)

111

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

RSA-3315-2017 (O&M)

Date of decision : 08.05.2019

Hardip Singh and another

... Appellants

Versus

Paramjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Sirphikhi, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs have not been successful in claiming declaration by challenging the recovery order passed by defendant Nos.3 and 4 and recovery notice dated 17.02.2005 issued by the Assistant Collector, 2nd Grade, Batala on behalf of defendant No.5, for recovery of ₹1,70,928/- of subsidy as arrears of land revenue, before the trial Court as well as the lower Appellate Court.

It was alleged that the plaintiffs entered into partnership firm M/s N.P. Foundry Faizpura Road, Batala and availed the subsidy from the Department, in view of the prevailing industrial policy. However, the firm was dissolved and the new partners i.e. defendant Nos.1 & 2, had stepped into the business and taken the liability and intimation, in this regard, was sent to defendant Nos.3 & 4, vide registered UPC and it was, thus, defendant Nos.1 and 2 were responsible in discharging the liability and not

RSA-3315-2017 (O&M)

the plaintiffs.

Defendant Nos.1 & 2 filed the joint written statement and contested the suit by raising the numerous preliminary objection and on merits, it was specifically denied that the plaintiffs had entered into partnership firm with defendant No.1, or the business started in the name and style of defendant No.2 and also regarding investment of ₹5 Lacs. It was clearly stated that the plaintiffs were responsible to pay the said amount to defendant Nos.3 to 6, imposed by the defendants, after the dissolution of firm defendant No.2.

Defendant Nos.3 to 6 also filed the separate written statement and raised also objection qua notice under Section 80 of the Code of Civil Procedure and on merits, it was stated that the firm availed 15% State Capital Subsidy of ₹38055/-, on 11.03.1992 and 10% of Central Subsidy of ₹25879/- on 04.05.1984. The plaintiffs were supposed to supply progress report, balance sheet and fire insurance policy etc., for five years from the date of disbursement to the department, but in the absence of same, a cause of action accrued to raise the demand, which was not acceded to and ultimately, the proceedings as arrears of land revenue, under the Punjab Land Revenue Act, were initiated.

Both the parties led extensive evidence in support of their respective cases.

Mr. G.S. Sirphikhi, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the intimation sent by registered UPC could not be denied by the defendant(s) and therefore, liability was of defendant No.1 as per the terms and condition of taking over the business. A recovery notice was, thus, not addressed to the proper and necessary

RSA-3315-2017 (O&M)

party, in view of the dissolution of the firm and urges this Court for setting aside the judgments and decrees, under challenge.

I am afraid the aforementioned argument is not sustainable, for, the plaintiffs, in order to discharge the liability, placed on record UPC without examining any witness from the Postal Department, therefore, the aforementioned document remained unproved in accordance with law as it is a settled law that mere exhibition of the documents does not dispense with its proof, in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in **“Sait Tarajee Khim Chand and others Vs. Yelamarti Satyam and others” 1971 AIR SC 1865.** The contest with vehemence of defendant Nos.1 & 2 also reflected that they had not indemnified the plaintiffs from liability of the subsidy. No evidence has been placed on record regarding progress report or dissolution of the firm etc. It is common practice amongst the litigants to avail the subsidy and spend the money without initiating the business. This is what precisely has happened in the present case.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Sirphikhi, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

08.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No