

Sr. No.385

2023:PHHC:053211

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

**RSA-327-1993 (O&M)
Date of Decision: 13.03.2023**

SHEIKHPURA COOP AGRI. SERVICE SOCIETY LTD

...Appellant

Vs.

SUKHDEV SINGH & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jasdev Singh Sidhu, Advocate
for the appellant.

Respondents No.1 to 3 ex parte vide orders dated 10.09.1993
and 05.11.1993.

ARUN MONGA, J. (ORAL)

Having suffered concurrent adverse findings by the two Courts below, defendant No.1 (appellant herein) is in second appeal before this Court assailing learned trial Court judgment and decree dated 11.04.1990, as upheld by the learned First Appellate Court vide its judgment and decree dated 31.10.1991, decreeing the suit of plaintiff/respondent No.1 for declaration to the effect that order dated 24.02.1984 attaching the 1/6th share of the suit land was null and void and consequential permanent injunction thereof.

2. For convenience, parties herein are addressed as per the recitals before the trial Court.

3. Briefly stated facts, as noticed by learned Courts below.

3.1 Suit was filed averring that the Assistant Registrar Co-operative Societies Mansa (Defendant No.2) illegally attached 1/6th share of the land in dispute belonging to plaintiff. Allegedly, said impugned

attachment was on the pretext that plaintiff had stood surety for one Major Singh, who had embezzled the funds of the society. Otherwise, no amount was due and recoverable from plaintiff and he asserted that he had never stood surety for Major Singh. Impugned order dated 24.02.1984 attaching the land of plaintiff was thus null and void. It was further alleged that defendant No.2 was not competent to pass said order, that too without following the prescribed procedure and without serving notice to plaintiff and affording him opportunity of being heard. It was further stated that the reputation of plaintiff stood spoiled because of this illegal and void order of defendant No.2 and he has suffered mentally also because of that act. He thus claimed damages to the tune of Rs.500/- only; that a notice under Section 79 of the Punjab Co-operative Societies Act and Section 80 C.P.C. were served upon defendants and thereafter the present suit was filed.

4. Upon notice, defendants appeared and filed written statement taking preliminary objections that this Court has no jurisdiction to try the suit; that the suit was bad for non-joinder of necessary parties; that plaintiff had not served any notice under Section 79 of the Punjab Co-operative Societies Act before filing the present suit; that a civil suit filed earlier by plaintiff was withdrawn with permission to file a fresh suit on the same cause of action subject to payment of Rs.250/- and that defendant No.1 was not a party to that suit. The suit was thus liable to be dismissed.

4.1 On merits, it was stated by the defendants that plaintiff had stood surety for Major Singh, Secretary of Seikhpura, Co-operative Agricultural Service Society Mansa. The surety bond was executed by him in accordance with law and rules, that said Major Singh had embezzled an amount of Rs.1,81,138/- to be recovered from him by defendant No.1. The

amount due from Major Singh had become Rs.2,25,418/-; that amount was not paid by Major Singh and as such the land of Sukhdev Singh plaintiff, who was surety of Major Singh was attached vide order No.1839-41 dated 24.02.1984 after complying with all the formalities. Defendants also stated that plaintiff being father of Major Singh, property in question being joint Hindu Family/coparcenary property could validly be attached; that the plaintiff being surety was legally bound to pay the amount embezzled by Major Singh.

5. Based on the rival pleadings, following issues were framed:

- “1. *Whether the suit is maintainable without service of notice under Section 79 of the Punjab Co-operative Societies Act.*
2. *Whether order dated 24.10.1984 challenged in the suit is illegal null and void.*
3. *Whether the plaintiff is entitled to the declaration prayed for.*
4. *Whether the Civil Court has no jurisdiction to try the present suit.*
5. *Whether the suit is bad for non-joinder of necessary parties.*
6. *Relief.”*

6. Parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid.*

7. On appraisal of evidence vis-à-vis pleadings, trial Court decided issues No. 1 to 3 in favour of the plaintiff. Issues No.4 and 5 were decided against the defendants. Consequently, learned trial Court decreed the suit vide impugned judgment and decree dated 11.04.1990.

8. Aggrieved against the said judgment and decree dated 11.04.1990, appellant-defendant No.1 preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, hence the instant Regular Second Appeal before this Court.

10. I have heard the learned counsel and perused the judgments of both the courts below. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“Plaintiff while appearing in the witness box has deposed that he in possession of about 14 acres of land. Major Singh had no concern whatsoever with the said land, which is the suit land in this case. He had never given surety of his son Major Singh. He also deposed that he never given any writing for taking of any liability of Major Singh to the defendant society. Defendant society is not entitled recovery any amount from him nor is entitled to attach the suit land. The attachment made by the defendant society is illegal one. No notice whatsoever was issued to him prior to the attachment. He further deposed that before filing of the suit a registered notice was given to the defendant.

On the other hand, defendant has examined DW-2 Dharambir Singh Inspector Co-operative societies, Seikhpura who has deposed that Major Singh was the Secretary of their society at Sheikhpura. Sukhdev Singh plaintiff stood surety for Major Singh. He also deposed that Major Singh had embezzled the amount of Rs.1,81,000/- of the society for which FIR was lodged against Major Singh. Major Singh was also convicted and sentenced by the Criminal Court in one case. He further deposed that no recovery was affected from Major Singh nor he returned any amount to the society. He also deposed that land of the plaintiff-Sukhdev Singh was rightly attached being he was the surety of Major Singh.

Simple case of the plaintiff is that he had never stood surety for Major Singh and thus the land belonging to him could be attached by the defendants. On the other hand the case of the defendants is that plaintiff had stood surety for Major Singh and was thus liable to pay the amount standing due against Major Singh. The fact that plaintiff had stood surety for Major Singh was thus to be proved by the defendants, but there is no evidence, whatsoever, in proof of that fact no documentary evidence has been produced by the defendants to show that plaintiff stood surety for Major Singh. Even if supposed that plaintiff stood surety for Major Singh, no surety bond has been proved by the defendants nor placed on file. The attachment of the land of the plaintiff admittedly has been made on the score that he was surety of Major Singh and that basic fact having not been proved the order of attachment can only be said to be null and void and not binding upon the plaintiff.”

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

12. Perusal of learned trial Court's judgment shows that notice Ex. P-6 under section 79 of the Punjab Co-operative Societies Act was served on the Registrar, Co-operative Societies, Punjab and other copies were sent to Shri B.S.Jatana, Assistant Registrar, Co-operative Societies, Mansa and the Collector, Bathinda. Qua issues No. 4 and 4 and 5, no arguments were advanced before the trial Court. There is nothing shown on record, or otherwise indicated, in the impugned judgment of learned Appellate Court below if the adverse findings, against the appellant herein, on issues No. 1,4 and 5 were challenged in the first appeal. In the premise, at this stage, challenge to the adverse findings on these issues against the appellant for the first time in the instant second appeal cannot be entertained.

12.1 Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

12.2 No new arguments have been raised other than reiteration of the stand taken before the courts below.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

15. No question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. Pending application(s), if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

13.03.2023

M.Sikka/vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No