

Sr. No.109

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

CM-991-992-C-2023 in/and

RSA-5393-2019 (O&M)

Date of decision: 02.02.2023

Sat Narain

...Appellant

Vs.

Inder Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.K. Daaria, Advocate
for the applicant-appellant.

ARUN MONGA, J. (ORAL)

CM-991-992-C-2023

For the reasons stated, the applications are allowed subject to all just exceptions. Main case, which is slated for hearing on 08.03.2023, is preponed for hearing and is taken up for hearing today itself.

RSA-5393-2019 (O&M)

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

2. Having suffered concurrent adverse findings by the two Courts below, defendant (appellant herein) is in second appeal before this Court assailing the trial Court judgment and decree dated 31.01.2019, as upheld by learned First Appellate Court vide its judgment and decree dated 20.03.2019.

3. Briefly stated, facts as noticed by Courts below are that plaintiff and his brother were owners in possession of agricultural land measuring 12¼ acre situated in the revenue estate of Village Nigana, Tehsil Kalanaur, District Rohtak.

Plaintiffs gave their land on theka to the defendant for the year 2013-2014 to 2016-2017. An amount of Rs.1,74,500/- was outstanding against defendant as theka money but defendant avoided the payment on one pretext or the other. On 20.10.2016, the plaintiff demanded his money and the defendant issued a writing (wrongly described as a receipt) admitting the outstanding balance amount of Rs.1,74,500/- on 26.10.2016 in presence of Suresh Kumar. However, despite his repeated demands the defendant was not paying the amount. Hence, the plaintiff filed a suit for recovery of the said amount along with interest.

4. Upon notice, defendant No.1-appellant appeared and filed written statement alleging that he took the agricultural land on contract basis every year from the plaintiff and he paid the contract amount to the plaintiff in presence of one Vedpal.

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

1. Whether the plaintiff is entitled to decree for recovery of Rs.1,74,500/- along with interest @ 24 p.a.? OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the plaintiff has no cause of action to file the present suit?OPD
4. Relief

6. The 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, issue No.1 was decided in favour of the plaintiff, whereas issues No.2 & 3 were disposed of being not pressed by the defendant and consequently, the suit of the plaintiff was decreed with costs.

8. Aggrieved, defendant-appellant preferred first appeal which was dismissed by the learned First Appellate Court.

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

10. The gravamen of the contention of learned counsel for appellant is, that it was incumbent upon the plaintiff respondent to prove the execution of the writing dated 20.10.2016 by the defendant acknowledging the liability. However, the learned courts below wrongly proceeded with the case by placing onus of proof of issue No. 1 on the defendant. Having heard him, even I am of the opinion, that there is no merit in this contention. Firstly, the fact of the matter is that, the onus of proof of issue No. 1 had actually been placed on the plaintiff and not the appellant-defendant, as contended. Secondly, it is not disputed that the land of the respondent had been taken by the appellant on theka. He was, therefore, under obligation to prove payment of the agreed theka money. On appreciation of evidence, the learned trial Court found that out of the theka money, the amount of Rs. 1,74,500/- had not been paid by the defendant-appellant. The learned First Appellate Court re-appreciated the evidence and affirmed this finding. I am inclined to agree with the said concurrent findings of fact.

11. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“XXXX XXXX XXXX XXXX

22. *I have perused the evidence on the record. The appellant in para No.4 of the written statement has admitted the fact that he had taken the suit land on Theka from the respondent and that a sum of Rs. 1,74,500/- is due from him. The appellant has also taken the plea that he has been making the payment of Theka money regularly in advance in the presence of Vedpal. However, he has not examined said Vedpal. He has also not proved on the record any evidence that he had made the payment. He has not produced on record any receipt of payment. In view of the above, I am of the considered view that the trial court has rightly affirmed this issue in favour of the respondent.*

XXXX XXXX XXXX XXXX”

12. Resultantly, no fault can be found with the findings rendered by learned trial Court as affirmed by learned First Appellate Court since the same were based on cogent evidence adduced by plaintiff.
13. Having perused the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording 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 were passed in hot haste or that the same are based on conjectures and surmises.
14. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.
15. In the premise, 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.
16. Furthermore, 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 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.
17. As an upshot of my preceding discussion, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
18. Pending application/s, if any, shall also stands disposed of.
19. No order as to costs.

(ARUN MONGA)
JUDGE

February 02, 2023
ashish

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