

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

206

RSA No.2232 of 1995
Date of Decision : 19.04.2024

Naib Tehsildar/A.C. IInd Grade, Nissing & Anr.Appellants

VERSUS

Harbans Singh (deceased) through LRsRespondents

206-1

RSA No.2378 of 1995 (O&M)

Naib Tehsildar/A.C. IInd Grade, Nissing & Anr.Appellants

VERSUS

Harbans Singh (deceased) through LRsRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Narinder Singh Behgal, AAG Haryana
for the appellants in both the appeals.

Mr. A.S. Virk, Advocate
for the respondent in both the appeals.

ALKA SARIN, J. (Oral)

1. This order will dispose off both the above-captioned appeals.
The appeals have been preferred by the State challenging the common judgment and decree dated 08.04.1995 passed by the First Appellate Court.
2. The plaintiff-respondent had approached the Trial Court by filing a suit for permanent injunction for restraining the defendant-appellants herein from recovering a sum of Rs.24,000/- as also from attaching his property. It is the case set up by the plaintiff-respondent that the plaintiff-respondent was appointed as Sarbrah Lambardar of village Mehmal Throta on 08.03.1972 in place of his father Labh Singh. It is further the case set up

that the Naib Tehsildar-cum-Assistant Collector, 2nd Grade, Nissing i.e. defendant-appellant No.1 herein demanded a sum of Rs.1,00,000/- (in Civil Suit No. 805 of 1989) and an amount of Rs.24,000/- (in Civil Suit No.806 of 1989) from the plaintiff-respondent as irrigation dues from 1975 upto date. It was further the averment in the plaint that the plaintiff-respondent had been depositing the amount regularly and that there was no amount due. Joint written statement was filed by the defendant-appellants herein. It was the stand taken by the defendant-appellants that the plaintiff-respondent had been collecting the land revenue and from 1975 upto Rabi 1988 and the total amount accrued on account of collection of land revenue from various stakeholders was Rs.3,18,383.90 ps., out of which the plaintiff-respondent had deposited a sum of Rs.2,24,618.02 ps. and the remaining amount was due to the tune of Rs.82,559.84 ps.

3. From the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief claimed as alleged ? OPP
2. Whether the suit is not maintainable ? OPD
3. Whether the plaintiff has no locus standi ? OPD
4. Whether the civil court has no jurisdiction ? OPD
5. Whether no notice under Section 80 CPC has been served upon the defendant, if so its effect ? OPD
6. Whether the suit is not maintainable ? OPP
7. Whether the suit is not properly valued for court fee and jurisdiction ? OPD
8. Relief.

4. The Trial Court vide judgments and decrees dated 28.10.1994 dismissed the suits. Aggrieved by the same, appeals were filed by the plaintiff-respondent. The appeals filed by the plaintiff-respondent were allowed and both the suits were disposed off vide common judgment and decree dated 08.04.1995. Hence, the present regular second appeals.

5. Learned State counsel would contend that the amount of Rs.82,559.84 ps. was due and the plaintiff-respondent had defaulted in depositing the said amount.

6. *Per contra* learned counsel for the plaintiff-respondent would contend that there was not an iota of evidence on the record to show that the amount was due. Rather, the plaintiff-respondent had brought on record Ex.P1 to Ex.P64, which were Dakhla Forms, showing the plaintiff-respondent as depositor of the land revenue.

7. Heard.

8. In the present case the only evidence brought on the record by the appellant-State was the Khatauni Mal to state that the amount was due. No further evidence was led by the defendant-appellants besides the Khatauni Mal. The First Appellate Court held as under :

“9. The learned trial Judge has taken a wrong view by holding that the plaintiff (hereinafter alluded as the appellant) was defaulter and an amount of Rs.82,566.49 ps., as shown in Khatauni Mal was due towards him. The only evidence taken into consideration by the trial Court in arriving at a decision that the amount was due, was the Khatauni Mal. The oral evidence led by the defendants (hereinafter alluded as the respondents) is the

statement of Joginder Kumar AW-l (DWl) an employee of office of Tehsildar, Sales, Karnal. It has been perused minutely. His material statement is only to the effect that as per Khatauni Mal, an amount of Rs.82,566.49 paise were due towards the appellant. This figures has also been shown in Khatauni Mal. By mentioning this figures in the Khatauni Mal it cannot be said that this amount was taken by the appellant from the various land holder and he did not deposit the same in the Government Treasury. This figure shown in Khatauni Mal is infact the figure which was due towards various landholders as irrigation dues. It has been held in Land Revenue Rule 2 that Lambardar shall acknowledge every payment received by him in the book of the landowners and tenants. No such evidence has been led by the respondents to prove from any piece of evidence that the appellant had collected the irrigation dues from land owners and in token of that he had acknowledged the same in the books of the land owners. No complaint from any land owner has been placed on record to prove that any one out of them had given the amount to the appellant but he did not deposit the same. It may be true, rather it is, of course, true that as per Khatauni Mal, the total irrigation dues accrues towards the various land holders was to the tune of Rs. 82,566.49 paise but it cannot be read that the amount was due towards the

appellant. It could have been due towards the appellant, had it been proved by the respondents that the amount in question was taken by the appellant from the land holders and he did not deposit the same. The respondents have failed to prove this fact by placing on record any evidence. The approach of the learned trial Judge was fallacious when the Khatauni Mal was read as a piece evidence to prove that this amount of Rs.82,566.49 paise was due towards the appellant. To prove this fact to the hilt, it was the prima-duty of the respondents to place on record oral as well as documentary evidence that the appellant had taken this amount from the land holders but as has been pointed out earlier that no such evidence was placed on record, so to fasten the liability on the appellant merely on the basis of Khatauni Mal would not be justified. This being so, the finding of the trial Court on issue No. 1 is set aside. It is held that the appellant was entitled to the relief claimed by him.”

9. The First Appellate Court while rejecting the evidence produced by the defendant-appellants had held that the figures shown in the Khatauni Mal were the figures which were due from the various land owners as irrigation dues. Khatauni Mal did not depict that the amount had not been deposited by the plaintiff-respondent and hence the First Appellate Court has rightly held that in the absence of any evidence it could not be proved that the amount was not collected or deposited. No other argument has been raised.

10. In view of the above, the present appeals, which are wholly devoid of any merit, are dismissed. Pending applications, if any, also stand disposed off.

19.04.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO