**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RSA No. 258 of 2009**
**Reserved on: 09.10.2026**
**Date of Decision:30.10.2026**

**Prem Singh & others** **.... Appellants**

**Versus**

**Prem Parkash Janartha** **.... Respondent**

***Coram***

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

***Whether approved for reporting?*** ***No.***

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| **For the appellants** | : | **Mr Ajay Kumar, Senior Advocate with Mr. Vinay Thakur, Advocate.** |
| **For respondents** | : | **Mr Bhupender Gupta, Senior Advocate, with Mr Janesh Gupta, Advocate.** |

***Rakesh Kainthla, Judge***

The present appeal is directed against the judgment and decree dated 15.05.2009, passed by learned Additional District Judge, Fast Track Court, Shimla, H.P. (learned appellate Court), vide which the judgment and decree dated 22.10.2005, passed by learned Civil Judge (Jr. Division), Court No.1, Rohroo, District Shimla, H.P. (learned trial Court) were upheld. (*The*

*parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenienc*e).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned trial Court for the recovery of ₹85,517.50. It was asserted that the plaintiff is the owner in possession of Rising Star Orchard at Chirgaon, District Shimla. Defendant No. 1 is engaged in the business of selling apples in the name and style of Shimla Trading Fruit Company. Defendant No. 2 is purchasing the apples from the growers on behalf of Defendant No. 1. Defendant No. 2 purchased the plaintiff's 562 apple boxes stacked on the roadside for a consideration of ₹2,30,000/-. Defendant No. 2 assured the plaintiff that Defendant No. 1 would pay the money after selling the boxes. Defendant No. 1 received the consignment of 562 boxes. He told the plaintiff that the market was low and that he had stored the apple boxes in a cold storage. The plaintiff asked Defendant No. 1 not to store the apples in the cold storage, but to sell them. Defendant No. 1 handed over the receipt of cold storage to another commission agent, Bansi Lal Hitin Kumar (BHS), Delhi, at the instance of Defendant No. 2, who sold the apple

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boxes for ₹1,44,482.50. The plaintiff suffered a loss. Hence, the suit was filed for seeking damages.

3. The suit was opposed by the defendants by filing a written statement taking preliminary objections regarding lack of maintainability. It was admitted that defendant No. 2 had a conversation with the plaintiff regarding the sale consideration. It was agreed that the plaintiff would send the goods receipt of the consignment to Prem Singh, defendant No.1. However, the plaintiff had sent the consignment in his own name. Defendant no.1 stored the boxes because the market was low. Plaintiff had authorised the sale through BHS and received the sale consideration from BHS. The defendants were not liable to pay anything to the plaintiff. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. The learned trial Court framed the following issues on 04.09.2004 and additional issue No. 2A on 26.10.2004: -

1. Whether the plaintiff is entitled for the recovery of the suit amount, as alleged? OPP
2. Whether the suit is not maintainable, as alleged? OPD.

2A. Whether the plaintiff has received the total amount from M/s Bansi Lal Hiten Kumar on 24.12.2003, as alleged? OPD.

3. Relief.

6. The parties were called upon to produce the evidence. The plaintiff examined himself (PW-1), Narvir Janartha (PW-2), and Anil Kumar (PW-3). The defendants examined Atma Ram, defendant No. 2 (DW-1) and Prem Singh, defendant No. 1 (DW-2).

7. Learned trial Court held that the receipt of the apple boxes by defendant No. 1 was duly proved. Defendant No. 1 had no authority to hand over the boxes to BHS. It was proved that the plaintiff had sold 562 boxes on the spot to defendant No. 2 for ₹2,30,000/-. The plaintiff had not received the agreed sale consideration, and he was entitled to the deficiency. Hence, the learned trial Court answered issue No. 1 in the affirmative. Issue No. 2 and 2-A in the negative and decreed the suit.

8. Being aggrieved by the judgment and decree passed by the learned trial Court, the defendants filed an appeal, which was decided by the learned Additional District Judge, Fast Track Court, Shimla (learned appellate Court). The learned appellate Court held that the plaintiff is the owner of Rising Star and Janartha Orchards at Chirgaon. Defendant No. 2 had purchased

the plaintiff's 562 apple boxes for ₹2,30,000/-. The plaintiff sent the boxes to Defendant No. 1 as per the goods receipt (Ext.PW1/G). The apple boxes were stored by Defendant No. 1 in the cold storage without the plaintiff's consent. The boxes were sold by BHS for ₹1,44,482.50. The plaintiff suffered a loss in the transaction, and the learned trial Court had rightly decreed the suit. Hence, the appeal was dismissed.

9. Being aggrieved by the judgment and decree passed by the learned trial Court, the defendants filed an appeal, which was admitted on 10.07.2009 on the following substantial questions of law:

> 1. Whether the findings of the courts below are a result of complete misreading of pleadings, evidence and the law as applicable to the facts of the case and particularly documents Exhibit PWI/A to PWI/H and as such palpably erroneous and illegal and if so to what effect?
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> 2. Whether, in the facts and circumstances of the present case and on the basis of the pleadings and evidence led by the respondent/plaintiff, it is proved on the file that the respondent was an unpaid seller as defined under the Sale of Goods Act, 1930?
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> 3. Whether the courts below have erred gravely and acted with material illegality and irregularity by ignoring or misinterpreting the pleadings, evidence and the law as applicable to the facts of the case and if so to what effect?
>
> 4. Whether the property in the goods had passed to the defendants as envisaged under sections 5, 19 and 45 of the

Sale of Goods Act, 1930 and if not whether the plaintiff could lay any action for recovery of the amount against the defendants?

5. What is the legal effect in case the GR Ext. PW1/G was not in the name of defendant No.2 and whether, in the absence of the same, could any liability be fastened on the appellants under the provisions of the Sale of Goods Act, 1930?

6. Whether the learned First Appellate Court failed to formulate proper points for determination and if so to what effect?

10. I have heard Mr Ajay Kumar, Senior Advocate, assisted by Mr Vinay Thakur, learned counsel for the appellants/defendants and Mr Bhupender Gupta, learned Senior Advocate, assisted by Mr Janesh Gupta, learned counsel for the respondent/plaintiff.

11. Mr Ajay Kumar, learned counsel for the appellants /defendants, submitted that the case projected by the plaintiffs in the plaint was never asserted in the notice issued by him. The goods receipt was not in the name of defendant no. 1, but in the name of the plaintiff; defendant no. 1 would become the owner only after the goods receipt is endorsed to defendant no. 1. However, the goods receipt was never endorsed in the name of defendant no. 1. Learned Courts below failed to appreciate the significance of the earliest notices and replies exchanged

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between the parties and relied upon a concocted version projected before the Court. Therefore, he prayed that the present appeal be allowed and judgment and decree passed by learned courts below be set aside.

12. Mr Bhupender Gupta, learned Senior Advocate, for the respondent/plaintiff submitted that learned courts below have concurrently found the plaintiff's version to be true. This Court cannot re-appreciate the evidence while deciding a regular second appeal in the absence of any perversity. The defendants/appellants failed to show any perversity; hence, he prayed the present appeal be dismissed.

13. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

***Substantial question of law no.* 1.**

14. Defendant No. 1 wrote a letter (Ext.PW-1/A) to the plaintiff on 8.09.2003, stating that the vehicle had reached the premises of Defendant No. 1 on 29.08.2003. The market was low, and the apple boxes were stored in the cold storage. The plaintiff should instruct the further course of action or should get the sale effected by visiting the premises of Defendant No. 1.

15. This was the first letter written by defendant no. 1 to the plaintiff, and it clearly admits that Defendant No. 1 had received the apple boxes sent by the plaintiff; Defendant No. 1 had sent the apples to the cold storage because, in his opinion, the market was low, and he had sought instructions from the plaintiff regarding further course of action. This letter establishes the plaintiff's version that he had sent the apple boxes to Defendant No. 1, who had sent the apple boxes to the cold storage without the plaintiff's instruction.

16. Ext.PW1/B is a copy of the ledger issued by BHS in the plaintiff’s name regarding the sale and payment of ₹1,44,482.50 to the plaintiff.

17. Ext. PW1/C is a copy of the registered notice sent on the plaintiff’s behalf to defendants 1 and 2, in which the plaintiff claimed that defendant no. 2 had purchased the plaintiff’s 562 apple boxes for ₹2,30,000/- and it was agreed that those boxes would be sent to defendant no. 1 for further sale. Defendants stored the apple boxes in cold storage without the plaintiff’s consent.

17. Ext. PW1/E is another notice sent by the plaintiff to defendant no. 1 stating that defendant no. 1 had kept the boxes in the cold storage without the plaintiff's consent and that the apple boxes should be sold. A reply (Ext.PW1/D) was issued to this notice stating that the apple boxes were kept in the cold storage because of the slump in the market. However, it was claimed that this was done as per the plaintiff's instruction. The plaintiff had already sold the apple boxes through BHS and had received money.

18. Exhibit PW1/F is another letter sent on behalf of the defendants to the plaintiff's counsel highlighting the discrepancy in the earlier notice, in the various notices and claiming that Atma Ram (the defendant no. 2) was responsible to pay the money to the plaintiff. It was further stated that Atma Ram had not brought any apple boxes to defendant no. 1 and boxes were sold through BHS.

19. Atma Ram also sent a reply (Ext. PW1/H) denying the contents of the plaintiff’s notice and stating that the boxes were stored because of the slump in the market. Atma Ram had handed

over the receipt of the cold storage to BHS at the plaintiff's instance.

20. All these documents do not support the defendants' version that the boxes were stored as per the plaintiff's instructions; rather, the initial letter (Ext.PW-1/A), written by defendant no. 1 to the plaintiff, clearly mentioned that the vehicle carrying the apple boxes was received by defendant no. 1 and the apple boxes were kept in the cold storage because of the slump in the market. Thus, the plea taken in the subsequent notices that the boxes were kept in the cold storage as per the plaintiff's instruction is clearly not correct as per the documents (Ext.PW-1/A to Ext.PW-1/H).

21. Defendant no. 1 (Prem Singh) admitted that he had received the apples from the plaintiff vide goods receipt (Ext.PW-1/G); there was a slump in the market; the boxes were put in the cold storage, and the plaintiff was informed about it vide letter (Ext.PW-1/A). He claimed that the plaintiff had visited the premises of defendant no. 1 and stated that he wanted to sell the apples through BHS. The defendant no. 1 had handed over the

goods receipt to the employee of BHS, and he had no concern with the plaintiff.

22. The statement made by the defendant no. 1 that the plaintiff had visited the shop of defendant no. 1 with an employee of BHS was never asserted in the notices and the replies sent from time to time. Therefore, the same was rightly discarded by the learned Courts below.

23. The defendant no. 1 admitted in his cross-examination that he did not know the plaintiff and that the plaintiff does not send his consignment to defendant no. 1. However, defendant no. 2 used to send the apple boxes to him (defendant no. 1). He admitted that defendant no. 2 had also sent his apple crop at the time of the receipt of the plaintiff's apple. He also admitted that the plaintiff had not asked him to store the goods in the cold storage. He also admitted that he had received the apples on 28th and 29th August and had issued the receipt on 18.09.2003. He did not remember the reason why the apples were put in the cold storage without the plaintiff's consent.

24. The statement of Prem Singh, defendant No. 1, also supports the plaintiff's version that the plaintiff had sent the

apple boxes to defendant No. 1 and defendant No. 1 had put the apple boxes in the cold storage without the plaintiff's consent. His plea that he had handed over the receipt to the plaintiff and the person accompanying him is not believable because this fact was not suggested to any of the plaintiff's witnesses.

25. Atma Ram (DW-1) stated that he had met the plaintiff and talked to the plaintiff about the sale of 562 boxes. He told the plaintiff that he had no money, and the plaintiff told him to pay the money subsequently. He asked the plaintiff to send the goods receipt in defendant no. 2's name. However, the plaintiff had prepared the goods receipt in his own name. He could not sell the apple boxes because the goods receipt was not in his name but was in the plaintiff's name. He admitted in his cross-examination that the sale transaction was settled for ₹2,30,000/-. He admitted that the plaintiff had sent the apple boxes to defendant no. 1 at his instance, but volunteered to say that the goods receipt was not in his name. He admitted that the plaintiff had sent the apple boxes to the commission agent suggested by him. He stated that the defendant no. 1 had sent the apple boxes to cold storage and the plaintiff was informed about it. He denied that he had handed over the goods receipt to BHS.

26. The statement of this witness clearly shows that the transaction was settled at ₹2,30,000/- and that the plaintiff had sent the apple boxes to defendant no. 1 as per his recommendation. However, he claimed that the goods receipt was not in his name. This did not make any difference because the apples were subsequently sold by BHS, even though the receipt was not in the name of BHS or the defendant no. 1 and 2, which shows that the endorsement in the defendants' name was not required.

27. Therefore, the oral evidence and the documentary evidence clearly proved on record that defendant no. 2 had asked the plaintiff to sell the apple boxes to him for ₹2,30,000/- and send the consignment to defendant no. 1. Plaintiff sent the consignment to defendant no. 1 and defendant no. 1 put the consignment into the cold storage without the plaintiff's consent. He wrote a letter to the plaintiff seeking further instructions, but instead of waiting for the plaintiff's instructions, he handed over the consignment to BHS, who had sold it for a lesser price. The defendants' plea that the sale was made with the plaintiff's consent is not supported by any material. The consignment was in the possession of defendant

no. 1, and he could not have sold it without the plaintiff's express consent. Therefore, learned courts below rightly held that the defendants had caused loss to the plaintiff and the plaintiff was entitled to the deficient sale consideration from the defendants. There is no perversity in the findings recorded by learned Courts below. The documents (Ext.PW1/A to Ext. PW1/H) were also properly appreciated by learned Courts below. Hence, this substantial question of law is answered accordingly.

***Substantial question no.2.***

28. Unpaid seller has been defined under Section 45 of the Sale of Goods Act, 1930 as the person who has not received the whole of the price from the buyer. In the present case, the defendant No. 2 had agreed to sell the plaintiff's consignment for ₹2,30,000/- as per his admission. The plaintiff sent the consignment to defendant no. 1 as per the directions of defendant No. 2. The defendants did not make any payment to the plaintiff, and the plaintiff had not received the sale consideration from the defendants; therefore, he would fall within the definition of an "Unpaid seller".

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29. It was submitted that the delivery made to defendant no. 1 was not proper because the goods receipt was in the plaintiff's name. This submission will not help the defendants. Section 33 of the Sale of Goods Act defines delivery of the goods as something which the parties agree or which has the effect of putting the goods into the possession of the buyer or of any person authorised to hold them on his behalf. In the present case, defendant no. 1 had received 562 apple boxes, as per the instruction of defendant no. 2 from the plaintiff. Therefore, defendant no. 1 was put in possession of the goods. The claim that the goods receipt was in the plaintiff's name; therefore, delivery was not proper is not acceptable because subsequently, the sale of the consignment was made based on this goods receipt without any further endorsement. Hence, the learned Courts below had rightly held that the plaintiff was an unpaid seller, and this substantial question of law is answered accordingly.

***Substantial question of law no. 3.***

30. The learned courts below have rightly held that the apple boxes were handed over to defendant no. 1 by the plaintiff,

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and defendant no. 1 had sold them for a price much less than what was agreed between plaintiff and defendant no. 2. Therefore, there is no misinterpretation of the pleading, evidence or the law, and this substantial question of law is answered accordingly.

***Substantial question of law no. 4.***

31. Section 4 (3) provides that when the property in goods is transferred from the seller to the buyer, the contract is called a sale. Section 19 provides that the property passes in ascertained goods or specific goods as per the intention of the parties and conduct of the parties. Section 20 provides that the property in goods in a deliverable state passes when the contract is made. In the present case, the apples were in a deliverable state, and they were put in possession of the defendant No. 1. The defendant No. 1 had put them in cold storage due to the slump in the market, and sought the plaintiff's instruction regarding further course of action. The defendant No. 1 never claimed that he was not in a position to sell the apples and that he had to put them in cold storage because of not passing the goods; rather, he could not provide any reason for putting the apple boxes in cold storage

except a slump in the market. Therefore, the conduct of the parties clearly shows that the property in the goods had passed to the defendant No. 1 on delivery. This is further apparent from the fact that the apples were sold by BHS without the plaintiff's consent. Hence the learned courts below had rightly held that property in the goods had passed to the defendants and this substantial question of law is answered accordingly.

***Substantial question of law no. 5.***

32. Section 2 (4) defines the document of title to goods including Bill of lading, dock warrant, warehouse Keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods, or any other document used as a document of title. It was laid down in ***Canara Industrial and Banking Syndicate Ltd., Udipi v. V. Ramachandra Ganapathy Prabhu*, *1966 SCC OnLine Kar 134*,** that the goods receipt does not fall within the definition of a document of title because the carrier does not hold the goods as bailee for the pledgee. It was observed:

> **11.** Thus, it is seen that there is variation in regard to the practice adopted by each one of the transport companies. It can also be gathered from the evidence of the witnesses connected with the banks that the advances are made

> mainly on the security of the drawers of the bills, and there is no uniform practice of taking delivery of the goods or seeking delivery of the same in case of dishonour of the bills drawn by the owner. The conditions pertaining to the transport of goods by the carriers also vary. Therefore, it is clear that there is no uniform practice adopted in the issue of waybills when goods are entrusted to the carriers for transport. There is also no proof of usage that only the originals of waybills are negotiated and not the duplicates or others. In the absence of the uniform and definite usage regarding the issue of waybills, and their transfer on endorsement as equivalent to pledge of goods, we are unable to accept the contention that the waybills can be treated as 'documents of title' to goods coming within the meaning of the words 'warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or purporting to authorise either by endorsement or delivery the possessor of the document to transfer or receive the goods thereby represented'. In view of this conclusion that the waybills are not documents of title, the legal position with regard to the pledge of these waybills is that the owner of the goods cannot pledge the goods covered by the waybills, as in the present case, unless the carriers are properly notified of the transfer and they agree to hold the goods as bailee for the pledgee, i.e. the Bank. It is not the case of the plaintiff that they notified the second defendant of the transfer of the waybill and the pledge of the goods in their favour and asked them not to deliver the goods to anyone except themselves or to anyone under their order. Therefore, we cannot accept the contention of the appellant that there has been a valid pledge of the goods in their favour, as security for the amounts advanced by them to the first defendant.

33. In the present case, the goods receipt (Ext.PW-1/G) mentions that Rising Star Janartha Orchard was the consignor and S.T.F Delhi was the consignee. There is no evidence on

record that delivery of the goods cannot be made without the express authorisation of the consignor. The delivery was made to the defendant no. 1 pursuant to this goods receipt alone, and it cannot be called a document of title as defined under Section 2(4) of the Sale of Goods Act, 1930.

34. Defendant No. 2 claimed that the goods receipt was not in his name and he could not sell the consignment, which is incorrect. He admitted that the plaintiff had consigned the goods to Defendant No. 1 as per his instructions. It is also undisputed that Defendant No. 1 had put the consignment in the cold storage, and the consignment was sold by B.H.S. Delhi. Therefore, the absence of the name of Defendant No. 2 was no impediment to the sale. Hence, this substantial question of law is answered accordingly.

***Substantial question of law no. 6.***

35. The learned appellate Court had framed the point for determination: "Whether the plaintiff was entitled to the recovery of the suit amount and whether the decree under challenge was legally and factually sustainable". These were two points involved in the present case. Thus, the learned appellate

Court had framed the proper points for determination, and this substantial question of law is answered accordingly.

***Final order:***

36. In view of the above, the present appeal fails, and it is dismissed, so also the pending application(s), if any.

37. A copy of the judgment, along with the record of the learned Courts below, be sent back forthwith

**(Rakesh Kainthla)**
**Judge**

**30th October, 2026**
*(Ravinder)*