

(2010) 12 P&H CK 0565

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 4133 of 2010 (O and M)

Sukha Singh alias Sukhdev Singh
and Others

APPELLANT

Vs

Goyal Traders and Others

RESPONDENT

Date of Decision: Dec. 6, 2010

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 13495.C of 2010

1. The application is allowed and Annexure A/1 and A/2 are taken on record subject to all just exceptions.

CM No. 12456.C of 2010

2. Allowed as prayed for.

RSA No. 4133 of 2010

3. Defendants Sukha Singh alias Sukhdev Singh and his three brothers having lost in both the courts below are in second appeal.

4. Suit was filed by Respondents/Plaintiffs M/s Goyal Traders and its partners Parvesh Kumar and Naresh Kumar alleging that the Plaintiffs are Commission Agents whereas Defendants are farmers. Defendants had been taking loan from the Plaintiffs. Ultimately on settlement of account in August, 2001, the following amounts were found due from the Defendants:

Defendant No. 1 - Sukha Singh Rs. 8,95,983/-

Defendant No. 4 - Surat Singh Rs. 6,69,884/-

Defendant No. 3 - Sewa Singh Rs. 7,73,864/-

Defendant No. 2 - Angrej Singh Rs. 5,85,003/-

Total amount Rs. 29,24,734/-

However, Defendants expressed their inability to pay the entire amount and settled that they would pay total amount of Rs. 8 lacs only i.e. Rs. 2 lacs by each Defendant. Out of it a sum of Rs. 4 lacs was to be paid upto 15.12.2002 and the remaining amount upto 15.12.2003. In this regard, two agreements dated 20.8.2001 were executed. Defendants failed to pay the aforesaid amount. Accordingly, the Plaintiffs sought recovery of Rs. 8 lacs along with interest thereon @ 12 % per annum with effect from 20.8.2001.

5. In addition to the aforesaid, the Plaintiffs alleged that Defendants had purchased tractor No. PB-20-5246 model 1998 by getting it financed from Punjab & Sind Bank. Defendants were unable to pay the loan instalments to the Bank. They accordingly transferred the said tractor to the Plaintiffs and gave its physical possession to them. Formal transfer of tractor in the record in favour of the Plaintiffs was to be made after payment of loan instalments to be paid by the Plaintiffs to the Bank. In this regard also agreement dated 20.8.2001 was executed. Accordingly, the Plaintiffs paid all the loan instalments to the Bank. However, Defendants were not transferring the tractor in favour of the Plaintiffs. Accordingly, the Plaintiff also sought mandatory injunction directing Defendants to take all necessary steps for transfer of the tractor in favour of the Plaintiffs.

6. The Defendants admitted that they had been selling their agricultural produce at the shop of Plaintiffs. However, Defendants broadly denied the other plaint averments. It was pleaded that Plaintiffs had taken the tractor on hire, agreeing to pay Rs. 10,000/-per month to the Defendants for the same. Accordingly, the Plaintiffs are liable to pay the said hire amount. Defendants executed power of attorney in favour of Plaintiffs to facilitate plying of the said tractor by the Plaintiffs. The Plaintiffs also did not pay approximate amount of Rs. 2,10,000/-to the Defendants being price of wheat crop sold by them in first week of May, 2001 at the shop of the Plaintiffs. Consequently, Defendants filed suit for rendition of accounts against the Plaintiffs. The instant suit is counter blast to the same. The Defendants are not liable to pay any amount to the Plaintiffs. Documents relied by the Plaintiffs are forged and fabricated. Plaintiffs used to obtain signatures of Defendants on blank papers in good faith. Various other pleas were also raised.

7. Learned Civil Judge (Senior Division), Rupnagar vide judgment and decree dated 21.1.2010 decreed the Plaintiffs' suit. First appeal preferred by Defendants stands dismissed by learned Additional District Judge, Fast Track Court, Ropar vide judgment and decree dated 4.8.2010. Feeling aggrieved, the Defendants have preferred the instant second appeal.

8. I have heard learned Counsel for the Appellants and perused the case file.

9. Parvesh Kumar Plaintiff No. 2 appeared in the witness box as PW4. He has stated the entire version of the Plaintiffs. He proved agreements Ex. P1 and P2 dated 20.8.2001 regarding settlement of due amount for Rs. 8 lacs and agreement Ex. P4 dated 20.8.2001 regarding the tractor and also affidavit Ex. P3 of the Defendants that in view of settlement they would withdraw their suit instituted against the Plaintiffs for rendition of accounts. Bahadur Singh Lamberdar PW1 is attesting witness of agreements Ex. P1 and P2 whereas Roop Chand Petition Writer PW3 is scribe of the said agreements. They have also proved the same by deposing in favour of the Plaintiffs. The Plaintiffs have also produced evidence from the bank regarding deposit of loan instalments of the tractor in question by the Plaintiffs.

10. On the other hand, Defendants No. 2 Angrej Singh and Defendant No. 3 Sewa Singh appeared in the witness box and broadly deposed according to their version. The Defendants failed to prove their case. Plaintiffs' case is supported by Bahadur Singh Lamberdar PW1 attesting witness of the agreements and Roop Chand Petition Writer who had scribed said agreements. On the other hand, there are self serving statements of Defendant Nos. 2 and 3 only. Said statements are not sufficient to rebut the case of the Plaintiffs. In this context it has to be noticed that Defendants have admitted their signatures on the aforesaid agreements. Consequently, Plaintiffs' suit has been rightly decreed by the courts below.

11. Learned Counsel for the Appellants vehemently contended that Bahadur Singh Lamberdar PW1 is also a customer of the Plaintiffs. However, his testimony cannot be discarded merely on this ground. On the other hand, merely by being customer of the Plaintiffs, Bahadur Singh would not have supported their false claim. On the contrary, if the Plaintiffs' claim had been false, Bahadur Singh also being agriculturist would have sided with the Defendants. There is also no reason to discard the sworn statement of Roop Chand, Petition Writer PW3. Deposit of loan instalments of the tractor by the Plaintiffs further strengthens their case. Learned Counsel for the Defendants/Appellants is also not aware of the fate of the suit which had earlier been instituted by the Defendants against the Plaintiffs for rendition of accounts. Obviously inference goes against the Defendants and it may be inferred that Defendants had withdrawn said suit pursuant to settlement effected on 20.8.2001 regarding which Defendants have also affirmed affidavit Ex. P3 for withdrawal of the suit.

12. Learned Counsel for the Appellants contended that Plaintiffs had been obtaining signatures of Defendants on blank papers as there were dealings between the parties. The contention cannot be accepted. Self serving statements of Defendants No. 2 and 3 are not sufficient to uphold this contention. On the contrary, Defendants even signed the entries in register of Petition Writer regarding agreements Ex. P1 and P/2. This circumstance also falsifies the aforesaid version of the Defendants.

13. There is concurrent finding by both the courts below in favour of the Plaintiffs. The said finding is based on appreciation of evidence and is supported by cogent reasons. The said finding is not shown to be perverse or illegal so as to call for interference in second appeal. No question of law much less substantial question of law arises for determination in the instant second appeal. On the other hand, fate of the case depends on finding of fact. Lower appellate court is final court of fact. There is also no misreading or misappreciation of evidence by the courts below so as to call for interference in finding of fact. The appeal is found to be lacking any merit and is accordingly dismissed in limine.