

**(1946) 03 AHC CK 0012****Allahabad High Court****Case No:** None

Hazari Ram and Others

APPELLANT

Vs

Firm Umrao Singh Sewati Lal and  
Another

RESPONDENT

**Date of Decision:** March 22, 1946**Citation:** AIR 1946 All 512 : (1946) 16 AWR 551**Hon'ble Judges:** Verma, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

Verma, J.

The petitioners for revision are plaintiffs in a suit instituted in the Court of the Munsif of Ballia. The main relief - apart from the prayer that any other relief, in addition to or instead of the relief claimed above, to which, in the opinion of the Court, the plaintiffs may be found to be entitled, may be granted-claimed in the suit as follows:

A decree for the recovery of Rs. 3616-4-9, in accordance with the accounts given below, together with pendente lite and future interest as well as costs of the suit, be passed in favour of the plaintiffs against the defendants.

2. The material facts out of which the claim arises are as stated below. The plaintiffs, who reside and carry on business at Ballia, allege that they entered into a contract with defendants, who carry on business as commission agents at Etmadpur in the district of Agra, the main terms of which were that the plaintiffs agreed to purchase "from the defendants and the defendants agreed to sell and supply to the plaintiffs 1005 bags of bajra. A certain portion of the purchase price was deposited with the defendants at Etmadpur. The defendants were to send the goods by rail to the plaintiffs at Ballia and were to recover the rest of the price by sending the Railway receipt to the Imperial Bank at Ballia along with a hundi drawn upon the plaintiffs in

favour of the Bank. Subsequently it was discovered that the booking of goods of this description from Etmadpur to Ballia was not allowed and the plaintiffs, there-upon, instructed the defendants to send the goods to Benares. The goods were accordingly despatched. A part of the balance of the price was recovered by means of a hundi drawn in favour of the Imperial Bank at Ballia and the rest by means of a hundi drawn in favour of the Imperial Bank at Benares. The allegation of the plaintiffs is that the total number of the bags thus received by the plaintiffs came only to 846 and that thus the defendants failed to supply 159 bags out of the 1005 bags which they had contracted to supply. It is alleged in the plaint, that, out of the monies paid by the plaintiffs to the defendants in the manner stated above, a sum of Rs. 2553-4-9 was on account of these 159 bags. It is further alleged in the plaint that the plaintiffs suffered damages to the extent of Rs. 1063 in consequence of the breach of contract committed by the defendants in failing to supply the said 159 bags. The sum of Rs. 3616-4-9 claimed in the suit is made up of these two amounts of Rs. 2553-4-9 and Rs. 1063. One of the pleas raised by the defendants was that the Court at Ballia had no jurisdiction to entertain the suit. The issue framed with regard to this plea by the Munsif was as follows:

(2)(a) Were the goods agreed to be purchased at Etmadpur and paid for there and not at Ballia, and whether the plaintiffs were to arrange for their own transport, or were they to be supplied at Ballia and, as booking could not be made to Ballia, at Benares and the price was to be paid at Ballia?

(b) Whether this Court has jurisdiction to try the case?

3. Although the entries in the Munsif's English notes do not throw any light on the matter, he appears to have decided to take up issue (2) first. He apparently recorded some evidence, relevant to that issue, and heard arguments and recorded his findings thus. As to the part 1 of the issue he said:

The plaintiffs purchased the millets they required at the agency of the defendants at Etmadpur and the property in those goods passed to them as soon as the purchase was made and the defendants only became bailees of the plaintiffs for keeping goods at the risk of the latter although they remained interested in the payment of their price which had not been paid. The mode of payment originally arranged was that they as bailees would send the goods to Ballia but would send the Railway receipt along with hundi of the kind above mentioned so that they may receive the payment of their price and expenses also. The goods, however, could not be sent to Ballia and the plaintiffs agreed that they be sent to Benares and part of their price and expenses were recovered by means of hundis drawn on them in favour of the Imperial Bank at Ballia and part by means of hundis drawn in favour of the Bank at Benares. This is the finding on this part of the issue.

4. Coming to the part 2 of the issue, the learned Munsif split up the claim into two parts, viz. one claiming refund on account of an alleged over-payment, and the

other claiming damages on account of an alleged failure to supply a certain portion of the goods agreed to be supplied. He held that he had jurisdiction to entertain the claim under the first head, namely, the claim for the recovery of Rs. 2553-4-9 on account of the alleged over-payment, but that he has no jurisdiction to entertain the claim with regard to the Rs. 1063 claimed as damages for the alleged failure to supply the 159 bags. He then passed the following order:

I, therefore, order that the plaintiffs, if they so choose, may withdraw their claim for damages within 10 days of today, failing which that claim shall stand dismissed for want of jurisdiction while I shall proceed with the trial for the claim of Rs. 2553-4-9....

5. The plaintiffs have filed this revision petition against this order relating to the claim for the recovery of Rs. 1063 as damages. It has been contended by learned Counsel for the petitioners that this revision petition is not adversely affected by the ruling of the Full Bench in Buddhoo Lal and Another Vs. Mewa Ram. The contention is that, so far as this part of the order of the Munsif is concerned, a case has been decided by the Court below. It appears to us that this contention is well-founded. It is, further, obvious that, if the decision of the Court below is wrong, it has failed to exercise a jurisdiction vested in it by law. There can, therefore, be no doubt that this revision petition is entertainable.

6. Coming to the merits of the order complained of, we have come to the conclusion that the view taken by the Munsif is wrong. The suit has been brought in respect of a single cause of action, namely, the alleged failure of the defendants to supply certain goods, viz., 159 bags of bajra which, according to the plaintiffs the defendants had agreed to sell and supply to the plaintiffs. The allegation of the plaintiffs is that they have performed their part of the contract and have paid the price of those 159 bags. The two amounts, the total of which is claimed by relief (a) in the plaint, are alleged to be payable by the defendants to the plaintiffs on the basis of that single cause of action. It is not denied that at least a part of that cause of action arose at Ballia. It appears to us that not only were the plaintiffs entitled, but they were bound under Order 2, Rule 2, Civil P.C., to include in a single suit the whole of the claim which they were entitled to make in respect of the cause of action alleged by them. That being so the learned Munsif was not justified in calling upon the plaintiffs to withdraw their claim in respect of Rs. 1068 and in ordering that, if the plaintiffs failed to withdraw that part of the claim within the time fixed by him, it would stand dismissed. In our judgment, the Munsif has jurisdiction to entertain the whole of this suit. For the reasons given above, we allow this revision petition, set aside that part of the order dated 12-2-1944, by which the learned Munsif held that the claim in respect of Rs. 1063 was not entertainable by him and direct him to proceed to try and decide the whole suit. The plaintiffs petitioners are entitled to their costs in this court.