

(2001) 09 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2189 of 2000

Avtar Singh

APPELLANT

Vs

Registrar Co-operative Societies, Punjab

RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2001) 4 RCR(Civil) 778

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Malkeet Singh, for the Appellant; A.G. Masih, DAG and R.S. Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—The unsuccessful plaintiffs have filed the present regular second appeal which has been directed against the judgment and decree dated 22nd April, 2000 passed by the Court of the Additional District Judge, Barnala, who dismissed the appeal of the appellant/plaintiffs by affirming the judgment and decree dated 10.8.1995 passed by the Sub Judge Ist Class, Barnala who partly allowed the suit of the plaintiffs/appellants.

2. The brief facts giving rise to the filing of this appeal are that the plaintiffs/appellants filed a suit for declaration that award dated 17.1.1977 passed in favour of the respondent-Society against Shri Gurdev Singh, father of the plaintiffs, vide which he was directed to pay a sum of Rs. 83,147.10 along with interest at the rate of 16% per annum and Rs. 8000/- as costs of the arbitration proceedings is illegal, null and void and the plaintiffs also made a prayer that the permanent injunction be granted in their favour and against the defendants not to recover the amount.

3. The case set up by the plaintiffs in the trial Court was that their father Shri Gurdev Singh was a Cashier of the Chhiniwal Co-operative Agricultural Service

Society Ltd., Chhiniwal Khurd (for short the Society). He died. The plaintiffs are his legal heirs. Shri Gurdev Singh deceased never obtained any loan from the society nor he was having any balance due to the society. He was simply a Cashier. The dispute might be regarding the amount due to the society against the members but wrong reference has been made by the Society. It was further claimed that the award passed by the Arbitrator is cryptic and it has been passed by violating the rules 53 to 79 of the Co-operative Societies Act. It was further alleged by the plaintiffs that Shri Gurdev Singh was never consulted for the appointment of the arbitrator. He was not heard during the arbitration proceedings. The dispute was with regard to the distribution of the fertilizer on the basis of Tamasaks which are still tying in the record of the society. The society has not produced any record before the Arbitrator.

4. Notice of the suit was given to the defendants who denied the allegations of the plaintiffs. It was also pleaded by the defendants that the plaintiffs have no locus standi to file the suit; that the suit is not within limitation; that the suit is hit by Order II, Rule 2 C.P.C. and also hit by the principles of res judicata; that the plaintiffs are estopped from filing the suit by their own act and conduct. It was further pleaded by the defendants that earlier Shri Gurdev Singh challenged the award dated 9th June, 1975 in an appeal. His appeal was dismissed. Shri Gurdev Singh filed the writ petition in the High Court and the Hon'ble High Court was pleased to direct the plaintiffs to appear before the Assistant Registrar, Co-operative Societies, Malkerkotla on 31 st May, 1976, but Shri Gurdev Singh never appeared there in spite of many notices issued to him. It was also pleaded by the defendants that the Civil Court has no territorial jurisdiction to try the suit. The plaintiffs did not gave notice u/s 79 of the Punjab Co-operative Societies Act before filing the suit. The award in question has been properly passed by the Arbitrator against Shri Gurdev Singh, predecessor-in-interest of the plaintiffs.

5. The plaintiffs filed a rejoinder to the written statement in which they reiterated their stand taken in the plaint while denying the allegations made in the written statement and from the pleadings of the parties, the trial Court framed the following issues:

1. Whether the award dated 17.1.1977 passed by the Arbitrator Rattan Singh is illegal, null and void and is liable to be set aside ?OPP
2. Whether Gurdev Singh, fattier of the plaintiffs never raised any loan from the society ? If so, its effect ? OPD
3. Whether the plaintiffs are entitled to the injunction prayed for ?OPP
4. Whether the plaintiffs have got no locus standi/cause of action to file this suit ? OPD.
5. Whether the suit is barred under Order 2 Rule 2 C.P.C. ? OPD
6. Whether the suit is barred under the principles of res judicata ? OPD.

7. Whether plaintiffs are estopped in filing this suit on account of their act and conduct ? OPD.

8. Relief.

6. The parties were given the opportunities to lead their evidence and on the conclusion of the proceedings, the learned trial Court partly decreed the suit of the plaintiffs and the defendants were restrained from arresting the plaintiffs/appellants to recover the awarded amount or to put to sale the property of the plaintiffs except the property inherited by them from Shri Gurdev Singh. The plaintiffs were not satisfied with the declaration given by the trial Court. They filed appeal before the Additional District Judge, Barnala, who vide order dated 22nd April, 2000 dismissed the appeal of the plaintiffs for the reasons given in paragraphs 11, 12, 13, 14 and 15 of the impugned judgment, which are reproduced as under :

11. Findings on issue Nos. 4 to 7 are in favour of the plaintiff/appellants. Hence these are not appealed against. These findings are affirmed. There is no need to give any finding on issue No. 3. The property attachable or not attachable will be seen during the execution of the award. Hence this issue is a surplus issue and calls for no decision.

12. Regarding issue Nos. 1 and 2 learned counsel for the appellants raises three objections. One is that Assistant Registrar, Co-operative Societies, Malerkotla was not properly appointed as Arbitrator. Second is that notice under Rule 53 was not issued to Gurdev Singh deceased and halfheartedly it has been pointed out that Rule 79 has been violated, because the award is not in a proper form.

13. To my mind, none of the three objections is tenable. Award Ex. P-3 clearly lays down that the Hon'ble High Court set aside the award dated 9.6.1975 and directed the parties to appear before the Assistant Registrar, Co-operative Societies, Malerkotla, who will himself act as Arbitrator or he may appoint any Arbitrator and in the award itself, it is mentioned that the said Assistant Registrar used every method from personal notice to publication of the notice in a newspaper to procure the presence of Gurdev Singh respondent, but Gurdev Singh did not appear. Hence the Assistant Registrar gave an award as Arbitrator, which authority was given to him by the Hon'ble High Court.

14. So far as form of the award is concerned, it is mentioned in the award that fictitious transactions of loan of the members for purchase of fertilizer was shown in the record and list of 37 members with details is given in it. The award is detailed one in as much as it shows that loan of Rs. 85,683.90 was entered in the record of the society in the account of the members and amount of Rs. 2536.80 has been shown returned by some of the members, which amount was, in fact, paid back by Gurdev Singh from his own pocket. There was no need to give notice to the members because Tamasaks on which loan was advanced are not signed by the loanees. Hence I find no fault in the findings of the learned lower Court on issue Nos. 1 and 2 and the same are affirmed.

15. Before parting with my discussion, I hold that it is a clever device by a cashier of the society on the ill-based legal advice that he is holding back the public money for the last about 25 years. With this observation, I find that there is no scope in the suit of the plaintiffs and hold that there is no fault in the judgment and decree of the lower court and the same is affirmed and the appeal is dismissed with costs. Decree sheet be prepared. File be consigned to the record room."

7. Still not satisfied, the present regular second appeal.

8. I have heard Shri Malkeet Singh on behalf of the appellants and Shri A.G. Masih, Assistant Advocate General, Punjab on behalf of respondent Nos. 1 and 2 and Shri Chauhan on behalf of respondent No. 3 and with their assistance, have gone through the record of the case.

9. The learned Counsel for the appellants submits that it is not established on the record that Shri Gurdev Singh had ever incurred any amount from the Society or any amount was due from him towards the Society. The award was ex parte. In these circumstances, both the courts have committed error in dismissing the suit of the plaintiffs in part. I am not in a position to subscribe to the arguments raised by the learned counsel for the appellants for the simple reason that the plaintiffs have given challenge to the award dated 17th January, 1977. Earlier to that, one more award was passed against the plaintiffs on 9th June, 1975. Shri Gurdev Singh gave a challenge to this award first in the appeal and then before the Hon'ble High Court. First award was set aside by the Hon'ble High Court and Shri Gurdev Singh was given the chance to appear before the Assistant Registrar, Co-operative Societies, Malerkotla on 3 May, 1976 to defend the allegations of the respondents. Shri Gurdev Singh did not appear in spite of the several notices given to him. He was proceeded ex parte. After hearing the stand of the society, again the award was passed on 17th January, 1977 which is now under challenge. The plaintiffs are none else but the legal heirs of Shri Gurdev Singh. Shri Gurdev Singh was proceeded ex parte before the arbitration proceedings.

10. The remedy available to the present plaintiffs after the death of Shri Gurdev Singh was to file an appeal before the Arbitrator. No appeal has been filed before the Arbitrator. The award dated 17th January, 1977 could only be challenged if it is against the vires of the Punjab Co-operative Societies Act. The learned counsel for the appellants has not been able to show how the vires of the Co-operative Societies Act or its rules have been flouted by the Arbitrator. The moment the award is held to be valid, the suit of the plaintiffs for declaration is barred u/s 82 of the Punjab Co-operative Societies Act. Be that as it may, I do not want to interfere in the present appeal. Dismissed. No order as to costs.

11. Appeal dismissed.