

(1999) 10 P&H CK 0167

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1030 of 1980

Fauja Singh

APPELLANT

Vs

Dalip Singh Ujjagar Singh and Others

RESPONDENT

Date of Decision : 12-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2000) 2 CivCC 47 : (2000) 124 PLR 842 : (2000) 1 RCR(Civil) 312

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

Bench : Single Bench

Advocate : A.K. Mittal and Akshay Bhan, for the Appellant;

Final Decision : Allowed

Judgement

R.L. Anand, J.—This is a defendant's appeal and has been directed against the judgment and decree dated 8.12.1979, passed by the Court of District Judge, Patiala, who allowed the appeal of the plaintiff-respondent in part and granted a money decree in favour of the plaintiff to the tune of Rs. 2,820/- with proportionate costs of both the Courts, by setting aside the judgment and decree of the trial Court dated 11.9.1978 passed by the Sub Judge II Class, Patiala who dismissed the money suit of the plaintiffs-respondent.

2. The brief facts of the case can be noticed in the following manner:-

3. The plaintiff M/s Dalip, Singh Ujjagar Singh, Commission Agents, Devigarh, Tehsil and District Patiala through its partner Ujjagar Singh filed a money suit for a sum of Rs. 4,760/- by alleging that the plaintiff-firm is a registered firm with the Registrar of Firms under the Indian Partnership Act and Ujjagar Singh is the registered partner and runs a shop of Commission Agent. The defendant Fauja Singh used to took loan at different times from the plaintiff-firm. He took loan at different times from the plaintiff-firm. He took a loan of Rs. 2,300/ in cash from the plaintiff-firm on, 7.12.1971 and agreed to repay the same as 31.3.1973 and an entry in this respect was made in the Bahi of the paintiff-firm; that the

defendant took a loan of Rs. 480/- on 5.2.1972 vide entry in Bahi through his servant and further took a loan of Rs. 520/- vide cheque drawn on the Central Co-operative Bank's Branch, Devigarh on 12.4.1982 and an entry in this respect was also made in the Bahi. The defendant took another loan of Rs. 100/- on 12.4.1972 by sending a separate writing in Punjabi and Rs. 100/- on 24.4.1972 by another writing and, thus, the defendant took a sum of Rs. 3,500/- as loan as detailed above and agreed to pay interest @ 1% per month. The plaintiff-firm asked the defendant to return the loan money a number of times but he refused to do so. Ultimately, a notice was given to the defendant on 12.12.1974 but to no effect. Hence, the suit.

4. Notice of the suit was given to the defendant, who pleaded that he never took the loan from the plaintiff-firm. In fact, he got "money from the plaintiff-firm against the sale of his crop. There was no agreement- regarding the loan as shown in the Bahi and also he did not take any loan from the plaintiff through his servant.

5. From the pleadings of the parties, the following issues were framed by the trial Court:-

"1. Whether the plaintiff is a registered firm and Ujjagar Singh is one of its partners? OPP

2. Whether the defendant took a loan of Rs. 3,500/- from the plaintiff-firm on different dates as mentioned in paragraph 3 of the plaint by executing the writings specified therein? OPP

3. To what interest, if any, is the plaintiff entitled? OPP

4. Whether the suit is within limitation? OPP

5. Relief."

6. The parties led oral as well as documentary evidence in support of their case and on the conclusion of the proceedings, issue No. 1 was decided in favour of the plaintiff and issues No. 2 and 3 were decided against the plaintiff-firm. However, on issue No. 4, no finding was given. Resultantly, on the basis of the findings given under issue No. 2, the plaintiff-firm was non-suited.

7. Aggrieved, by the judgment and decree of the trial Court, the plaintiff-firm filed, the first appeal in the Court of the District Judge, Patiala who vide the judgment and decree dated 8.12.1979 reversed the judgment and decree of the trial Court and allowed the appeal of the plaintiff-firm in part and decreed the suit of the plaintiff to the extent of Rs. 2,820/- with proportionate costs of both the Courts and this time the defendant is aggrieved by the judgment and decree of the first appellate Court and has filed the present appeal.

8. I have heard the counsel for the appellant and with their assistance gone through the record of this case.

9. There is no cross, appeal to the judgment and decree dated 8.42.1979 by the plaintiff and in these circumstances. I have to confine my discussion to whether the suit of the plaintiff has been rightly decreed to the extent of Rs. 2,820/-. The plaintiff is basing the claim on, the entry. Ex.P.2 and the case set up by the plaintiff, in the plaint is that a sum of Rs. 2,300/- was, advanced to the defendant on 7.12.1971. Meaning thereby, for this entry, the plaintiff could institute a suit before the trial Court on or before 7.12.1974. Admittedly, the present suit was instituted on 1.2.1975. The learned counsel for the appellant submitted that the entry, Ex.P.2, vide which the alleged loan of Rs. 2,300/- was given to the defendant has been tampered with materially so as to bring the suit within limitation and, secondly, the rate of interest has also been introduced so as to justify the claim of the plaintiff.

10. I find substance in the argument of the counsel for the appellant! The entry, Ex.P.2 is in Punjabi character, which reads as under:-

"2,300/- Col. Fauja Singh Phunder Heri 2,300/- Rokri Khud Waida 3.13.72 - 1%"

11. If this entry is looked with a naked eye, it is clear that the date 31.3.1972 and the rate of interest i.e. 1% have been added subsequently for the obvious reason to bring the suit within limitation with regard to this entry. This entry is in three lines. The space between the first two lines is different as compared to the second and third line. In the third line, the following words are relevant:-

"Date 31.3.72 1%"

The above would show that the plaintiff had introduced the date in order to bring the suit within limitation and the plaintiff-firm also wanted to show that the defendant allegedly agreed to pay interest @ 1%, otherwise the suit of the plaintiff was hopelessly barred by time. When the plaintiff has interpolated the material document, he is not entitled to the relief as prayed for. In this regard, I agree with the learned trial Court that the plaintiff has not led cogent evidence to establish that Rs. 2,300/- were advanced to the defendant by way of loan on 7.12.1971 vide entry Ex.P-2. The plaintiff has not examined any expert. So much so, the plaintiff made an application before the trial Court that he would like to examine the expert but for the reasons best known to him he dropped the request and did not produce any hand writing expert so as to prove the entry. Ex.P-2, which was specifically denied by the defendant. In this view of the matter the first appellate Court was not justified in granting money decree to the tune of Rs. 2,300/-.

12. With regard to the other amount of Rs. 520/-, this amount has been given to the defendant through cheque, Ex.P-1. Though the stand of the defendant was that this amount was in consideration of the crops which he sold to the plaintiff-firm, but there is no cogent evidence in this regard. The account books of the plaintiff-firm do not contain any entry with regard to the alleged payment. The onus was upon the defendant to establish that he had received this amount against the sale consideration of his crop. In this view of the matter, the suit of

the plaintiff-firm could be decreed to the extent of Rs. 520/-.

13. Resultantly, I allow this appeal and set aside the judgment and decree of the first appellate Court and grant a money decree for a sum of Rs. 520/- only to the plaintiff-respondent alongwith interest @ 6% from the date of the suit till payment. The defendant, however, shall bear the proportionate costs of the Courts below. Decree sheet be prepared accordingly.