
(1950) 09 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 33 of 1949

Kishori Lal and Others

APPELLANT

Vs

Firm Lajja Ram, Ram Sarup

RESPONDENT

Date of Decision : 27-09-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 1, 21

Citation : AIR 1951 P&H 375

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Advocate : Mukand Lal Puri and Shambhu Lal Puri, for the Appellant; D.N. Aggarwal, for the Respondent

Judgement

Harnam Singh, J.—In civil Suit No. 107 of 1947 the trial Court by its order passed on 12-1-1948, found that the Civil Courts at Ambala had jurisdiction to try the suit.

2. From the order passed by the trial Court on 12-1-1948, the Defendant firm came to the H.C. in revision, but the revision failed and was dismissed on 23-3-1948.

3. On 26-1-1948, the trial Court fixed the following issues on merits :

(1) Whether the Defendant could sell the goods on 27-12-46 under the terms of the agency? O.D.

(2) If not, is the Pltf. entitled to any damages and to what amount? O.P.

(3) Relief.

4. After fixing issues on merits the trial Court adjourned the case to 23-2-1948 for scrutiny. No one, however, appeared in the trial Court on 23-2-1948. On 29-3-1948, Shri Baru Mal, Manager, Sonapat Trading Company Ltd., Shri Hari Ram munim of the Defendant firm gave evidence for the Defendants and the case was then adjourned to 22-4-1948, for the remaining evidence. On the last

mentioned date Nand Ram Defendant gave evidence in his own cause and then the Defendant's Counsel closed the case for the Defendant's Plaintiffs' Counsel then requested the Court to exhibit the documents proved or admitted at the trial and the case was adjourned to 27-4-1948, for arguments.

5. On 27-4-1948, the trial Court finding that the Plaintiffs were entitled to recover a sum of Rs. 4,264-6-6 with costs from the Defendant firm decreed the suit with costs.

6. From the decree passed by the trial Court on 27-5-1948, the Defendant firm appealed in the Court of the District Judge at Ambala. In the appellate proceedings it was pressed inter alia that in the trial of Civil Suit No. 107 of 1947 the trial Court had not framed necessary issues. This objection prevailed and the Court of appeal fixed an additional issue reading :

Was Chuni Lal the sole proprietor of the firm Chuni Lal-Vir Bhan and could he sue in his own name?

7. Parties examined evidence on the issue set out in the preceding para. and on 20-5-1949, the trial Court sent its report on that issue to the Court of Appeal.

8. Now, when the case came to the Court of Appeal for the second time the objection was raised that the trial Court had no territorial jurisdiction to try the suit. The Court of first appeal has allowed the objection raised and has returned the plaint to the Plaintiff for presentation to the proper Court.

9. From the order passed by the Court of appeal returning the plaint to the Plaintiff for presentation to the proper Court the Plaintiff has come up in appeal to this Court under Rule 1(u) of Order 45, Code of Civil Procedure, and the contention raised in appeal is that the lower appellate Court in returning the plaint for presentation to the proper Court has disregarded the provisions of Section 21, Code of Civil Procedure.

Section 21 reads :

No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

10. From a perusal of Section 21 it appears that even though the objection as to the place of suing has been raised at the earliest possible opportunity or wrongly disallowed the judgment will not be disturbed unless the trial in the wrong Court has led to a "failure of justice".

11. In order to ascertain whether there has been a failure of justice the appellate Court must go into the merits of the case and form an opinion upon the justice or otherwise of the decision of the original Court This has not been done. Indeed the Court of First Appeal has not considered the requirements of Section 21 of the Code.

12. In these proceedings I have examined, the entire record of the case to ascertain whether the trial of the suit at Ambala has led to a failure of justice.

13. Mr. D.N. Aggarwal, learned Counsel for the Defendant firm, argues that the Defendant firm failed to examine evidence on the issues raised by reason of the fact that the suit was tried at Ambala. In support of the argument raised by Mr. Aggarwal points out that in para. 9 of the written statement the Defendant relied inter alia upon the usage of the market on issue No. 1. The final step in the argument is that because of the trial of the suit at Ambala the Defendant firm could not examine witnesses from Sonapat at Ambala to prove the usage of trade. For reasons appearing hereinafter I see no force in the argument raised.

14. In the first place the usage of trade was put in issue. In the second place, the Defendant examined the Manager of the Trading Chamber at Sonapat, but no question was put to him as regards the usage of trade. Nand Ram Defendant and Shri Hari Ram munim of the Defendant firm gave evidence at the trial but there is not a syllable in the evidence of Nand Ram or Shri Hari Ram to show that the Defendant firm relied upon the usage of the market on issue No. 1. As stated above, the Defendant did not appear on the date of sorutiny and made no complaint during the trial that he was prevented from examining evidence in support of issues Nos. 1 and 2. Indeed, as stated above, on examining the evidence the Defendants Counsel himself closed the case and did not ask the Court to give him an opportunity to examine further evidence on issues Nos. 1 and 2. That being the situation of matters, I find that in this case the trial of the suit at Ambala has not led to failure of justice. The failure of justice mentioned in Section 21, Code of Civil Procedure, is the failure of justice arising from the trial of the suit in a wrong Court.

15. Finding, as I do, that the trial of the suit at Ambala, has not led to any failure of justice, I allow the appeal, set aside the order of remand and remit the case to the lower appellate Court for the decision of the appeal on merits.

16. Considering the circumstances of the case I leave the parties to bear their own costs.

17. Parties are directed to appear in the Court of the District Judge at Ambala on 9-10-1950.