
(1982) 05 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 266 of 1973

Sh. Onkar Nath and others

APPELLANT

Vs

Bawa Muni Lal and others

RESPONDENT

Date of Decision : 04-05-1982

Acts Referred:

Citation : (1982) 05 P&H CK 0029

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : H.L. Sarin, with Mr. M.L. Sarin, for the Appellant; Munishwar Puri, for the Respondent

Final Decision : Allowed

Judgement

Prem Chand Jain, J.—Onkar Nath and Krishan Kumar have filed this appeal against the judgment and decree of the learned Additional District Judge, Amritsar, by which the suit of Bawa Muni Lal, plaintiff-respondent (since dead and whose legal representatives have been brought on the record) for recovery of Rs. 2,200/- has been decreed with costs against them and other two defendants Siri Krishan and Panna Lal.

2. In order to appreciate the controversy, certain salient features of the case may be noticed:--

3. Bawa Muni Lal plaintiff (since dead) had filed a suit for the recovery of Rs. 2,200/-, as brokerage, on the allegation that Onkar Nath and others, defendants Nos. 1 to 4, instructed him to find out some seller of a commodious piece of land in which four houses could easily be constructed and that they would pay him brokerage at the rate of 2%, according to the prevailing market rate. The plaintiff made effort and got an agreement executed between the defendants and one Tara Singh, attorney of Smt. Jamna Devi, on 22nd July, 1964, under which the aforesaid defendants paid Rs. 16,500/- to Tara Singh. It is further pleaded that the plaintiff became entitled to the brokerage the moment he was able to bring

the defendants 1 to 4 and the attorney of Smt. Jamna Devi together As the defendants refused to pay the brokerage, the necessity of filing the suit for the recovery of Rs. 2,200/- arose.

4. The suit was contested by all the defendants except Siri Krishen defendant No 3.

On the pleadings of the parties, the following issues were framed:--

1. Whether the plaintiff was appointed or acted as a broker in the transaction of sale detailed in para No. 6 of the plaint?

2. If issue No. 1 is proved in the affirmative to what brokerage the plaintiff is entitled and from whom ?

3. Whether the suit is bad for multifariousness?

4. Relief?

The parties led evidence.

5. On consideration of the evidence, the trial Court held that the rate of brokerage was 2% but the plaintiff was not appointed a broker by the defendants and hence he was not entitled to the amount of brokerage from them Consequently, the suit was dismissed leaving the parties to bear their own costs.

6. Being aggrieved from the judgment and decree of the trial Court, Bawa Muni Lal preferred an appeal The learned Additional District Judge, who heard the appeal, did not agree with the finding of the trial Court on issue No 1 and accordingly set aside the same after holding that the plaintiff was entitled to brokerage from Onkar Nath and other defendants 2 to 4. In view of this finding, a decree was passed in favour of the deceased plaintiff and against defendants 1 to 4.

7. As earlier observed, dissatisfied from the judgment and decree of learned Additional District Judge. Amritsar, the present Regular Second Appeal has been filed by defendants 1 and 2.

8. The only contention raised before me by Mr. M.L. Sarin, Learned Counsel for the appellant, is that the finding of the learned Additional District Judge on Issue No. 1 cannot legally be sustained as the same has been arrived at on conjectures According to the Learned Counsel, there is absolutely no evidence on the record to show that the appellant ever appointed Bawa Muni Lal deceased to act as a brokerage in the transaction of sale detailed in para 6 of the plaint.

9. After hearing the Learned Counsel for the parties, I fined considerable force in the contention of the Learned Counsel for the appellant.

10. In para 3 of the plaint, it has been specifically averred by the plaintiff that defendants No. 1 to 4 had instructed the plaintiff to find out some seller of a commodious piece of land in which four houses could easily be constructed and

that according to the prevailing market rate, they would pay 2% brokerage for the work and labour put in by him. The defendants have categorically denied the aforesaid averment.

11. There is no gain saying that the plaintiff could succeed in the suit if he had proved positively by leading evidence that the plaintiff was appointed by defendants 1 to 4 to act as broker on their behalf and that they had agreed to pay 2% brokerage. It is conceded at the bar by Mr. Munishwar Puri, Learned Counsel for the plaintiff-respondent and vary fairly, that there is no evidence, except the statement of the plaintiff-himself, on the record to show that the plaintiff was ever appointed as a broker by defendants 1 to 4. However, his submission is that on the basis of the circumstances of which note has been taken by the learned Additional District Judge, a fair inference can be drawn that the plaintiff was appointed a broker by defendants 1 to 4.

12. I am afraid, I am unable to agree with this submission of the Learned Counsel for the plaintiff respondent I have gone through the letter Exhibit P-9, the draft Exhibit P. W-7/1 and the statement of Tara Singh (P.W. 11) and find that absolutely no inference can be drawn that consciously or unconsciously the plaintiff was ever appointed as broker by the defendants; rather, the fact appears to be that for quite a long time Bawa Muni Lal has been acting as agent of Smt. Jamna Devi and her husband Hakam Singh and that the documents referred to above only go to prove that fact. The appointment of an agent is a conscious act. A specific plea in this respect was taken by the plaintiff in the plaint. He was required to prove the same by leading cogent evidence. But he has failed to produce any evidence to show his appointment as broker. In the letter Exhibit P-9 Tara Singh (P.W. 11) only enquired from Muni Lal as to what was the position of his buyer. This letter does not indicate, at all that the defendants wanted to appoint him as broker. Further, going of the defendants along with the broker to the Advocate for the preparation of the draft would again not indicate that they had appointed him as broker. As earlier observed, it was for the plaintiff to show that he had been asked by defendants 1 to 4 to act for them and that they had agreed to pay brokerage. On the file, there is absolutely not an iota of evidence to prove these two ingredients. The whole judgment of the learned Additional District Judge on issue No. 1 is based (sic) on tures and surmises. In this view of the matter, the finding of the learned Additional District Judge cannot legally be sustained. Consequently, I reverse the finding of the learned Additional District Judge on issue No. 1 and restore that of the trial Court.

13. No other point is urged.

14. For the reasons recorded above, this appeal is allowed, the judgment and decree of the learned Additional District Judge are set aside and the suit of the plaintiff (since dead and whose legal representatives have been brought on the record) is dismissed with costs throughout.

15. Before parting with the judgment it may be observed that the legal

representatives of Bawa Muni Lal Plaintiff deceased would be entitled to recover the amount of brokerage against Shri Krishen and Panna Lal as they have accepted the correctness of the decree and have not challenged the same.