

PUNJAB STATE CO-OPERATIVE SUPPLY AND  
MARKETING FEDERATION LTD.

v.

B.S. AULAKH AND ORS.

APRIL 9, 1997

[S.C. AGRAWAL AND S. SAGHIR AHMAD, JJ.]

*Service Law :*

*Deputation—Characteristics of—Employee after discharge from an establishment appointed in another establishment initially on probation and then on regular basis—Held : the subsequent employment was not on deputation.*

*Limitation Act, 1963 :*

*Suit—For declaration that discharge from service was invalid—Resolution dated 20.12.1977 assailed in civil suit filed on 28.10.1983—Suit sought to be brought within limitation on the basis of order dated 5.9.1983 which was found to be forged and fabricated—Held : Suit barred by limitation—Service Law.*

*Criminal Procedure Code, 1973 : Section 195.*

*Prosecution—Procedure for—Employer filed an application in High Court under S.195 for initiating criminal proceedings against employee for submitting forged documents, but application dismissed by High Court—On Supreme Court's direction District Judge submitted report that such documents were forged—Employee's objections against said report rejected and report accepted—Registrar of High Court directed to take necessary steps to file a criminal complaint in competent court.*

*Practice and Procedure :*

*Advocate—Discharge of—By party—Conditions for accepting discharge—Neither Advocate's 'no objection' recorded on application for discharge nor did he appear after a particular stage of proceedings—Held : It was not possible to pass an order on the application—However, party heard in person.*

A *Findings of fact—Interference with—By Supreme Court—Findings of lower courts based on documents found by Supreme Court to be forged—Held : such findings not sustainable and hence reversed.*

B The respondent was appointed as Plant Protection Expert in the Punjab State Co-operative Supply and Marketing Federation Ltd. (MARKFED). The said appointment was on probation for a period of one year. Before completion of the period of probation, the respondent was discharged from service. The respondent filed an appeal to the Registrar of Co-operative Societies and during the pendency of the said appeal the respondent was appointed as Plant Protection Officer in Punjab State Federation of Co-operative Sugar Mills (SUGARFED). Under the said order of appointment, 50 per cent of the pay and allowances of the respondent were to be paid by MARKFED. The respondent was confirmed on the post of Plant Protection Officer in SUGARFED. By a Resolution dated 20.12.1997, the post of Plant Protection Officer in SUGARFED was abolished and the services of the respondent were terminated.

E Being aggrieved the respondent filed a civil suit on 28.10.1983 for a declaration that his discharge from service was invalid. The trial court dismissed the suit. The trial court held that the suit was barred by limitation inasmuch as the impugned Resolution dated 20.12.1977 came to the knowledge of the respondent at least between 28 to 30.12.1997 and the suit was filed on 28.10.1983. The trial court also rejected the claim of the respondent that at the time of the passing of the impugned Resolution the respondent was on deputation with SUGARFED and was an employee of MARKFED. The Addl. District Judge while allowing the appeal filed by the respondent held that the suit was not barred by limitation on the ground that the appeal filed by the respondent against the Resolution with regard to his claim to be an employee of MARKFED was disposed of by the Joint Registrar, Co-operative Societies by order dated 5.9.1983 and the suit was filed soon thereafter on 3.10.1983. The Addl. District Judge also found that the respondent was an employee of MARKFED and was on deputation with SUGARFED. In order to come to the said finding the Addl. District Judge placed reliance on certain documents.

H The appellant filed a second appeal before the High Court against the said judgment of the Addl. District Judge. Before the High Court the appellant contended that the documents on which the Addl. District Judge

placed reliance were forged and fabricated. The appellant also filed an application under Section 195 of the Criminal Procedure Code, 1973 for initiating criminal proceedings against the respondent for having produced forged documents. The High Court dismissed the second appeal as well as the application for initiation of criminal proceedings against the respondent. Hence this appeal.

During the course of hearing of the appeal the appellant-Federation raised a plea that the respondent had produced forged documents which were relied upon by the lower courts. This Court directed the District Judge to examine whether the documents relied on by the Addl. District Judge were forged or fabricated. The District Judge submitted a report that the said documents were forged and fabricated. A copy of the said report was furnished to the respondent and he had submitted objection against the same. The respondent had also submitted an application for discharging his Advocate but it did not contain an endorsement of "no objection" by the said advocate. The said advocate did not appear after a particular stage of the proceedings. However, the respondent was heard in person.

Allowing the appeal, this Court

**HELD : 1.** There is no reason why after his discharge from Punjab State Co-operative Supply & Marketing Federation Ltd. (MARKFED), the respondent should have been continued to be in employment of MARKFED especially when by an order he had been appointed as Plant Protection Officer in Punjab State Federation of Co-operative Sugar Mills Ltd. (SUGARFED) on probation and subsequently on regular basis. [758-A-B]

**2.** The objections raised by the respondent against the findings recorded by the District Judge are without any substance and do not detract from the findings recorded by the District Judge in his report which are fully supported by the evidence adduced before him. [757-C]

**3.** As a consequence to the acceptance of the findings recorded by the District Judge, it must be held that no order was passed by the Joint Registrar (Planning) on the appeal of the respondent on 5.9.1983 and since the order that was submitted by the respondent and which has been relied upon by the Addl. District Judge as well as by the High Court to hold that the suit was within limitation, is a false and fabricated document, it must

A be held that the suit filed by the respondent on 28.10.1983 to assail the Resolution of SUGARFED dated 20-12-1977 was barred by limitation.

[757-D-E]

B 4. In the absence of the Advocate of the respondent and without his 'no objection' certificate it is not possible to pass any order on the application for discharge submitted by the respondent. However, the respondent was heard in support of his objections. [757-B]

C 5. It has been found that the documents produced by the respondent were false and fabricated and, therefore, a case has been made out for initiating criminal proceedings against the respondent. The Registrar of the High Court is directed to take necessary steps to file criminal complaint in the competent court in that regard under Section 195 of the Criminal Procedure Code, 1973. [758-H; 759-A-B]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5646 of 1994.

From the Judgment and Order dated 21.2.94 of the Punjab & Haryana High Court in R.S.A. No. 2240 of 1991.

D.S. Nehra and P. Mahale for the Appellant.

E J.D. Jain, (NP), A.S. Chahil and Ms. S. Janani for the Respondent.

In-person for the Respondent No. 1.

The Judgment of the Court was delivered by

F S.C. AGRAWAL, J. This appeal by special leave arises out of a suit (Civil Suit No. 337/83) filed by B.S. Aulakh, respondent No. 1 (hereinafter referred to as 'the plaintiff') wherein he sought a declaration to the effect that the Resolution dated December 20, 1977 passed by the Board of Directors of the Punjab State Federation of Co-operative Sugar Mills Ltd. (for short 'SUGARFED'), respondent No. 2 herein, by which the plaintiff was relieved of the post of Plant Protection Officer and the said post was abolished, was invalid, illegal and without jurisdiction. In the said suit the plaintiff also claimed that he was the employec of Punjab State co-operative Supply & Marketing Federation Ltd. (for short 'MARKFED'), appellant herein, and that he was only on deputation with  
H SUGARFED.

The facts briefly stated are as follows :

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By order dated December 12, 1972, the plaintiff was appointed as Plant Protection Expert in the MARKFED. The said appointment was on probation for a period of one year. Before the completion of the period of probation, the plaintiff was discharged from service of MARKFED by order dated June 12, 1973. The plaintiff filed an appeal against the said order of discharge with the Registrar of Cooperative Societies and during the pendency of the said appeal by order dated November 8, 1973 he was appointed on the post of Plant Protection Officer in SUGARFED. Under the said order of appointment, 50 per cent of the pay and allowances of the plaintiff were to be paid by MARKFED. The plaintiff was confirmed on the post of Plant Protection Officer in SUGARFED by order February 7, 1975. By order dated December 20, 1977, the post of Plant Protection Officer in SUGARFED was abolished and the services of the plaintiff were terminated. The plaintiff filed a Writ Petition (Civil Writ Petition No. 1828/77) in the High Court of Punjab & Haryana. The High Court, however, felt that the Writ Petition was highly belated and thereupon the same was withdrawn as prayed by the learned counsel for the plaintiff. On October 28, 1983, the plaintiff filed the civil suit which has given rise to this appeal. The trial court by judgment dated November 20, 1987 dismissed the said suit of the plaintiff and it was held that the suit was barred by limitation inasmuch as the impugned Resolution dated December 20, 1977 came to the knowledge of the plaintiff at least between December 28 to 30, 1977 and the suit was filed on October 28, 1983. The trial court also rejected the claim of the plaintiff that at the time of the passing of the impugned resolution he was on deputation with SUGARFED and was employee of MARKFED. The appeal filed by the appellant against the said judgment of the trial court was, however, allowed by the Addl. District Judge, Chandigarh, by judgment dated October 11, 1991. The Addl. District Judge held that the suit was not barred by limitation on the ground that the appeal filed by the plaintiff against the resolution with regard to his claim to be an employee of MARKFED was disposed of by the Joint Registrar, Co-operative Societies by order dated September 5, 1983 and the suit was filed soon thereafter on October 3, 1983. The Addl. District Judge also found that the plaintiff was an employee of MARKFED and was on deputation with SUGARFED with effect from November 11, 1973 till December 20, 1977. In order to come to the said finding the Addl. District Judge placed reliance on the following documents :

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A (1) Letter (Exhibit PW. 8/12) from Shri S.L. Kapur, the then Registrar, Cooperative Societies, and ex-officio Administrator of MARKFED, addressed to the Chairman, SUGARFED wherein it was stated :

B "Shri Aulakh will be an employee of Marketing Federation but will work in Punjab State Federation of Co-operative Sugar Mills Ltd. till he is recalled".

(2) Letter dated May 4, 1975 (Exhibit PW 8/14) from the Establishment Officer on behalf of the Managing Director, MARKFED, Ad-  
C dressed to the Chairman, SUGARFED, wherein it is stated :

"The Management agrees to his proposed confirmation on 7.5.75 as P.P.E., MARKFED in SUGARFED as per existing arrangement. However, he will continue in your Federation till he is recalled."  
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(3) Order dated April 26, 1977 (Exhibit PW 8/19) passed by the Chief Minister of Punjab holding that the order of termination/discharge dated June 12, 1973 was null and void and the plaintiff is an employee of MARKFED as Plant Protection Officer and that he was on deputation with  
E SUGARFED.

MARKFED filed a second appeal (R.S.A. No. 2240 of 1991) in the High Court against the said judgment of the Addl. District Judge. During the course of hearing of the said appeal an application was filed under  
F Order 41 Rule 27 CPC for placing on record the correct copy of the latter written by Shri S.L. Kapur and for calling the original letter from the office of SUGARFED. It was submitted on behalf of MARKFED that the letter (Exhibit P.W. 8/12) filed by the plaintiff and on which reliance had been placed by the Addl. District Judge to hold that the plaintiff was an employee of MARKFED and was on deputation with SUGARFED, was  
G a fabricated document and that the original letter does not contain the sentence "Suit Aulakh will be an employee of Marketing Federation but will work in Punjab State Federation of Co-operative Sugar Mills Ltd. till he is recalled" and instead it contains the sentence "However, Shri Aulakh will be working as a wholetime employee of the Punjab State Federation  
H of Co-operation Sugar Mills Ltd.". In support of his aforesaid submission,

a photostat copy of the original letter of Shri S.L. Kapur, addressed to the Chairman of SUGARFED, as procured from the record of SUGARFED, was submitted in the High Court. The said contention was, however, not accepted by the High Court in view of the other two documents, namely, letter dated May 4, 1975 (Exhibit P.W. 8/14) sent by the Establishment Officer, MARKFED to the Chairman of SUGARFED, and the order of the Chief Minister of Punjab dated April 26, 1977 (Exhibit P.W. 8/19). The High Court also placed reliance on the order dated September 9, 1983 (Exhibit P.W. 8/29) passed by the Joint Registrar, Cooperative Societies, on the appeal filed by the plaintiff, for holding that the suit was not barred by limitation. By judgment dated February 21, 1994, the High Court dismissed the second appeal filed by MARKFED. A review petition was filed by MARKFED in the High Court wherein it was pointed out that the other documents, namely, letter dated May 4, 1975 (Exhibit P.W. 8/14) and order dated September 5, 1983 (Exhibit P.W. 8/29) were also fabricated documents. In support of the said review petition a number of documents were filed and it was prayed that the matter may be duly enquired into. The High Court did not consider it fit to entertain the review petition and the same was dismissed by order dated May 6, 1994. Feeling aggrieved by the judgment of the High Court dated February 21, 1994 MARKFED has filed this appeal.

During the course of hearing of the appeal, this Court, after taking note of the submissions of Shri D.S. Nehra, the learned senior counsel appearing for MARKFED, felt that the question as to whether the letter (Exhibit P.W. 8/12) from Shri S.L. Kapur to the Chairman, SUGARFED, the letter dated May 4, 1975 (Exhibit P.W. 8/14) from the Establishment Officer, MARKFED to the Chairman, SUGARFED and the order (Exhibit P.W. 8/29) dated September 5, 1983 passed by the Joint Registrar (Planning) had been forged or fabricated needs examination. The Court also felt that the confusion in respect of two orders dated April 22, 1977 and April 26, 1977 said to have been passed by the Chief Minister of Punjab should be removed. The Court, therefore, by order dated February 7, 1996 directed the District Judge, Chandigarh to record a finding on the following questions :

"1. Is Document No. 1 (Exhibit P.W. 8/12) a true copy of the original letter sent or it is a fabricated copy of the original letter?

- A 2. Are the Documents Nos. 2 (Exhibit P.W. 8/14) and 3 (Exhibit P.W. 8/29) false and fabricated documents?
3. Were both or any one of the two orders dated April 26, 1977 (Document No. 4) and April 22, 1977 (Annexure P-6 to C.W.P. 1828 of 1977) passed by the Chief Minister of Punjab and, if so, which was that order?"
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In pursuance of the said direction, the District Judge, Chandigarh, after recording the evidence adduced by the parties, has submitted his report wherein he has recorded the following findings :

- C (i) Document No. 1 (Exhibit P.W. 8/12) is not the true copy of the original letter sent and the possibility of the same having been fabricated by interpolating the words "Shri Aulakh will be an employee of Marketing Federation but will work in Punjab Federation of Co-operative Sugar Mills Ltd. till he is recalled" in place of the words "However, Shri Aulakh will be working as a wholetime employee of the Punjab State Federation of Co-operative Sugar Mills Ltd." cannot be ruled out.
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(ii) Document No. 2 (Exhibit P.W. 8/14) and Document No. 3 (Exhibit P.W. 8/29), are also false and fabricated.

- E (iii) The originals of the orders dated April 26, 1977 and April 22, 1977 had not been produced and the plaintiff had not led any evidence nor had he made by effort to produce the originals before him and it was not possible to say that any of the two orders was passed by the Chief Minister or not.

- F The District Judge has observed that all the four document referred to in the orders of this Court dated February 7, 1996 are copies which were produced before the trial court by Chanan Ram P.W. 8 and are stated to be attested by Shri Kishan Chand, Superintendent of the Office of the Registrar, Coop. Societies. The District Judge has stated that earlier the plaintiff had sought summons for securing the presence of Kishan Chand as his witness but since the process serving agency was having difficulty in effecting the service on Kishan Chand, bailable warrants were issued for securing his presence and that one Shri G.S. Sandhu, Advocate, appeared and stated before the Court that Kishan Chand has not appeared because
- G he was told by the plaintiff that he need not come to the Court as his name
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had been dropped. The District Judge was of the view that Kishan Chand was an important witness who had attested the disputed documents and should be examined as court witness even though the plaintiff did not want to examine him. A direction was, therefore, issued to secure the presence of Kishan Chand as a court witness and he was examined as a court witness. In his statement, Kishan Chand categorically stated that the attestations on documents (Exhibits P.W. 8/12, P.W. 8/14, P.W. 8/19 and P.W. 29) do not bear his signatures.

As regards document No. 1 (Exhibit P.W. 8/12), the District Judge has stated that in the Writ Petition filed by him the plaintiff had attached (as Ex. P. 3) as copy of the letter written by Shri S.L. Kapur, Registrar of the Cooperative Societies and Administrator of MARKFED, to Shri O.G. Adya, Chairman of the SUGARFED and the contents of the said letter were not the same as the contents of the letter Ex. P.W. 8/12 subsequently produced. The District Judge has also stated that MARKFED had brought on record Ex. RW. 12/1 and its original (marked D3) in support of its assertion that Ex. P.W. 8/12 is not the correct copy of the communication addressed by Shri S.L. Kapur to Shri O.G. Adya and that the plaintiff has not brought on record the document from which the copy Ex. P.W. 8/12 could have been prepared. In these circumstances, the District Judge has held that the possibility of Ex. P.W. 8/12 having been fabricated could not be ruled out.

As regards document No. 2 (Exhibit P.W. 8/14), the letter dated May 4, 1975 from the Establishment Officer of MARKFED, the District Judge has pointed out that the said letter bears the signatures of Shri Tarlochan Singh. Shri D. Justine R.W. 9 and the Establishment Officer, Shri P.S. Saini, have been examined to prove that Shri Tarlochan Singh was not the Establishment Officer of MARKFED after February 1974 and that at the time when the said document is said to have been sent Shri Justine was the Establishment Officer in MARKFED. It has also been stated by the District Judge that in the document Ex. P.W. 8/14 the telephone numbers of MARKFED are shown as 21681 to 21685 and the telex code is given as 0395 and that Joginder Singh Manocha R.W. 5 has been examined to prove that telephone numbers 21681 to 21685 were given to MARKFED in place of Telephone numbers of 27366, 27234 and 27235 on April 15, 1976 and that B.S. Nayyar R.W. 6 has been examined to prove the change of

A Telex Code number from 039 to 0395 after March 7, 1980.

Having regard to the aforesaid evidence produced before him, the District Judge has stated that on May 4, 1975 when the letter Ex. P.W. 8/14 is said to have been sent neither Shri Tarlochan Singh was serving as the Establishment Officer nor could the letter head on which it was written have been available because it would have been printed only after March 7, 1980. Since no evidence was brought on record by the plaintiff to explain these discrepancies, the District Judge has come to the conclusion that the document (Exhibit P.W. 8/14) was not prepared at the time when the same is purported to have been done nor had it been signed by the person who is stated to have signed.

As regards document No. 3 (Exhibit P.W. 8/29), the District Judge has found that the order dated September 5, 1983 bears the signatures of Shri J.N. Vashisht described as Joint Registrar (Planning) and that MARKFED had examined Shri J.N. Vashisht as RW 11 and he has stated that he had never worked as Joint Registrar (Planning) and he had not heard any appeal filed by the plaintiff and that he has categorically stated that the order Ex. PW 8/29 was not passed by him and it does not bear his signatures. The service book of Shri J.N. Vashisht has also been produced to prove that he was not posted as Joint Registrar (Planning) on the date on which the order is stated to have been passed by him. In view of the said evidence, the District Judge has stated that document No. 3 (Exhibit P.W. 8/29) is a false and fabricated document.

As regards the note (Exhibit P.W. 8/19) dated April 26, 1977 of the Chief Minister, Punjab and another note dated April 22, 1977 of the Chief Minister, the District Judge has stated that Exhibit P.W. 8/19 is a photo copy which has been attested as a true copy like other documents by Kishan Chand who, in his statement as the Court Witness, has denied his signatures on the attestation and that the plaintiff has not cared to bring on record the original of the said document and, therefore, in the absence of the original of the document and since the attestation is not proved it was difficult to record a finding in favour of the plaintiff regarding the authenticity of the said document. According to the District Judge the position was not different as regards the note dated April 22, 1977.

A copy of the said report of the District Judge was furnished to the plaintiff and he has submitted his objections against the same. The plaintiff

is represented by Shri J.D. Jain, Advocate. He has submitted an application for discharging his advocate but it does not contain an endorsement of "no objection" by Shri Jain. Shri Jain has not been attending the Court for some time. He was not present in the court when the appeal was taken up ever since the order dated February 7, 1996 was passed. In the absence of Shri Jain it has not been possible to pass any order on the application for discharge submitted by the plaintiff. We have, however heard the plaintiff who is present in person in support of his objections on the report submitted by the District Judge.

We have carefully considered the said objections against the findings recorded by the District Judge in the light of the evidence produced before him. The objections raised by the plaintiff are without any substance and do not detract from the finding recorded by the District Judge in his report which are fully supported by the evidence adduced before him. We, therefore, accept the said findings.

As a consequence to the acceptance of the findings recorded by the District Judge, it must be held that no order was passed by the Joint Registrar (Planning) on the appeal of the plaintiff on September 5, 1983 and since the order (Exhibit P.W. 8/29) that was submitted by the plaintiff and which has been relied upon by the Addl. District Judge as well as the High Court to hold that the suit was within limitation, is a false and fabricated document, it must be held that the suit filed by the plaintiff on October 28, 1983 to assail the resolution of SUGARFED dated December 20, 1977 was barred by limitation.

Even on the merits, the plaintiff cannot succeed in view of the fact that his case that after the order dated June 12, 1973 he continued to be in employment of MARKFED and that he was on deputation in SUGARFED is based on Exhibit P.W. 8/12 and Exhibit P.W. 8/14. In Exhibit P.W. 8/12 the word "Shri Aulakh will be an employee of Marketing Federation but will work in Punjab State Federation of Co-operative Sugar Mills Ltd. till he is recalled" have been found to have been interpolated in place of the words "However, Shri Aulakh will be working as a wholetime employee of the Punjab State Federation of Co-operative Sugar Mills Ltd." Similarly the letter (Exhibit P.W. 8/14) dated May 4, 1975 sent by the Establishment Officer, MARKFED to the Chairman, SUGARFED wherein the plaintiff has been described as Plant Protection Officer,

A MARKFED and it is stated that "he would continue in SUGARFED till he is recalled" has been found to be false and fabricated. There is no reason why after his discharge from MARKFED under order dated June 12, 1973 the plaintiff should have been continued to be in employment of MARKFED especially when by order dated November 8, 1973 he had been  
B appointed as Plant Protection Officer in SUGARFED on probation and subsequently on regular basis under order dated February 7, 1975, Shri Nehra has also referred to the letter dated September 10, 1974 from the Registrar, Cooperative Societies addressed to the plaintiff whereby it was intimated that the plaintiff was a directly appointed employee of SUGARFED and not a deputationist from MARKFED. As regards the  
C note (P.W. 8/19) of the Chief Minister, Punjab dated April 26, 1977 on which the reliance has been placed by the Addl. District Judge and the High Court, it may be stated that there is inconsistency in the case of the plaintiff in this regard in view of two notes, one dated April 22, 1977 and the other dated April 26, 1977. In the Writ Petition he had relied upon the  
D note of the Chief Minister of Punjab dated April 22, 1977 while in the present suit he has relied upon the note of the Chief Minister dated April 26, 1977. The plaintiff has not been able to produce the originals of either of these two notes of the Chief Minister of Punjab. No credence can be attached to the document Ex. P.W. 8/19 that was produced by the plaintiff which purports to be a copy attested to be a true copy by Kishan Chand  
E who has denied having so attested the said document.

Taking into consideration the facts and circumstances referred to above, we are of the view that the finding recorded by the Addl. District Judge and the High Court that even after his discharge from MARKFED  
F under order dated June 12, 1973 the plaintiff continued to be an employee of MARKFED till December 20, 1977 when the impugned resolution was passed by the SUGARFED and that he was only deputation with the SUGARFED cannot be sustained. It must, therefore, be held that the suit filed by the plaintiff had been rightly dismissed by the trial court.

G Before we conclude, it is necessary to state that MARKFED had filed an application in the High Court under Section 195 Cr.P.C. for initiating criminal proceedings against the plaintiff in having produced the forged documents. The said application was dismissed by the High Court by the impugned judgment while dismissing the second appeal of  
H MARKFED. Since it has been found that the documents marked as Ex.

P.W. 8/12, Ex. P.W. 8/14 and Ex. P.W. 8/29 that were produced by the plaintiff were false and fabricated documents a case has been made out for initiating criminal proceedings against the plaintiff. The Registrar of the High Court of Punjab and Haryana is directed to taken the necessary steps to fix a criminal complaint in the competent court in that regard. A

For the reasons aforementioned, the appeal is allowed, the impugned judgment of the High Court of Punjab and Haryana dated February 21, 1994 in R.S.A. No. 2240 of 1991 as well as that of the Addl. District Judge, Chandigarh dated October 11, 1991 in C.A. No. 197 of 1990 (SS) are set aside and the suit filed by the plaintiff is dismissed. The appellants will be entitled to the costs from the plaintiff, respondent No. 1 herein. B

V.S.S.

Appeal allowed. C