

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.1680 of 1990
Date of Decision-25.02.2016**

Avtar Singh

... Appellant

Versus

Kans Raj and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sankalp Sagar, Advocate for the appellant.

Mr. Harsh Manocha, Advocate for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Defendant-Avtar Singh has filed this Regular Second Appeal against the judgment and decree dated 07.03.1990 whereby judgment and decree dated 27.10.1986 passed by Sub Judge, Second Class, Ludhiana was set aside by accepting the appeal partly and decreeing the suit of the plaintiff-respondent No.1 for declaration against defendant No.1. Defendant was directed to deliver the tractor to the plaintiff. If there was no tractor with the defendant, then the decree for recovery of Rs.11312/- was passed as price of the tractor as entered in writing Ex.P-2.

[2]. Plaintiff filed suit for recovery of Rs.1000/- as compensation for use of tractor and for direction to the defendant to deliver back the tractor bearing No.PUP 6100 ESCORT 37 HP and for declaration that the agreement dated 01.02.1983 was illegal, null and void. Plaintiff alleged that he was owner of the

tractor in question and he had let out the tractor on rent for Rs.1000/- to defendant No.1 for a period of 3 months. Defendant No.2 had given guarantee for the aforesaid transaction on 01.02.1983. When the plaintiff went to collect the rent from defendant No.1 on 05.06.1983, he refused to pay the same and further disclosed that there was an agreement of mortgage of the said tractor for a sum of Rs.9000/- instead of agreement of lease. Defendant No.2 is real brother of the plaintiff and is friend of defendant No.1. On the undertaking of defendant No.2, the tractor was let out to defendant No.1. The agreement dated 01.02.1983 was got signed from the plaintiff on the basis of misrepresentation of the defendants. The writing dated 01.02.1983 was claimed to be illegal, null and void. Defendants were liable to pay the amount of Rs.1000/- as rent from May 1983.

[3]. Suit was contested by the defendants. Defendant No.1 denied about taking the tractor on any terms and conditions. He told the plaintiff that he had got the mortgage executed for a consideration of Rs.9000/- of the tractor. No such document dated 01.02.1983 as alleged was ever executed by the defendants in favour of plaintiff. The allegations of the plaintiff were denied altogether. Defendant No.2 in his stand denied that he ever stood guarantor for defendant No.1 in respect of tractor. He also denied other allegations of the plaintiff.

[4]. After filing replication, both the parties went to trial on following issues:-

“1. Whether the agreement dated 01.02.1983 is illegal and void? OPP

2. Whether the plaintiff is entitled to get back the tractor? OPP

3. Whether the plaintiff is entitled to recover any amount as compensation? OPP

4. Whether the suit in the present form is not maintainable? OPD

5. Relief.”

[5]. Parties led their respective evidence to prove their case. Plaintiff got examined Partap Singh as PW-1. Plaintiff himself appeared as PW-2. On the other hand, defendant No.1 appeared as DW1, whereas defendant No.2 did not examine any witness.

[6]. Claim of the plaintiff was that the alleged agreement dated 01.02.1983 was the result of fraud and misrepresentation as he had given the tractor to defendant No.1 on rent only, whereas in place of rent agreement, defendant No.1 fraudulently got executed agreement of mortgage of the tractor. The agreement was claimed to be illegal, null and void. Plaintiff got exhibited Registration Certificate as Ex.P1 and agreement dated 01.02.1983 as Ex.P2. According to plaintiff, on 01.02.1983 the tractor was let out to defendant No.1 on monthly rent of

Rs.1000/-. Plaintiff had recovered rent of two months. Trial Court observed that the plaintiff had not placed on record any rent agreement dated 01.02.1983, therefore factum of leasing out the tractor to defendant No.1 could not be believed for want of evidence. In respect of declaration that the agreement of mortgage was illegally executed, since the defendants have denied such agreement having executed between the parties, therefore, the trial Court held that no such declaration could be granted. After recording findings under different issues against the plaintiff except issue No.4 where suit was held maintainable, the suit was dismissed vide judgment and decree dated 27.10.1986.

[7]. Plaintiff filed appeal before the Additional District Judge, Ludhiana against the judgment and decree of the trial Court. The Lower Appellate Court vide judgment and decree dated 07.03.1990 accepted the appeal by accepting execution of writing Ex.P2 as mortgage deed. Hence the present appeal came to be filed in this Court.

[8]. No substantial question of law has been framed nor the same could be pointed out during the course of arguments.

In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I**, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC,

framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[9]. I have heard the arguments of both the learned counsel for the parties and have gone through the record as well.

[10]. Plaintiff has sought declaration that the document of lease was wrongly transformed into mortgage of tractor. Mortgage was claimed to be null and void. The document which proposed to mortgage the tractor was claimed to be void and in fact the tractor was leased out for a period of three months @ of Rs.1000/- per month to the defendant. Defendant should have returned the tractor and should have paid the amount of Rs.1000/- for use of the tractor.

[11]. Defendant No.1 has denied the claim of the plaintiff in toto. Defendant No.2 was guarantor. He has also denied that he ever stood as guarantor. Trial Court rejected the suit on the

ground that execution of agreement was not proved, therefore, no such declaration in respect of alleged agreement dated 01.02.1983 could have been given. The lower Appellate Court accepted the suit partly and held that defendant should deliver back the tractor to the plaintiff and in case the tractor was not with him he should compensate the plaintiff by paying Rs.11312/-.

[12]. Apparently, plaintiff himself had not accepted legality and correctness of the document. Learned counsel for the plaintiff has asserted that previously tractor in question was owned by Basanta Singh. He sold the same to the plaintiff. Plaintiff let out the tractor to defendant No.1 on the guarantee of defendant No.2 at the rental of Rs.1000/- per month vide agreement dated 01.02.1983. Defendant No.2 is brother-in-law of the plaintiff. Plaintiff intended to execute writing of lease of tractor vide writing dated 01.02.1983 but defendants being friends took advantage of illiteracy of the plaintiff and got the mortgage of the tractor. Plaintiff never wanted to mortgage the tractor to defendant No.1 for the alleged consideration of Rs.9000/-, nor he received the mortgage amount. Defendant No.1 took delivery of the tractor from the plaintiff. Partap Singh PW-1 stated that when he went to flour mill of the plaintiff-Kans Raj in order to hire his tractor for agricultural purposes, defendants No.1 and 2 were sitting with the plaintiff. Plaintiff told him that he had let out the tractor to defendant No.1 for a monthly rent of Rs.1000/-. Writing Ex.P2 was signed by him. Defendant No.1 and the plaintiff also signed

the writing Ex.P2. Defendant No.2 also signed the writing. Defendant No.1 has denied the execution of such writing in toto and has also denied having taken tractor from the plaintiff either on hire or on mortgage. He also denied that he ever wrote any writing Ex.P2. Possession of tractor with him was also denied. Defendant in his cross examination has admitted that the writing Ex.P2 bears his signatures as well as signatures of defendant No.2. Tractor was previously owned by Sunder Singh son of Basanta Singh as per Registration Certificate Ex.P1. It was sold by Sunder Singh by way of executing affidavit to the plaintiff on 19.01.1981. A receipt was also executed in a sum of Rs.13500/- towards sale price of the tractor. Receipt has been marked as 'A' on record.

[13]. Once the signatures of defendants No.1 and 2 are admitted on the writing Ex.P2, defendant No.1 could not have denied the factum of taking possession under an agreement which according to the plaintiff was of lease. Defendant has denied both the eventualities in respect of agreement, whether it was a lease transaction or a mortgage deed but being signatory to the agreement, he cannot deny the execution of said agreement. The ownership of the plaintiff being vendee from Sunder Singh cannot advance the case of either side because for the purposes of creating lease, status of the owner could have been appreciated. Even, if Mark 'A' and Mark 'B' remained unproved, the admission of defendant No.1 would suffice to prove

the nature of transaction executed between the parties. The Lower Appellate Court has rightly pointed out that defendant had taken the tractor on rent vide writing Ex.P2 from the plaintiff on 01.02.1983 after satisfying the title of the plaintiff. The tractor was never mortgaged to defendant No.1. No evidence was led that the plaintiff realized the rental for three months from defendant No.1 and tractor in possession of defendant No.1 being mortgagee of Rs.9000/-. Part acceptance of the appeal by the Lower Appellate Court, thereby decreeing the suit for declaration against defendant No.1 and directed him to deliver the possession of the tractor to the plaintiff and in case tractor was not found with him a decree for Rs.11312/- as granted was lawful. Since prayer of stay was declined by this Court on 08.08.1996, therefore on a pointed question as to whether anything remains in the appeal as on date could not be answered by any of the party for want of instructions.

[14]. Having taken note of the aforesaid situation, I find that no substantial question arises for consideration of this Court nor the same has been formulated by the appellant. Resultantly, this appeal is found to be totally bereft of merit and the same is accordingly dismissed.

(RAJ MOHAN INGH)

JUDGE

25.02.2016

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