

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

**RSA No.2826 of 2013 (O&M)
Decided on: 21.04.2016**

Charan Singh

....Appellant

Versus

Bahadur Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Gurbir Singh Toor, Advocate
for the appellant.

Mr. Amaninder Singh, Advocate
for the respondents.

REKHA MITTAL, J.

The present appeal assails the consistent findings recorded by the Courts below whereby suit filed by the appellant was dismissed by the learned trial Court and the findings recorded by the trial Court were affirmed in appeal without any variance.

Charan Singh, the unsuccessful plaintiff claimed himself to be owner in possession of one tractor Farmtrac bearing Chasis No.BSL311295 Engine No.313496, Model 2002 and further sought the relief of permanent and mandatory injunction on the premise that the tractor in question was sold by respondents No.1 to 3 in favour of the plaintiff for a sum of Rs.3,10,000/- and executed an affidavit on a stamp paper which was got attested from Sh. Gandhi Singh, Advocate, Notary Public, Dhuri on 24.01.2003. It is further averred that the plaintiff is in possession of the tractor and has been using the same but the defendants failed to perform their part of the agreement to get it registered and deliver the Registration Certificate to the plaintiff.

The learned trial Court, on consideration of pleadings, issues framed for determination, evidence adduced on record and in the light of rival submissions made by counsel for the parties non-suited claim of the plaintiff and dismissed the suit leaving the parties to bear their own costs. As has been noticed hereinbefore, the judgment and decree passed by the trial Court was affirmed in appeal by the Additional District Judge, Sangrur.

Counsel for the appellant has submitted that the findings recorded by the Courts below are the result of non-application of mind and misappreciation of evidence, therefore, the judgments suffer from perversity and liable to be set-aside. It is argued that though the affidavit Ex.P-1 bears the date 08.12.2002 but the same was got attested from Notary Public on 24.01.2003 after the tractor in question was purchased by the defendants vide bill Ex.P-2 dated 14.12.2002. It is further argued that the mere fact that the Notary Public failed to make an entry in his register *qua* attestation of the affidavit Ex.P-1 is neither sufficient to ignore the attestation nor to discard testimony of Sh. Gandhi Singh, Notary Public.

Counsel for the respondents, on the contrary, has supported the judgments passed by the Courts below with the submissions that as respondents No.1 to 3 were not owner in possession of tractor on 08.12.2002, there was no occasion for them to enter into any such agreement by way of executing an affidavit in favour of the appellant. It is further argued that mere marking of affidavit as Ex.P-1 is not sufficient to dispense with proof in accordance with law as the original

document has not seen the light of day and no permission was sought for proving the same by way of secondary evidence. Another submission made by counsel is that since Sh. Gandhi Singh, Notary Public did not make an entry in his records regarding attestation of the affidavit in question, the same is sufficient to prove that the respondents never got the affidavit attested from the Notary Public.

I have heard counsel for the parties, perused the records particularly the judgments impugned in the appeal.

It is an undisputed position of the case that the tractor in question was purchased by the respondents from M/s. Shiva Tractor and Automobiles, Dhuri on 14.12.2002. On the affidavit, the date has been mentioned as 08.12.2002. There is no entry in the records of Sh. Gandhi Singh, Notary Public in regard to attestation of the affidavit on 24.01.2003. The original affidavit was not produced on record. No permission was sought much less granted to prove the original document by way of secondary evidence. The respondents seriously contested claim of the appellant/plaintiff in regard to sale of the tractor in question, execution of affidavit and receipt of an amount of Rs.3,10,000/-.

Keeping in view glaring deficiencies in the case of the appellant noticed by the Courts below, I find myself unable to accept submissions of the appellant that the judgments passed by the Courts below suffer from illegality much less perversity warranting intervention in exercise of jurisdiction under Section 100 of the Code of Civil Procedure, in view of the scope of intervention only in the

circumstances that a substantial question of law arises for hearing the appeal on merits.

For the foregoing reasons, the appeal sans merit and the same is accordingly dismissed leaving the parties to bear their own costs.

21.04.2016
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(REKHA MITTAL)
JUDGE