

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

RSA-556 of 2016 (O&M)

Date of decision: 23.05.2016

Ganesh Kohli

...Appellant

Versus

Satish Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. G.S. Nagra, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

CM-1533-C-2016

Keeping in view the averments made in the application which is supported by an affidavit, the same is allowed. The delay of 397 days in filing the present appeal is hereby condoned, subject to all just exceptions.

RSA-556-2016

By filing the present Regular Second Appeal, the appellant-defendant No.4 has assailed the judgment and decree dated 26.03.2012, passed by Civil Judge (Jr. Divn.), Nakodar,

vide which the suit for decree of recovery along with mandatory injunction filed by the plaintiff/respondent No.1 was decreed and the judgment and decree dated 01.08.2014, passed by learned Addl. District Judge, Jalandhar, whereby the appeal filed by the appellant and other defendants (respondent Nos. 2 to 4 herein) was dismissed.

2. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellant-defendant No.4.

3. It is contended that both the Courts below have misconstrued the material facts on record. The respondent No.1 has failed to prove that the truck in question i.e. RJ-31-G-3871, had been snatched/stolen by the appellant. The family settlement dated 08.08.2004, Ex.D1 does not bear the signature of the appellant, however, both the Courts below have ignored the same. The respondent No.1 had alleged that the truck was stolen by the appellant including respondent Nos. 2 to 4 but neither any police complaint nor the matter was reported to Truck Union, Nakodar.

4. Heard, the learned counsel for the appellant and

perused the record carefully.

5. In the present case, the main dispute is between the appellant and respondent No.1 regarding the truck bearing registration No.RJ-31-G-3871. As per the case of appellant, initially the truck in question was in the name of respondent No.1 but after the family partition, the same had fallen to the share of respondent No.2/defendant No.1 on 08.08.2004 and thereafter, the same was being plyed by him through Truck Union, Nakodar. The bills of freight were also coming in the name of respondent No.2. The respondent No.1/plaintiff used to bring the cheque of freight in the name of respondent No.2. A bare perusal of the document relied upon by the appellant i.e. compromise deed, Ex.D1, reveals that it only refer to two trucks. The attesting witness of Ex.D1, Parmod Bhardwaj, who appeared as DW3 has admitted that he had never seen the scribe of Ex.D1. Further respondent No.2 during his cross examination has admitted that no partition of moveable or immovable property has taken place between the family members. Furthermore, the compromise deed Ex.D1 is an unregistered document and hence, cannot be taken into consideration being unauthenticated document. The respondent No.1 had duly

proved his ownership, vide registration certificate Ex.P1, whereas, respondent No.2 had duly admitted that the truck in question was plyed through Truck Union, Nakodar, and denied the fact that the truck was stolen and thus his different stand belies his story.

6. In view of the above discussion, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below neither suffer from any perversity or illegality nor any material point has been left un-addressed.

7. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for.

Dismissed.

23.05.2016

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(JITENDRA CHAUHAN)
JUDGE