

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

RSA No.1066 of 2014 (O&M)
Date of decision: 18.01.2017

M/s S.S. Trading Company

-----Appellant(s)

Vs.

Pritam Singh & another

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. P.S. Badhran, Advocate
for the appellant.

HARI PAL VERMA, J. (Oral)

Appellant-defendant no.1 has filed the present Regular Second Appeal against judgment and decree dated 27.1.2014 passed by learned Additional District Judge, Yamuna Nagar at Jagadhri whereby his appeal against judgment and decree dated 27.9.2011 passed by learned Additional Civil Judge (Sr. Division), Yamunanagar at Jagadhri was dismissed.

Briefly stated, the respondent no.1-plaintiff had filed a suit for mandatory injunction against the appellant-defendant no.1, stating therein that he is an agriculturist and used to supply agricultural produce to the appellant-defendant no.1, who is a commission agent. An amount of Rs.2,50,223/- was due towards appellant-defendant no.1 upto the year 2002. He requested the appellant-defendant to make the payment of the

said amount, but to no avail. Therefore, he served a legal notice dated 10.6.2004 upon the appellant-defendant. The issuance of legal notice annoyed the appellant-defendant and he threatened the respondent-plaintiff of dire consequences. On 18.8.2006, when the respondent-plaintiff was going towards Ladwa on his tractor No.HR-2P-6380 and reached near Village Radaur, appellant-defendant no.1 along with some anti-social elements reached there and started beating and abusing the plaintiff-respondent and snatched his tractor forcibly. The plaintiff-respondent lodged a complaint with Police Station Radaur, but no action was taken. Rather, the plaintiff-respondent was pressurized to compromise the matter. He was told that the matter pertains to the jurisdiction of Police Station Ladwa and therefore, the Police Station Radaur will not take any action. Thereafter, the plaintiff-respondent moved a complaint to SP, Yamunanagar, but no action was taken against the appellant-defendant. Finally, the plaintiff filed a complaint under Sections 323, 504, 506, 392, 34 IPC as well as the present suit for mandatory injunction for recovery of the tractor.

The suit filed by the plaintiff-respondent was resisted by the appellant-defendant by taking preliminary objections, inter-alia, of maintainability, *estoppel*, *locus standi*, cause of action and concealment of material facts. However, on merits, it was pleaded that the respondent-plaintiff used to sell his crops to appellant-defendant. He sold his crops to the appellant-defendant upto 2002, but thereafter, he stopped. It was further pleaded that the respondent-plaintiff had taken an advance from the appellant-defendant and an amount of Rs.5,50,000/- was outstanding against the respondent-plaintiff and his son Ved Pal. Since the

respondent-plaintiff was to pay the said amount, he handed over the keys of the tractor to the appellant-defendant voluntarily. The allegation of altercation with the respondent-plaintiff was denied. From the pleadings of the parties, learned trial Court formulated following issues:-

- “1. Whether plaintiff is owner of the tractor bearing registration No.HR02P-6380 and is entitled for the relief of mandatory injunction against the defendants, on the ground, as stated in the plaint? OPP.*
- 2. Whether the suit is not maintainable in the present form? OPD.*
- 3. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD*
- 4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct file the present suit?” OPD.*
- 5. Relief.”*

Learned trial Court vide judgment 27.9.2011 decreed the suit for mandatory injunction filed by the respondent-plaintiff and directed the appellant-defendant no.1 to hand over the tractor No.HR02P-6380 to the respondent-plaintiff within a period of one month from the date of the judgment. Learned trial Court observed that no doubt, the appellant-defendant has claimed that the respondent-plaintiff had taken advance from him, but no cogent evidence to this effect was produced on record. The appellant-defendant has proved receipts Ex.D1 to Ex.D11 claiming that an amount of Rs.4,32,000/- was due from the respondent-plaintiff as on 31.3.2011 and an amount of Rs.2,21,300/- was due from Ved Pal son of the plaintiff as on 31.3.2011, but the cash book and the ledger do not show that any amount was advanced by the appellant-defendant to the

respondent-plaintiff and his son. It was further observed that it cannot be discovered whether the accounts were kept in regular course of business or if there were any interpolations or whether the interpolations were in a different ink or whether the accounts were in the form of a book with continuous page numbering. Hence, when original books have not been produced, it is not possible to know whether the entries related to payment of advance or the entries were made in regular course of business. In the case in hand, since original account books were not produced for comparison nor their non-production was explained, the version of the appellant-defendant was not acceptable. Even otherwise, if the appellant-defendant had advanced any amount to the respondent-plaintiff, some agreement or receipt should have been executed by him, but no such document is produced on the case file. Even if some amount was due to the respondent-plaintiff from the appellant-defendant, the appellant-defendant had no right to snatch the tractor from the respondent-plaintiff. The version of the appellant-defendant that the tractor was handed over to respondent-plaintiff voluntarily in discharge of his outstanding loan, was not believed, as firstly, the tractor was under finance by ICICI bank, for which, the respondent-plaintiff had not paid even a single instalment after taking delivery of the tractor, towards repayment of the loan amount, secondly, on snatching the tractor by the appellant-defendant, the respondent-plaintiff had immediately informed the police about the incident, wherein the police had given time to the parties to compromise the matter.

Feeling aggrieved from the aforesaid judgment and decree

dated 27.9.2011 passed by learned Additional Civil Judge (Senior

Division), Yamuna Nagar at Jagadhri, the appellant-defendant no.1 preferred an appeal against the same. However, the said appeal was dismissed by Additional District Judge, Yamuna Nagar at Jagadhri vide judgment and decree dated 27.1.2014.

Still not satisfied, the appellant-defendant no.1 has filed the instant appeal challenging the judgment and decree dated 27.1.2014 passed by the Additional District Judge, Yamuna Nagar at Jagadhri formulating following substantial questions of law in this appeal:-

- “a) Whether the impugned judgments and decrees are based upon misconstruction of documents proved on record, perverse reading of evidence, misapplication of settled law and irrelevant considerations?*
- b) Whether the impugned judgments and decrees are illegal, null and void and thus liable to be set aside?*
- c) Whether grave and manifest injustice has been caused to the plaintiff?”*

Learned counsel for the appellant-defendant has argued that the Courts below have wrongly discarded the evidence Ex.D2 to Ex.D10 and Ex.D12 to D24 on the ground that original account books were not produced in the Court, but the Courts below have not taken into consideration the fact that when the aforesaid documents were exhibited by the appellant, no objection regarding admissibility of the same was raised either by the respondent-plaintiff or by the learned trial Court, which led to an inference that the respondent-plaintiff has waived his right and therefore, these documents were not required to be led into evidence. Similarly, the statement of witnesses DW-1, DW-2 and DW-3, who have specifically deposed regarding handing over of the tractor by the

respondent-plaintiff to the appellant-defendant voluntarily in lieu of the money advanced in past, has not been considered.

I have heard learned counsel for the appellant and perused the record.

One of the pleas, as raised by the appellant-defendant is that the respondent-plaintiff had voluntarily handed over the tractor, whereas the case put forward by the respondent-plaintiff is that the tractor in question was snatched from him forcibly, for which, the matter was immediately brought to the notice of the police and even complaint was filed, which is pending before the competent Court. If the tractor had been handed over by the respondent-plaintiff to the appellant-defendant voluntarily, the RC and other documents would have also been handed over to him, which the appellant-defendant denied to have received. In the case in hand, the appellant-defendant has claimed that the respondent-plaintiff had taken advance from him and he relied upon receipts Ex.D1 and Ex.D11 as well as copies of ledger Ex.D2 to Ex.D10 and Ex.D12 to Ex.D24 to show that transaction had taken place between the respondent-plaintiff and appellant-defendant, but these documents nowhere show that any amount was ever advanced by the appellant-defendant to the respondent-plaintiff or his son. These documents only refer to the entries regarding sale of crop of the respondent-plaintiff and his son to the appellant-defendant. Since the original account books have not been produced, it is not possible to know whether the entries related to payment of advance or the entries were made in regular course of business. Even if ,for the sake of arguments it is accepted that any amount was payable by the respondent-plaintiff to the appellant-defendant, the appellant-

defendant had no right to snatch his tractor in the manner in which it has been taken away. The appellant-defendant has failed to produce any document regarding advancement of any loan to the respondent-plaintiff. Therefore, the story put forward by the appellant-defendant that the tractor was handed over to the appellant-defendant voluntarily has rightly been discarded by the Courts below, more particularly when the respondent-plaintiff had filed complaints against the appellant-defendant.

Therefore, no exceptions can be taken to the concurrent findings of facts recorded by the Courts below. Accordingly, no substantial questions of law arise in this appeal.

In view of the aforesaid, this Court finds no merit in this appeal.

Dismissed.

January 18, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No