

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.306 of 2017
Date of decision:30.3.2017**

Jagroop Singh

...Appellant

Versus

Darshan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.P.S.Bawa, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts, recorded by both the learned courts below, whereby the learned Additional District Judge, vide his impugned judgment and decree dated 16.7.2016, while dismissing the first appeal of the plaintiff-appellant, upheld the impugned judgment and decree dated 9.2.2015 of the learned trial Court.

Succinctly put, relevant facts necessary for disposal of instant appeal, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that the present suit for decree of permanent injunction restraining defendant No.1 from transferring/ alienating the route permit for Zira-Mallanwala via Botian wala Kachar Bhan Baltoha Bhagoki Gurditti wala (one permit with four R/Ts daily) bearing Sr.No. 139/ Reg./ M/89 of Mini Bus bearing RC No. PAB-4090 and the route permit in question was issued by the Transport Authority/defendant No.3 in the name of the defendant No.1 for Zira Mallanwala via mentioned above. It had been averred that on 23.12.87, defendant No.1 sold the vehicle along with route

permit in question to defendant No.2 vide an affidavit dated 23.12.87 and thereafter defendant No.2 had sold the same to the plaintiff after receiving entire payment from him. Since then the plaintiff was plying his Mini Bus in question on the said route as owner thereof. Thereafter, defendant No.2, alongwith the plaintiff, moved a joint application before defendant No.3 for transfer of vehicle alongwith rights of permit in question who vide meeting held on 14.3.2000 allowed the transfer Mini bus in question with permit in question from the name of Darshan Singh-defendant No.1 in the name of the plaintiff. Now defendant no.1 was bent upon to transfer/alienate the vehicle with route permit in question to anybody else in order to harass the plaintiff and in order to defeat the rights of the plaintiff, in the near future and further defendant No.3 was bent upon to renew the route permit in question in the name of defendant No.1 rather than the plaintiff in the near future for which the defendants had got no right to do so. It was further averred that the plaintiff alongwith some respectables of the locality approached and requested defendant No.1 not to transfer/alienate the vehicle with route permit in question to anybody else but the defendant No.1 did not pay any heed to the request of the plaintiff and further the plaintiff and others approached and requested defendant No.3 not to renew the route permit in question in the name of defendant No.1 or any other person except plaintiff but defendant No.3 did not listen to the request of the plaintiff and ultimately, the defendants flatly refused to admit the claim of the plaintiff over the vehicle with permit in question.

Having been put to notice, defendant No.1 put in appearance and filed his contesting written statement, raising more than one preliminary objections. Defendant No.2 filed his separate written statement on the

similar lines as that of defendant No.1, contesting the suit of the plaintiff. Defendant No.3 also filed his separate written statement, raising more than one preliminary objections. Plaintiff did not file any replication.

On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the suit of the plaintiff is false, frivolous and vexatious ? OPD
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff failed to prove his case. Accordingly, suit of the plaintiff for permanent injunction was dismissed, vide impugned judgment and decree dated 9.2.2015.

Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 16.7.2016. Hence this second appeal, at the hands of the unsuccessful plaintiff.

Heard learned counsel for the appellant.

Facts are hardly in dispute. Appellant-plaintiff miserably failed to comply with the conditions for transferring the permit in his favour by placing on record No Dues Certificate and Fitness Certificate etc. which were the conditions precedent for final transfer of route permit in favour of the plaintiff-appellant. It is also not in dispute that until and unless the appellant would have fulfilled the conditions of transfer of route permit in his favour, he would have no case either on facts or in law.

When confronted with the above-said factual as well as legal aspect of the matter, learned counsel for the appellant had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **T.K.Mohammed Abubucker (D) Thr. LRs and others Vs. P.S.M. Ahamed Abdul Khader and others, 2009(14) SCC 224**, Division Bench judgment of this Court in **Pramjit Singh Vs. State Transport Appellate Tribunal, Punjab, Chandigarh and others, 2008(3) RCR (Civil) 745** and judgment of Madras High Court in **M/s Ajantha Travels, Pondicherry Vs. State Transport Authority, Pondicherry and another, 1983 AIR (Madras) 365**.

Before arriving at its judicious conclusion, the learned first appellate court re-examined, considered and appreciated the true facts of case as well evidence available on record in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in

paras 14 and 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“The main contention raised by the learned counsel for the plaintiff is that the plaintiff has purchased the said permit alongwith Mini Bus in question from defendant No.2, who had purchased the same from defendant No.1. This is not denied by any of the parties that originally defendant No.1 Darshan Singh was owner in possession of the permit in question along with bus bearing registration No.PAB-4090. The other contention raised by learned counsel for the plaintiff is that defendant No.1 had transferred the permit in question to defendant No.2 and thereafter, defendant No.2 sold the permit and the bus to plaintiff and whereas ultimately, defendant No.2, and plaintiff, moved joint application for transfer of the bus and route permit in favour of the plaintiff. The moving of joint application by defendant No.2 and plaintiff for transferring the said permit/bus in favour of the plaintiff is not denied even by defendant No.3 i.e. Regional Transport Authority, Ferozepur, who is the competent authority. The perusal of the order Ex.P-1 also reveals that the application for transfer of Mini Bus, alongwith rights of permit in question were allowed. The only stand taken by the respondent No.3 is that the said application was allowed subject to certain conditions, which the present plaintiff had failed to fulfill. In this regard he has stated that the plaintiff had failed to no due certificate, fitness certificate and no duce certificate of financier, which was a condition precedent for the final transfer of the rouge permit in favour of the plaintiff. The perusal of the entire evidence on record was clearly indicate that the plaintiff has not placed any material on record to prove that the said conditions were infact complied with by the plaintiff. DW-3 Sukhwinder Pal Singh has stepped into witness box in order to candidly stated on oath that the plaintiff miserably failed to comply with the orders of Joint State

Transport Commissioner with the result that the bus permit still stood in the name of defendant No.1 Darshan Singh.

Apart from it, the plaintiff has admitted that he failed to pay the amount to defendant No.1 Darshan Singh qua the bus/permit in question. PW-1 Jagroop Singh has further stated that Darshan Singh was still owner of the permit bearing No.39. So much so Darshan Singh had already given legal notice to Mukhtiar Singh regarding the cancellation of power of attorney, so the entire crux of the matter is that the plaintiff has failed to fulfill the conditions of transfer as per the orders of Joint State Transport Authority and thereafter, the power of attorney was got cancelled. Now, the route permit stands in the name of Darshan Singh defendant NO.1 and the defendant NO.3 has to process the application for renewal only and not for any other purpose as per the directions of the original owner in their record who is non-else, but Darshan Singh. Therefore, the learned trial court has rightly held that the plaintiff was not entitled for injunction restraining the defendant No.1 to alienate the route permit in question to some third person or to restrain the defendant No.3 from renewing the route permit in question in the name of defendant No.1. Therefore, the learned trial court has rightly dismissed the suit of the plaintiff with costs. Thus, the findings of learned trial court are upheld.”

Learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. Learned counsel for the appellant could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil

Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179*.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

30.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No