

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

**RSA No.3795 of 2013 (O&M)
Date of Decision: March 08, 2018**

Lakhvir Singh

...Appellant

Versus

Mohinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ramesh Sharma, Advocate
for the appellant.

Mr. P.S. Bawa, Advocate
for the respondent

FATEH DEEP SINGH, J.

The plaintiff/Lakhvir Singh, now appellant had earlier filed against Mohinder Singh/defendant, now respondent a suit for issuance of mandatory injunction directing the defendant to put the plaintiff in possession of one tractor bearing registration No.PB03C-5409 make Mohindra DI-265. The claim is based on the contention that plaintiff is registered owner of this tractor and along with Joga Singh and Pargat Singh has started business of selling and buying of second hand tractors and that these persons had taken the tractor on some pretext and, thereafter, refused to return back the same and now it transpired that they had sold it to Mohinder Singh-defendant and, hence, the suit in question. The defendant in his stand taken in written statement took up the plea denying that the ownership of the tractor vests with the plaintiff and claimed that he has purchased the tractor from the plaintiff and his partner Joga Singh for sum of Rs.1,90,000/- and sale letter was also issued in this regard after receiving

Rs.10,000/- and the balance amount was to be paid on 26.10.2005 which was received by these persons and also issued receipt and necessary documents to this effect and denied the averments claiming that he had called upon the plaintiff side to get the vehicle transferred in his name upon receipt of balance consideration but he refused to do so. From the pleading of the parties the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the possession of tractor and can command upon the defendant to deliver the same to the plaintiff as claimed? OPP
2. Whether plaintiff has no cause of action to file the suit? OPD
3. Whether the suit of the plaintiff is not maintainable?OPD
4. Whether plaintiff is estopped by his own act and conduct from filing the suit? OPD
5. Whether plaintiff concealed any material fact from the court if so it what extent?OPD
6. Whether the suit is bad for non-joinder of necessary parties?OPD
7. Relief.

The plaintiff examined himself as PW1 and defendant has examined himself as DW1 leading to the judgment of trial Court dated 7.4.2012, whereby, suit of the plaintiff was dismissed. Upon appeal, the Court of learned Additional District and Sessions Judge, Fazilka too dismissed the appeal upholding the findings of the trial Court and that is how the parties are before this Court.

Heard learned counsel for the parties and perused the records of the case. Appreciating the submissions of the two sides, though the plaintiff had filed suit for mandatory injunction for the possession of tractor in question but as is in the pleadings and the rival stand of the two sides it is a case where ownership of the tractor is in dispute and being a

motor vehicle by virtue of Section 21 of Motor Vehicle Act 1988 (in short, 'the Act') falls within the category of '*light motor vehicle*' and the term owner is defined in Section 2(30) of the Act which is reproduced as below to lay emphasis:-

“owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement*, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

Though, PW1 Lakhvir Singh, Plaintiff in his cross-examination-in-chief by way of Ex.PA claims that he is owner of tractor in question bearing No.PB03C-5409 and though an issue regarding entitlement of possession by way of issue No.1 has been framed, onus lays upon the plaintiff to prove the same. Though, vital document i.e. Registration certificate of the vehicle is very essential and which has been placed on record as Ex.P1 and as per the entry/endorsement made thereon as Ex.P2 the same has been transferred in the name of Lakhvir Singh son of Roop Singh and which entry is dated 24.11.2005 when the suit in question has been filed much thereafter, on 15.2.2006 irrefutably shows that at the time of filing of suit the relevant entry is in the name of plaintiff. However, as has sought to be canvassed before this Court there is no such entry pertaining to the name of Joga Singh. Though, it is claimed that Joga Singh started business of sale of second hand tractors with the plaintiff which they carried on for 5-6 years. Learned Court below while

adjudicating on issue No.1 has taken pure lackadaisical approach into the matter and purely on the premise that during the cross-examination, the plaintiff admitted receipts Ex.D1 and Ex.D2 which do not bear his

signatures and on account of admission of relationship between plaintiff and Joga Singh had reached the conclusion that Joga Singh was partner of the plaintiff and that is what has led to decision on material issue No.1 in favour of defendant against plaintiff certainly is misconstruing of evidence and proposition of law. The testimony of Mohinder Singh DW1 does not in any manner enlists the case in favour of defendant and rather admits that he is in possession of the tractor but is unable to answer as to who is owner of the tractor at the time of its purchase and admitted that he has never seen registration certificate of the vehicle and accepts receipts Ex.D1 and Ex.D2 do not bear signatures of the plaintiff and that the material point conceded by him he did not enquire about the ownership of the vehicle rather are matters of much relevance which undermines the case of the defendant. Neither any agreement to sell much less any relevant document under the Motor Vehicle Act or Rules have been brought on record to this effect by the defendant. Even in para 15 of the impugned findings, a conclusion has been drawn by learned First Appellate Court that as per the documents Ex.P1 and Ex.P2 plaintiff happened to be owner of the tractor in question and has drawn conclusion that Ex.D1 receipt bears signatures of Joga Singh does not in any manner can be construed or interpreted that the tractor vehicle in question has been sold off by the registered owner. The learned Court below in the impugned order has affirmed the findings of the learned trial Court which certainly distresses this Court when the abundant documentary evidence brought on the records suggests that plaintiff Lakhvir Singh happens to be registered owner of the vehicle and there is not even an iota of evidence to show that he has in any manner sold the vehicle to

defendant Mohinder Singh or to anybody else, thus, certainly a grave injustice has been done by the Court below in dismissing the suit of the plaintiff.

In view of what has been detailed and discussed above, the impugned judgment is certainly highly illegal in its findings and perverse in its approach and is not correct appreciation of documentary evidence on record. In light of the same, the impugned judgment is set aside and suit of the plaintiff is hereby decreed, thereby allowing the present appeal.

(FATEH DEEP SINGH)
JUDGE

March 08, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No