

RSA No.3092 of 2017 (O&M)

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

RSA No.3092 of 2017 (O&M)

Date of decision:17.12.2018

Kikkar Singh and another

... Appellants

Vs.

Guranditta Singh Dhaliwal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Surinder Garg, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

As per office report, in compliance of order dated 31.10.2018,
costs of Rs.2500/- has been deposited.

The plaintiffs have not been successful before the Lower
Appellate Court in sustaining the judgment and decree of the trial Court,
whereby, mandatory direction was issued to defendants to release the tractor
to the plaintiffs as referred to in the plaint.

The suit aforementioned was filed on the premise that plaintiffs
purchased the tractor from defendant no.1 by hypothecation for a sum of
Rs.5,90,000/-, out of which a sum of Rs.5,00,000/- was raised as loan and
the entire price of the tractor was paid but despite that defendants had
forcibly taken the possession on account of non-payment of installments.

Defendant no.1 raised the objection with regard to
maintainability of the suit and stated that possession of the tractor was taken
after having obtained the signatures of the plaintiffs.

The plaintiffs claimed that they had purchased the tractor being original one for a sum of Rs.5,90,000/- and Rs.5,00,000/- was hypothecated but replaced with second hand tractor and in this regard, a complaint was lodged to the police and in lieu thereof, as a counter blast, the defendants had taken the tractor forcibly.

The trial Court decreed the suit but the Lower Appellate Court as noticed above has reversed the findings.

Mr. Surinder Garg, learned counsel appearing on behalf of the appellants submitted that photographs reflected that possession of the tractor was with the defendants which have been taken in connivance with the police.

I am afraid the aforementioned argument would not be sustainable and rightly so discarded by the Lower Appellate Court. For the relief as indicated above, it was obligatory upon the plaintiffs to establish the conscious possession of the tractor with the defendants. The photographs would not help. The judgment and decree of the Lower Appellate Court cannot be faulted with. No ground for interference is made out.

The regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 17, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No