

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

RSA no.681 of 2019 (O&M)

Date of Decision: 29.01.2019

Ram Singh

...Appellant

Vs.

Ranjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. G.S. Brar, Advocate, for the appellant.

Amol Rattan Singh, J (Oral)

The defendant has come in second appeal assailing the judgments and decrees of both the courts below.

The plaintiff-respondent filed a suit seeking decrees of mandatory injunction and permanent injunction, alleging therein that he is the owner of a *Rotavator* machine which was purchased by him from M/s M.B. Machinery (P) Ltd. It was alleged that the appellant-defendant, having close relations with the plaintiff, had taken the said machine and had not returned it to the plaintiff.

The appellant-defendant contested the suit and pleaded that the plaintiff has no concern with the rotavator machine.

On the pleadings of the parties, the following issues were framed by the trial court:-

“1A Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for?OPP

1 Whether the plaintiff is entitled for permanent injunction as prayed for? OPP

2 Whether the present suit is not maintainable?OPD

3 Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD

4. Whether the plaintiff concealed the material fact from the Court?OPD

5. Relief.”

Upon considering the pleadings and appraising the evidence led, learned Civil Judge (Jr. Divn.), Malerkotla, vide his judgment and decree dated 03.11.2017, allowed the suit of the plaintiff and directed the appellant to hand over the possession of the rotavator machine in dispute to the plaintiff, along with an amount of Rs.10,000/- as damages.

While holding so, the learned trial court found that the invoice memo, Ex.P-1, dated 18.03.2018, issued in the name of the plaintiff by the aforesaid company, was duly proved by PW-2, Parveen Singh, who was a manager of the aforesaid company, who deposed that the machine had indeed been purchased by the plaintiff on cash payment of Rs.82,000/-.

Hence, the ownership of the machine by the plaintiff having been held to be proved, and the possession thereof in any case not denied to be with the respondent, the aforesaid damages were also awarded to the plaintiff on account of usage of the machine by the respondent-defendant.

The appellant herein preferred a first appeal before the learned Additional District Judge, Sangrur, who modified the judgment and decree of the learned trial court to the extent that the plaintiff was still held entitled to the recovery of *rotavator* machine in question from the defendant, as also the relief of permanent injunction prayed for, but as regards the damages of Rs.10,000/- awarded by the trial court, it was found that with the plaintiff having admitted that the *Rotavator* machine was “taken by the defendant”, which had not been denied in any manner, the said damages awarded were reversed by the appellate court.

While upholding the finding on the ownership of the machine,

the first appellate court noticed an argument raised before it on behalf of the appellant-defendant, that the contention that it had been purchased jointly by him and one Tej Pal, was not proved in any manner by him, other than the oral testimony of Dws 3, 4 and 5 (to the effect that the plaintiff had no concern with the machine and that it had been so jointly purchased by the appellant-defendant and Tej Pal).

The testimony of PW-3, Head Constable, Manjit Singh to the effect that a complaint was filed by the plaintiff before the SSP, Sangrur, with regard to the machine having been taken, was also referred to by the first appellate court.

Further, however, since the plaintiff had failed to affix court fee *ad valorem*, as per the price of the machine, he was given one months' time to deposit the requisite court fee on the value of the movable property, i.e. rotavator in question, failing which the plaint of the plaintiff was ordered to be deemed to have been rejected in terms of Order 7 Rule 11 of the CPC.

However, the primary issue having been upheld in favour of the plaintiff, the defendant has preferred the instant second appeal.

Learned counsel for the appellant has referred to the cross-examination of PW-2, Parveen Singh, Manager of M/s M.B. Farm Machinery (P) Ltd. , to submit that not even the invoice book was produced before the trial court to prove the cash memo that the plaintiff had relied upon to show that he had purchased the machine in question (*Rotavator*).

He submits that, therefore, the finding of the learned courts below is wholly perverse.

Having considered that argument, as regards the ownership of the machine, it is to be noticed that the respondent did produce a cash memo

to prove his purchase, with the learned courts below having recorded a finding that the appellant herein, i.e. the defendant, could produce no evidence whatsoever with regard to his claim of ownership of the machine, other than oral testimony to that effect.

Further, the manager of the manager of the company having also been recorded to the effect that the machine had been so purchased by the plaintiff, I would see no reason to disturb that finding of fact recorded by the courts below, simply on account of oral testimony of witnesses produced by the appellant-defendant, that actually he was the joint owner of the machine along with one Tej Pal.

Hence, even though the cash memo led by way of evidence by the respondent-plaintiff was not backed by production of the original book from which it had been purportedly issued, I still find no reason to interfere with the findings of the courts below, in the absence of any documentary evidence led by the appellant-defendant that he was the owner of the machine, either by purchase of it from the plaintiff, or otherwise.

In view of the above, I see no ground to entertain this second appeal, which is consequently dismissed in limine.

29.01.2019
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(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes