

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. SAO No. 21 of 2017 (O&M)
Date of Decision: 08.04.2019**

Jagroop Singh

...Appellant

VERSUS

Satpal Khurana and others

...Respondents

2. SAO No. 22 of 2017 (O&M)

Jagroop Singh

...Appellant

VERSUS

Baldev Raj and and others

...Respondents

3. SAO No. 23 of 2017 (O&M)

Jagroop Singh

...Appellant

VERSUS

Mahindra & Mahindra Financial Services Ltd. and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Harsh Aggarwal, Advocate
for the appellant in all the appeals.

Mr. Arun Jindal, Advocate
for respondent no. 1 in SAO-21-2017.

Mr. Nitin Thatai, Advocate
for respondent no.2 in SAO Nos. 21 & 22 of 2017 and
for respondent no. 1 in SAO No. 23 of 2017.

SURINDER GUPTA, J.

Appellant-Jagroop Singh filed suit seeking the relief as follows:-

“Suit for declaration to the effect that mortgage deed no.

2509 dated 05.11.2003 registered in the office of Sub

Registrar, Sangrur in respect of 1/6th share of the plaintiff out of the land measuring 8 bighas 8 biswas Pukhta comprised in khewat no. 52, khatauni no. 60, khasra no. 101/1-6, 102/2/1-16, 324/98/1-0, 327/224/99 min/2-6, 328/102/1-0, 330/103/1-0 situated in the revenue estate of village Nanakpura (Ganga Singh Wala) Tehsil and District Sangrur as per jamabandi for the year 2008-2009, for an amount of ₹2,50,000/- executed by plaintiff in favour of defendant no. 1 is wrong, illegal, null and void, without consideration and is result of misrepresentation and fraud practiced by defendants no. 1 to 3 in connivance with each other on the plaintiff and same is liable to be set aside and subsequent mutation thereof is also liable to be set aside.

And

Suit for recovery of ₹6,18,000/- from defendants no. 1 to 3 jointly and severally i.e. ₹1,18,000/- which includes ₹30,000/- as price of old Tractor bearing registration no. PEP-8451 bearing Chassis no. 584537 and Engine No. 180306 paid in cash as margin money and ₹4000/- paid in cash on account of expenses of registration of new Tractor and ₹5,00,000/- as damages alongwith interest @ 18% per annum from the date of payment i.e. 03.11.2003 till realization.

And.

Suit for permanent injunction restraining defendant no. 1 from effecting any recovery of the amount from the plaintiff in respect of the alleged loan which was never paid to the

plaintiff and from filing any complaint on the basis of blank cheques obtained by defendants by way of fraud i.e. cheque no. 508561 to 508572 drawn at State Bank of Patiala, Main Branch, Sangrur.”

2. The suit was partly decreed as follows:-

“25 In view of my findings on issues no.1 to 3, suit of the plaintiff is partly decreed with proportionate costs to the effect that mortgage deed no.2509 dated 05.11.2003 in respect of 1/6th share of the plaintiff out of the land measuring 8 bighas 8 biswas Pukhta comprised in khewat no. 52, Khatauni no.60, khasra no.101/1-6, 102/2/1-16, 324/98/1- 0, 327/224/99min/2-6, 328/102/1-0, 330/103/1-0 situated in the revenue estate of village Nanakpura(Ganga Singh Wala) Tehsil and District Sangrur for an amount of ₹2,50,000/- executed by plaintiff in favour of defendant no.1 is declared to be wrong, illegal, null and void, without consideration and is result of misrepresentation and fraud practiced by defendants no.1 to 3 in connivance with each other on the plaintiff and same is set aside.

Further, plaintiff is entitled to recovery of ₹1,18,800/- which includes ₹30,000/- as price of old Tractor bearing registration no.PEP8451 bearing Chassis No.584537/- and Engine No.180306, ₹84,800/- paid in cash as margin money and ₹4000/- paid in cash on account of expenses of registration of New Tractor

alongwith interest @9% per annum from the date of delivery of the said amount from defendants no.1 to 3. Further, plaintiff is entitled to recovery of ₹1,00,000/- as damages alongwith interest @ 9% per annum from the date of passing of the decree till realization from defendants no.1 to 3.

Further, defendant no.1 is restrained from effecting any recovery of the amount from the plaintiff in respect of the alleged loan. However, he has the liberty to pursue against defendants no.2 and 3 for recovery of any amount, if due.....”

3. Against judgment and decree of the trial Court three separate appeals were filed by Satpal Khurana, M/s Mahindra & Mahindra Financial Services Ltd. and Sangrur Tractors and others. An application under Order XLI Rule 27 CPC filed by Satpal Khurana seeking permission to lead additional evidence was allowed by Ist Appellate Court and case was remanded to trial Court for fresh decision in accordance with law.

4. Learned counsel for the appellant has challenged the order of Ist Appellate Court allowing permission to Satpal Khurana to lead additional evidence and also remand of the case. He has argued that the plea was taken by Satpal Khurana in the written statement that he had nothing to do with M/s Sangrur Tractors and the evidence sought to be produced by him is beyond pleadings.

5. This appeal is to be considered from two angles, firstly, regarding the correctness of order of Ist Appellate Court allowing permission to Satpal Khurana, who was impleaded as proprietor of M/s

Sangrur Tractors to lead additional evidence; and secondly, the legality of order of Ist Appellate Court remanding the case for fresh decision after allowing additional evidence.

6. The case of plaintiff is that he approached M/s Sangrur Tractors for purchase of new Mahindra DI 575 tractor, who gave him the proposal to replace old tractor of appellant and supply him new tractor after arranging finance/loan. The plaintiff-appellant agreed to mortgage his 1/6th share in the agricultural land measuring 8 *bighas* and 8 *biswas* situated in village Nanakpura for loan amount of ₹2,50,000/- with defendant no. 1-M/s M&M Financial Services Ltd. Price of new tractor was settled as ₹3,64,800/- out of which ₹30000/- was to be adjusted towards price of old tractor bearing no. PBP-8451 and ₹84800/- were agreed to be paid by plaintiff in cash as marginal money. The plaintiff has alleged that he handed over old tractor to defendants no. 2 and 3, paid marginal money with ₹4000/- towards registration and documentation charges. He also supplied them copy of *jamabandi* of his land and his signatures were obtained on various blank papers. Blank cheques were also obtained from the plaintiff but new tractor was not supplied to him. He then filed petition before District Consumer Disputes Redressal Forum, Sangrur and after failing there filed this civil suit.

7. Defendant no. 3 in his written statement took a plea that he is not the proprietor of M/s Sangrur Tractors and has no concern with the dispute. It was also pleaded before Ist Appellate Court that due to brain haemorrhage he could not lead evidence before the trial Court. He now had documentary evidence to prove that plaintiff was supplied the tractor, which was issued registration number and also got insured with the insurance

company. The above piece of evidence was found material for decision of the case by the Ist Appellate Court and rightly so as the Court at any stage can allow the production of material evidence relevant for disposal of the case, which came to its notice from any source. The mere fact that Satpal Khurana had not pleaded this evidence in his written statement is not a relevant fact to be seen while allowing additional evidence. I find no legal or factual infirmity calling for any interference with the order of Ist Appellate Court so far as it relates to permission to lead additional evidence.

8. The second question, which arises for consideration is as to whether Ist Appellate Court could remand the case only on the ground that additional evidence has been allowed? Answer to this is in negative. After allowing additional evidence course open before Ist Appellate Court was either to proceed further to record evidence on its own or send the case to trial Court to record evidence and to provide opportunity to other parties to lead evidence in rebuttal and send the report. After receipt of report of trial Court about additional evidence, Ist Appellate Court could proceed to decide the appeal on merit. Findings recorded by trial Court on merit could not be set aside merely on the ground that some additional evidence has been allowed to be produced.

9. As a sequel of my above discussion, these appeals are partly allowed. Order of Ist Appellate Court allowing recording of additional evidence is held as legal and justified in the facts and circumstances of the case. The order remanding the case to trial Court with direction to decide it afresh is set aside.

10. The parties are directed to appear before Additional District Judge/successor Court on 05.05.2019. Ist Appellate Court/successor court

will take the appeals on board and proceed to decide the same after calling report of the trial Court on additional evidence/rebuttal evidence as allowed.

April 08, 2019
jk

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>