

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

RSA No.2494 of 1992 (O&M)
Date of decision: 24th February, 2020

Santokh Singh

... Appellant

Versus

Harnek Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mrs. Harpreet K. Dhillon, Advocate for the appellant.

Mr. M.L. Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate for the respondent.

FATEH DEEP SINGH, J.

Plaintiff (now appellant) Santokh Singh filed against his brother Harnek Singh defendant (now respondent) a suit seeking decree of permanent injunction restraining the defendant not to transfer or alienate Eicher tractor bearing registration No.PBU-6203 with trolley and other implements claiming to be the joint owner of the same. The brief stand of the plaintiff is that the vehicle in question, the tractor, was purchased during the lifetime of their father Maghar Singh who died in December 1986. Since the land of Maghar Singh was mortgaged to secure loan for this tractor in the year 1981 and being in joint cultivation of the joint family land, name of defendant Harnek Singh was incorporated in the ownership of the tractor with Maghar Singh.

Consequent upon the death of Maghar Singh, brothers fell apart and that is how the suit has come about. It is alleged that the defendant on account of incorporation in the registration certificate of the vehicle, is trying to lay claim on the same and hence the suit in question.

The defendant in his claim states that the tractor in question was purchased by the defendant for which loan was secured from the Jagraon branch of Bank of India by the defendant and for which land was mortgaged as collateral security and name of Maghar Singh was added as co-loanee and claimed that the defendant was the sole loanee and has been paying installments to the Bank in discharge of the loan so due and thereby claimed to be the owner of the vehicle. The trial Court framed the following issues:

1. Whether the tractor bearing registration No.PBU-6203 along with trolley and other implements is joint of the parties? OPP
2. Whether the plaintiff is entitled to the injunction prayed for? OPP
3. Whether no cause of action has arisen to the plaintiff to file the present suit? OPD
4. Relief.

As is the admission of the learned counsel for the two sides
Mrs. Harpreet Kaur Dhillon, Advocate appearing on behalf of the

appellant and Mr. M.L. Saggar, Senior Advocate assisted by Ms. Armaan Saggar, Advocate representing the respondent, Maghar Singh happens to be the father of plaintiff and the defendant and was owner of the land which was mortgaged to secure this loan for buying the tractor in question. His son Harnek Singh was shown to be the co-loanee with Maghar Singh. The testimony of PW-1 Chander Mohan Agricultural Assistant of the Bank of India on the basis of original voucher Ex.P1 has testified that the amount of ₹ 12,000/- was deposited in the Bank in the account of Maghar Singh, and in his cross-examination states that Harnek Singh is the co-loanee in the said loan account. The testimony of PW-2 Amarjit Singh who has witnessed the agreement between the brothers placed on the record as Mark A is not of much help as the document was never legally and legitimately proved on the record to be considered as a legitimate piece of evidence, but in his cross-examination as has been pointed out, this witness accepts the fact that the land which was mortgaged with the Bank belongs to Maghar Singh and that the entire loan amount was paid by Harnek Singh and claims that Santokh Singh has nothing to do with the tractor. So is the testimony of PW-4 Mohan Lal Deed Writer and PW-5 Santokh Singh who have testified orally and the factum of cultivation being joint amongst brothers is his admission in the cross-examination of PW-5. On the other hand, DW-1 Harnek Singh

claims to have deposited the loan amount in the Bank and even otherwise is of not much relevance when the same is not supported by any documentary evidence.

To the very specific query of the Court, none from the side of either the appellant or the respondent could bear out what documentary proof has come about over the ownership of the tractor. The Court of learned Sub Judge Ist Class, Jagraon through judgment and decree dated 31.07.1991 decreed the suit holding as under:-

“8. In view of my foregoing discussion, the suit of the plaintiff succeeds. In the result, I pass a decree for permanent injunction in any way either (sic) tractor transferring of alienating in any way either (sic) tractor registration No.PBU-6203 along with trolley and other of implements which are joint of the parties and other heirs of Maghar Singh as the defendant has no right to claim himself to be sole owner of the disputed tractor in favour of the plaintiff, against the defendant with costs. Decree sheet be prepared. File be consigned to the record room.”

The learned first appellate Court of Additional District Judge, Ludhiana through impugned findings dated 30.07.1992 upset the findings of learned trial Court by allowing the appeal and setting aside the judgment of the learned Sub Judge 1st Class. Thus, what is evident under the provisions of Section 41(h) of the Specific Relief Act, where a more efficacious remedy is available to a party it needs to invoke that very

remedy and in the present case a simplicitor suit for permanent injunction over the ownership of tractor being in question, the parties ought to have sought their claim over title which they failed to do so and in view of the law laid down in '**Jharkhand State Housing Board vs. Didar Singh & another**' 2018 (15) Scale 34, a suit for mere injunction does not lie when defendant raises genuine dispute with regard to the title and clouds the right of the other party of the title of property in question. The provisions of the Motor Vehicles Act, 1988 by way of Section 41 illustrate the procedure by virtue of which a registration certificate is made on the basis of the application moved by or on behalf of the owner of a motor vehicle and further in terms of Section 47 the vehicle as per the own claim of the parties was under hire purchase agreement and was under hypothecation of a Bank and in the absence of any clear cut, tangible evidence that the charge has since been discharged, certainly right of the Bank crystallizes, however no tangible evidence has come about to establish if the loan stood paid and the vehicle was discharged from this charge. Besides the fact that by virtue of joint reading of Sections 41 to 50 of the Motor Vehicles Act bears out that the entry in the registration certificate of a motor vehicle is sufficient proof of the title of the vehicle which can only be adjudged from the registration certificate issued by the competent registering authority. In the present case, there is nothing

substantiated on the records nor proved by any means as to in whose name the registration certificate of the disputed tractor stands nor the registration certificate, purchase bills or records of the Bank have been proved to show in whose name the tractor vested. Moreover, as has come in the impugned judgment that the tractor was jointly owned and possessed by the defendant and Maghar Singh in equal shares and consequent upon the death of Maghar Singh being a property would certainly devolve upon his heirs by way of natural succession as there is no claim of any testamentary succession and that would also in the absence of any other legal heirs, as in the evidence it is well established by DW-1 Harnek Singh in his statement who accepts that they were six sisters and four brothers and therefore, share of Maghar Singh would also come to these heirs who are not arraigned as party. Thus, from it all reflects that the suit in itself was inherently not maintainable in the absence of other evidence as well as on account of lack of cogent and reliable evidence throwing light over the ownership of the tractor and therefore would be too preposterous to be adjudged on the issues as framed by the Court below by way of issue No.1 and issue No.2 which are the mainstay of the claim of the two sides. In the light of foregoing discussions, the observations of the learned first appellate Court holding out that the tractor in question is jointly owned and possessed by the

defendant and Maghar Singh in equal shares and consequent upon the death of Maghar Singh his half share in the said property devolves upon all the legal heirs in equal shares, are wholly just and appropriate and as such need to be upheld. There appears to be no merit in the instant appeal and the same stands dismissed accordingly.

(FATEH DEEP SINGH)
JUDGE

February 24, 2020

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No