

2024:PHHC:142671



104.

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No.4123 of 2018 (O&M)  
Date of decision: 08.05.2024

Umed Singh .... Appellant

Versus

Smt. Rekha @ Radha and others .... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Zorawar Singh Chauhan, Advocate, for the appellant.

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GURBIR SINGH, J.

1. Present regular second appeal has been filed by the plaintiff against the concurrent findings of the courts below.
2. The parties herein are being addressed as per their status in the suit. The plaintiff is the appellant and the respondents are the defendants.
3. Brief facts of the case are that the plaintiff filed a suit for mandatory injunction directing the defendants (legal heirs of Chand Singh son of Het Ram. Chand Singh was the husband of defendant No.1-Rekha and father of defendants No.2 to 4) to transfer the vehicle No.HR-36-J-2590 in his name. The case of the plaintiff is that deceased Chand Singh was the owner of said car. On 18.11.2008, he sold out said vehicle to the plaintiff after receiving whole consideration amount from him by executing an affidavit duly attested by Notary Public. It was pleaded that deceased

Chand Singh also appended his signatures on Form Nos.29 and 30 for transfer of said vehicle in the record of registering authority, but in the meantime, he expired. After his death, the plaintiff applied for NOC of said car but the defendants, being the legal heirs of deceased Chand Singh, filed an application before the Registering Authority, Rewari for not issuing NOC of said car.

3.1 Upon notice, defendants appeared, filed written statement and denied that Chand Singh neither sold any vehicle in favour of plaintiff on 18.11.2008 nor appended any signature upon any document. It was further alleged that the plaintiff hatched a conspiracy with one Satpal and Hetram (brother and father of Chand Singh respectively) to dispose of all his movable and immovable properties including motorcycle, alto car, tractor, trolley etc. in a fraudulent manner. It was contended that another affidavit dated 19.12.2008 of selling motorcycle was also prepared by them fraudulently. The same way, present affidavit dated 18.11.2008 is also the result of fraud.

3.2 To prove his case, the plaintiff examined himself as PW1; Ashok Kumar, Clerk of Shri R.S. Sharma, Advocate, as PW2; and Braham Prakash, Clerk, Motor Vehicle, SDM Office, Mahendergarh, as PW3.

3.3 After appreciating the evidence on record, the suit of the plaintiff was dismissed vide judgment and decree dated 21.01.2015 passed by learned Civil Judge (Junior Division), Mohindergarh and said findings were affirmed in appeal vide judgment and decree dated 11.01.2018 passed

by learned Additional District Judge, Narnaul. It was held that the plaintiff-PW1, during his cross-examination, admitted to have paid Rs.2 lakhs to Chand Singh in the presence of Rajbir and Het Ram, father of Chand Singh, for sale consideration of Alto car in question. But strangely, he did not obtain any receipt for paying such a hefty amount. He admitted to be an accused with said Rajbir and Het Ram in a criminal case. The defendants also lodged a criminal case of fraudulent transfer of car in question and other vehicles after preparing forged documents in the name of deceased Chand Singh, but the plaintiff examined none of them in order to prove the receipt of sale consideration of said car. The plaintiff also not examined Bharpur Singh on whose identification, the Notary Public notarized the affidavit. No person was examined who could prove that he had seen Chand Singh while signing the document in question. No efforts were made to examine any handwriting expert to prove the signatures of Chand Singh on affidavit. There is no evidence either documentary or oral in terms of Section 67 of the Evidence Act to prove execution of Ex.P1. On the other hand, the defendants proved FSL report Ex.D1 which revealed that signature of deceased Chand Singh on alleged affidavit of vehicle in question did not match with his standard signatures. It is unbelievable that despite making entire payment of sale consideration, the possession of vehicle in question was not taken.

3.4 Aggrieved, the plaintiff has approached this Court by way of present appeal.

4. Learned counsel for the plaintiff has argued that no evidence has been led by the defendants to prove that the affidavit Ex.P1 is the result of fraud. The courts below have held that since there was no amount mentioned in the affidavit, so no consideration has been passed to deceased Chand Singh, but the fact remains that Ex.P1 was not an agreement but it was an affidavit, which is required for change of name of owner of the vehicle.

5. I have heard the submissions of learned counsel for the appellant-plaintiff.

6. Admittedly, Chand Singh (since deceased) was the owner of the car in dispute. The dispute between the parties is that Chand Singh allegedly sold the car to the plaintiff vide affidavit dated 18.11.2008. As per plaintiff, deceased Chand Singh signed said affidavit and executed it before Notary Public and also put his signatures on Forms-29 and 30 for transferring ownership in the name of plaintiff in the record of registering authority of motor vehicle. Chand Singh died on 26.11.2008 i.e. after eight days of the alleged affidavit. The defendants contended that they came to know about the said transaction when the plaintiff applied for NOC of said car.

6.1 It is well settled that the plaintiff is required to stand on his own legs. Case of the plaintiff is based on affidavit Ex.P1 alleged to be executed by Chand Singh. There is only bald statement of the plaintiff to prove said affidavit. As per version of the plaintiff, sum of Rs.2 lakh was paid as price of the vehicle in question to Chand Singh. There is no receipt

in support of the said averment. Plaintiff has not been able to prove that the signatures on the affidavit are of Chand Singh. Moreover, plaintiff has not been able to establish that the possession of the vehicle in question was handed over to him. The learned lower Appellate Court has referred the judgment of Hon'ble Supreme Court in *State of Madras Versus Gannon Dunkerley and Co., AIR 1958 SC 560* wherein it has been held that to constitute a valid sale, there must be occurrence of the following elements viz. (1) the parties competent to contract; (2) mutual assent; (3) thing of sale or general property in which transfer from seller to buyer; (4) a price in money paid or promised. When all these conditions are fulfilled, then property must pass to the purchaser, otherwise there can be no sale.

7. Since the plaintiff failed to prove that there was sale of the vehicle by Chand Singh and has also failed to prove payment of the consideration amount and the affidavit Ex.P1 bears signatures of the plaintiff, so this Court is of the view that there is neither any misreading and misappreciation of evidence nor any substantial question of law is involved in the present case. The instant appeal is without any merit and is dismissed accordingly.

8. Pending application, if any, shall also stand disposed of.

**(GURBIR SINGH)**  
**JUDGE**

**May 08, 2024**  
sanjeev

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