

**(2014) 03 P&H CK 0164**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 4639 of 2012 (O&M)

Tilak Raj Sharma

APPELLANT

Vs

Amir Chand Saini

RESPONDENT

**Date of Decision:** March 24, 2014

**Citation:** (2014) 175 PLR 334

**Hon'ble Judges:** Rakesh Garg, J

**Bench:** Single Bench

**Advocate:** Deepak Arora, Advocate for the Appellant

**Final Decision:** Dismissed

**Judgement**

Rakesh Garg, J.

The plaintiff-respondent filed the instant suit seeking declaration to the effect that he is co-owner of tractor in question along with the defendant in equal share and the defendant has got no right to use it individually, with consequential relief of permanent injunction restraining the defendant from using the said tractor without his consent and also from alienating or disposing of the said tractor and for rendition of accounts for the period 1.6.1995 up to date. In the suit, it was averred that tractor in question was purchased by the plaintiff and the defendant jointly vide receipt dated 14.10.1994. Even the accessories of the tractor were purchased jointly by the parties after spending an amount of Rs. 1 lakh. It was settled at the time of purchase that both the parties will utilise the tractor jointly with the consent of each other and they continued acting on the agreed principles up to 31.5.1995. Thereafter, the defendant kept the tractor in his custody and neither sent it to the plaintiff nor the defendant rendered the accounts. It was further averred by the plaintiff that the defendant was using the tractor for hire purpose and getting the whole income without paying any share to him since 1.6.1995. The said act of the defendant was illegal, null and void and against the agreed terms and conditions. He requested the defendant not to use the tractor individually and to render the accounts and further to pay his share but the defendant refused to admit the claim

of the plaintiff and also threatened to alienate the tractor without his consent. Hence, necessity arose to file the present suit.

2. Upon notice, the defendant filed written statement raising various preliminary objections. It was denied that the tractor in question was purchased by the plaintiff and defendant jointly. It was further pleaded that the tractor was purchased by the defendant entirely with his own funds. It was further pleaded that one Smt. Rattan Devi had also contributed a sum of Rs. 22,000/- in the price of the tractor and the remaining amount was contributed by him alone. It was further pleaded that the plaintiff has not contributed any amount towards the purchase price of the said tractor. The accessories were purchased by the defendant and Rattan Devi jointly. It was further pleaded that a cheque of Rs. 69,000/- dated 4.10.1994 was issued by Smt. Agya Sharma, his wife, favouring the plaintiff drawn on Punjab National Bank, Behrampur and a cheque of Rs. 46,000/- dated 4.10.1994 was issued by him in favour of the plaintiff and thus, the amount was deposited in his account only to ensure that plaintiff will have interest in the work for plying the tractor. It was further pleaded that after plying the tractor for two months, the plaintiff failed to deposit any amount in his account and misappropriated the funds and had sold Suhaga (the agricultural equipment of the tractor). The plaintiff executed an agreement dated 16.11.1994 vide which he has admitted that he has not contributed any amount in the said tractor and it was further agreed that if he failed to contribute his share of 45% of the said amount of the purchase of tractor then he would not have any right, title or interest in the said tractor. It was further pleaded that the tractor was in the custody of the defendant who was the sole owner. The defendant further pleaded that the plaintiff had failed to contribute his share of 45% as per agreement dated 16.11.1994 and also failed to furnish any account. The name of the plaintiff was inserted in the registration certificate only on the condition that he would contribute his share within one or two months but the plaintiff had committed breach of the terms of the said agreement dated 16.11.1994 and as such he was not entitled to any relief.

3. After hearing the arguments of the counsel for the parties, the trial Court partly decreed the suit of the plaintiff vide judgment and decree dated 8.11.2000 as under:

"It is ordered that suit of the plaintiff partly succeeds and partly decreed to the extent that plaintiff is co-owner of tractor No. PB-18-1925 as described and detailed in the head note of the plaint along with defendant in equal shares and defendant is restrained from using the said tractor individually and alienating the same without the consent of plaintiff. Rest of the suit of the plaintiff being without merits, fails and stands dismissed. The parties are left to bear their own costs."

4. Aggrieved from the aforesaid judgment and decree of the trial Court, the defendant filed an appeal before the Lower Appellate Court which was dismissed vide impugned judgment and decree dated 17.8.2012. While dismissing the appeal, the Lower Appellate Court observed as under:

"After considering the rival contentions of counsel for the parties and perusing the pleadings and evidence on the file as well as law relied upon by the parties, the evidence on the file reveals that the registration certificate of tractor No. PB-18/1925 has been produced on the file. The bill, whereby the tractor has been purchased, has been proved as Exhibit P-1, wherein Amir Chand Saini and Tilak Raj Sharma have been shown as purchaser of the tractor HMT. The delivery challan dated 14.10.1994 relating to the tractor in question is also proved on the file as Exhibit P-2, which is in the name of the parties jointly. Exhibit P-2 shows that the Proprietor of the Tractor Agency has received Rs. 1,10,000/- from the plaintiff in cash. It has also been established on the record that the receipt of total sale price of the said tractor is in the name of plaintiff and the defendant jointly. The plaintiff has not proved on the file regarding any expenses incurred by him for the purchase of other accessories like Trolley etc. The receipts relating to the accessories are in the name of defendant alone. Though the agreements Exhibit D-1 and Exhibit D-2 have been produced on the file but in these agreements it has been written that the plaintiff Amir Chand, when pay the entire amount to the defendant Tilak Raj and Rattan Devi and when also pay the amount of 45%, then become owner of the tractor but the said agreements are after purchase of the tractor. The tractor has been purchased on 14.10.1994 and Exhibit D-1 and Exhibit D-2 are executed on 16.11.1994. The agreements are not genuine documents as in the documents, the amount of insurance of the tractor is mentioned as Rs. 2600/-. In the agreements, it is stated that the tractor has been purchased Benami in the name of appellant. The said plea is not available to the defendant as after the Benami transaction Act such plea is not available. From the documents Exhibit P-1, Exhibit P-2, Exhibit P-3 and registration certificate on the file, established that the plaintiff is co-owner of the tractor to the extent of 1/2 share but with regard to the other accessories, he failed to prove the ownership. Hence, such plea is not helpful for him. In the totality of the circumstances on the file, I am of the view that the learned lower Court has rightly decreed the suit of the plaintiff partly. Hence, the judgment under appeal is not required any interference. The citations relied upon by the appellant are not applicable and as such are distinguishable because the facts of the present case are different from the cases cited by the learned counsel for the appellant, whereas the cases relied upon by learned counsel for the respondent are applicable to the case in hand."

5. Still not satisfied, the defendant has filed the instant appeal alleging that the following substantial, questions of law arise in this appeal:

"1. Whether the plaintiff-respondent could claim any right or interest in the disputed tractor when all the funds in connection with the purchase of the disputed tractor were provided by the defendant appellant alongwith Smt. Ratno Devi and the plaintiff-respondent did not contribute even a penny towards the purchase of the disputed tractor as mentioned in the agreements dated 16.10.1994 Exhibit D1 and Exhibit D2 and had no concern with the disputed tractor? If so, its effect.

2. Whether the plaintiff-respondent who was to work as a driver on the disputed tractor and to maintain necessary accounts ceased to work on the same and handed over the custody of the disputed tractor to the defendant who being the owner thereof was within its rights to use the same or alienate the same in any manner he liked? If so, its effect

3. Whether Shrimati Ratno Devi who contributed part of the amount towards the purchase of the tractor was a necessary party to the suit, if so, its effect?"

6. Counsel for the appellant has vehemently argued that the Courts below have ignored the fact that the appellant was in fact the real and ostensible owner of the tractor in question and plaintiff-respondent could not claim any right or interest in the same when the entire funds in connection with the purchase of the tractor were provided by the defendant-appellant himself along with Rattan Devi and the plaintiff-respondent had nothing to do with the same. The respondent was in fact to be given necessary share in the event of his working as a driver on the same and to maintain the accounts for the same but he worked on the disputed tractor just for 2 months and thereafter, ceased to work on the same and could not claim any right or interest in the disputed tractor. The agreements Ex. D1 and Ex. D2 were validly executed by the plaintiff-respondent and he was bound by the same. Since the plaintiff-respondent has violated the terms and conditions of the aforesaid agreement and had not invested even a penny in the purchase of the disputed tractor, he could not claim any share in the tractor merely because his name finds mention in the purchase bill Ex. P1 and thus, the impugned judgments and decrees of the Courts below are liable to be set aside.

7. I have heard learned counsel for the appellant and perused the impugned judgments and decrees of the Courts below.

8. It could not be disputed before this court that the bill Ex. P1 whereby the tractor was purchased, shows the plaintiff as well as defendant as purchasers of the tractor in question. Even the delivery of the tractor is in the name of the parties jointly. The documents placed on record further shows that a sum of Rs. 1,10,000/- was received from the plaintiff in cash by the proprietor of the tractor agency. Receipt of total sale price of the tractor was in the name of the plaintiff and defendant jointly. In view of the aforesaid documents placed on record, the plea of the Benami purchase in the name of the respondent is not available to him in view of the provisions of the Benami Transactions (Prohibition) Act, 1988. From the various documents placed on record, it stands established that the plaintiff is the co-owner of the tractor to the extent of half-share and in view of the aforesaid evidence on record, this Court is of the view that the Courts below have rightly decreed the suit of the plaintiff-respondent and no fault can be found with the concurrent findings so recorded on the basis of appreciation of evidence.

No substantial question of law, as raised, arises in this appeal.

Dismissed.