

(2014) 04 P&H CK 0246

High Court Of Punjab And Haryana At Chandigarh

Case No: R.S.A. No. 5032 of 2012 (O&M)

Suresh Kumar

APPELLANT

Vs

Hari Singh

RESPONDENT

Date of Decision: April 21, 2014

Citation: (2014) 3 RCR(Civil) 983

Hon'ble Judges: Rakesh Garg, J

Bench: Single Bench

Advocate: J.P. Sharma, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Rakesh Garg, J.

This is plaintiffs second appeal challenging the judgment and decree dated 06.06.2009 of the trial Court whereby his suit for mandatory injunction directing the defendant-respondents to issue "No Objection Certificate" in his favour for transfer of the vehicle in question with a further prayer for permanent injunction was dismissed. Further challenge has been laid to the judgment and decree dated 26.09.2012 of the lower appellate Court dismissing his appeal against the aforesaid order of the trial Court. As per the pleadings, defendant No. 2 (registered owner of the Jeep in question, which was registered in the office of defendant No. 3) executed an agreement to sell dated 07.03.2000 (Ex. P1) in favour of defendant No. 1 and by virtue of the aforesaid agreement to sell defendant No. 1 became owner of the Jeep in question. Defendant No. 1 further vide agreement to sell dated 23.08.2003 (Ex. P2) agreed to sell the said Jeep to the plaintiff for a sale consideration of Rs. 85,000 and received a sum of Rs. 50,000 as earnest money from him at the time of execution of the agreement to sell dated 23.08.2003 and delivered possession of the Jeep in question to him. Since defendant No. 2 was the registered owner of the Jeep, therefore it was agreed that the balance sale consideration of Rs. 35,000 would be paid within one month i.e. upto 23.09.2003 on receipt of "No Objection Certificate" and Sale Letter from defendant No. 2. It was further agreed that defendant No. 1

will get the "No Objection Certificate" and other documents with regard to transfer of the Jeep in question from defendant No. 2 at his own responsibility. Though the plaintiff-appellant was always ready and willing to perform his part of the contract, defendant No. 2 was not transferring the Jeep in question in his name on one pretext or the other. The appellant also showed his readiness and willingness by presenting himself in the office of Sub Registrar, Narnaul on 22.09.2003. A legal notice was also sent for transferring the Jeep in question but defendant No. 1 instead of transferring the Jeep in question in the name of plaintiff, lodged a false complaint against him with the Narnaul Police. The said complaint was cancelled being false. On 08.10.2003, defendants No. 1 and 2 came to the plaintiff and told him that they were ready to transfer the Jeep in his name and they took him to the Court premises for executing the transfer papers. An affidavit was executed by defendants No. 1 and 2 in his favour and on execution of the said affidavit, the plaintiff gave the balance sale consideration of Rs. 35,000 to defendant No. 1. However, the aforesaid affidavit was kept by the defendants on the pretext that the same would be required for getting the "No Objection Certificate". The defendants went away on the pretext that they would return back after getting the "No Objection Certificate" and other documents. The plaintiff further issued a legal notice dated 23.10.2003 and on 14.10.2003 defendant No. 2 came to him and gave him three affidavits executed by him and duly attested by the Notary Hissar on 13.10.2003. He also gave an application for issuance of "No Objection Certificate" of the Jeep in question and other documents duly signed by him. Defendant No. 2 told the plaintiff to get the Jeep transferred in his name after obtaining the "No Objection Certificate" from Hissar. The plaintiff had pleaded that transfer proceedings of the Jeep in question could not be completed as defendant No. 2 refused to give the copy of his ration card as demanded by the Registration Authority. There was a collusion between the defendants and they were not performing their part of the contract and thus, a direction was sought to be issued to defendants No. 1 and 2 to transfer the Jeep in question in his name after getting the "No Objection Certificate" issued in his favour. A further prayer was made for restraining the defendants from interfering in his possession over the Jeep in question.

2. Defendant No. 1, in his written statement, pleaded that he was owner in possession of the Jeep in question. However, the alleged agreement to sell in possession of the plaintiff was forged and fabricated. He was kidnapped by some notorious persons on 07.08.2000, who had obtained his signatures on some blank papers by putting undue pressure. He neither agreed to sell his Jeep to the plaintiff nor ever received any earnest money from him. In his written statement, defendant No. 1 further denied receiving of balance sale consideration of Rs. 35,000 from the plaintiff. Consequently, dismissal of the suit was prayed for.

3. Defendant No. 2 was proceeded against ex parte by the Court.

4. Defendant No. 3 in its written statement, stated that the vehicle in question was registered in the name of defendant No. 2 and the "No Objection Certificate" was issued on 03.07.2003 on the request of the owner.
5. It may further be noticed that during the pendency of the suit, defendant No. 3 was given up on the request of the plaintiff vide order dated 04.05.2004.
6. On the basis of the pleadings of the parties, the following issues were framed by the trial Court:
 1. Whether there was any agreement to sell dated 23.8.2003 regarding sale of Jeep between the parties as alleged? OPP
 2. Whether the respondent has already received full and final payment on 8.10.2003 through affidavit as alleged? OPP
 3. If issue No. 1 is proved then whether the plaintiff is entitled to decree of mandatory injunction as prayed for? OPP
 4. Whether suit is not maintainable? OPD
 5. Whether plaintiff has no locus standi to file the present suit? OPD
 6. Whether the plaintiff has not come to the Court with clean hands and concealed the true facts? OPD
 7. Whether the suit of plaintiff is hopelessly time barred? OPD
 8. Relief.
7. Both the Courts below, on appreciation of evidence, recorded a concurrent finding to the effect that there was no evidence on record to show that defendant No. 2, who admittedly was the owner of the Jeep in question, ever transferred the same in favour of defendant No. 1, and therefore, in the absence of any title in defendant No. 1 with regard to the Jeep in question, the alleged agreement to sell (Ex. P2) in favour of the plaintiff-appellant was of no use. Admittedly, defendant No. 2 was never party to the agreement (Ex. P2) and therefore, no mandatory injunction could have been issued against him and in favour of the plaintiff-appellant at the asking of the appellant compelling defendant No. 2 to transfer the Jeep in question in favour of the plaintiff. Moreover, the mere agreement to sell in favour of defendant No. 1 will not confer any title in the Jeep in question.
8. Even before this Court, nothing has been pointed out on the basis of which the aforesaid concurrent findings so recorded by the courts below can be challenged.
9. In view thereof, this Court finds no merit in this appeal as the substantial questions of law, as raised, do not arise at all therein. Dismissed.