

(2019) 09 SHI CK 0141

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 340 Of 2019

Man Singh

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Indian Forest Act, 1927 — Section 32, 33, 41, 42, 52A

Indian Penal Code, 1860 — Section 379

Code Of Civil Procedure, 1908 — Section 80

Citation : (2019) 09 SHI CK 0141

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : V.S. Chauhan, Ajay Kashyap, Hemant Vaid, Hemanshu Mishra, Vikrant Chandel

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The instant appeal is directed against the concurrently recorded verdicts, by both the learned Courts below, (a) wherethrough(s) the plaintiffs' suit, for recovery of Rs. 1,93,300/-, as damages, from, the defendants, and, arising from during the period, of, retention, of, the offending tractor, bearing No. HP-34A-0509, in the precincts of the defendants concerned, it hence developing mechanical defect(s), as enumerated in paragraph-8 of the application, (b) defects whereof, are, averred to stand sparked, by negligence, and, dereliction(s), of, the contesting defendants, to thereat(s) hence ensure its roadworthiness, (c) rather stood dismissed, hence, by both the learned Courts below. The plaintiff is aggrieved therefrom, and hence, has, through casting the instant Regular Second Appeal, strived to cast, an, onslaught thereon.

2. Briefly stated the facts of the case are that the plaintiff had filed civil suit for the recovery of Rs.1,93,300/- by way of damages against the defendants alleging that he is in the registered owner of the Tractor bearing registration No.

HP-34A-0509. The tractor in question alongwith its keys and documents was impounded by the officials of defendant No. 4 in connection with FIR No. 22 of 2004, registered at P.S. Kullu, for the commission of offences punishable under Section 32,33, 41 and 42 of the Indian Forest Act, as well as under Section 379 of IPC. When the tractor was impounded, it was in good condition. Thereafter, proceedings under Section 52-A of the Indian Forest Act were initiated against the plaintiff. The plaintiff had moved an application for the release of the tractor before the Authorized officer/defendant No. 4, but it was tagged with the proceedings under Section 52-A of the Act. The application of the plaintiff was dismissed and the tractor in question was ordered to be confiscated to the state of H.P. The plaintiff preferred Revision petition before the learned Addl. District Judge (Fast Track Court), Kullu, and the said revision was accepted on 20.5.2010. The above mentioned tractor was ordered to be released in favour of the plaintiff. Then, the plaintiff moved another application alongwith the order of Ld. Additional Sessions Judge (Fast Track), Kullu, for the release of the tractor in question before Authorized Officer-cum-Divisional Forest Officer, Parvati Forest Division, Shamshi, who vide endorsement, of, 4.6.2010, directed the plaintiff to produce the photo copies of the documents relating to the vehicle in question alongwith his identity card for record. The R.C. of the vehicle was in the record file of Criminal case No. 114-1 of 2004 which was decided by the learned CJM, Kullu, on 7.1.2009, therefore, the plaintiff moved application for the release of R.C. before the Court of Ld. CJM, Kullu. The said application was allowed by the Court concerned and the RC of the tractor was ordered to be released in favour of the plaintiff. Before putting signatures qua the receipt of the tractor, the plaintiff asked the defendant No. 4 to show the condition of the tractor, and plaintiff noticed that the tractor was kept in open ground at Shamshi. The tyres of the tractor were sunk in the mud, and, approximately two feet height grass were grown up beneath and around the tractor. Due to the negligence of the defendant No. 4, the plaintiff, had to pay a sum of Rs. 1,93,300/- on account of repair and spare part charges of the tractor. On 4.8.2010, plaintiff served legal notice under Section 80 CPC to the defendants directing them to pay the damages so incurred by the plaintiff for the repair of spare parts of his tractor. The defendants have given wrong reply to the legal notice. The cause of action accrued to the plaintiff against defendants from 20.5.2010, when the Court passed order for the release of tractor in question and secondly on 15.7.2010, when plaintiff firstly came to know about the condition of the tractor, which was under the care and custody of defendant No 4 and on 30.9.2010, when the defendants did not pay heed to the claim of the plaintiff and lastly on 5.10.2010, when the stipulated period of the notice elapsed. Hence the suit for recovery of aforesaid amount.

3. The suit was contested by the defendants by filing a written statement, whereby the defendants have taken preliminary objections regarding maintainability, cause of action and that plaintiff has not come to the Court with clean hands and has suppressed true and material facts. In the written statement,

on merits, the defendants have admitted that the tractor in question had been impounded by defendant No. 4, in connection with FIR no. 22 of 2014, of P.S. Kullu but denied that the said tractor was handed over to defendant No. 4 in good condition. It was averred that plaintiff Man Singh Paul presented the photocopy of R.C. alongwith other supporting documents for the release of the tractor before defendant No. 4 and he issued the release order of the tractor in favour of the plaintiff, but he did not get the same released, rather made lame excuses. It was specifically denied that defendant No. 4 was negligent in keeping the tractor in safe custody. It was specifically pleaded that no damage of any kind had been caused to the tractor of the plaintiff by the defendants and, as such, the defendants are not liable to pay the amount so claimed. More so, the amount claimed is highly and excessive. The defendants have denied that they had given wrong reply to the legal notice.

4. The plaintiff filed the replication vide which he has re-affirmed, and, re-asserted the allegations contained in the plaint, and, hence denied the allegations contained, in, the written statement. On the pleadings of the parties, the following issues, were, framed, on, 17.8.2013, by the learned trial Court

1. Whether the plaintiff is the registered owner of tractor bearing N. HP-34-0509, as alleged? OPP
2. Whether the aforesaid tractor was impounded by the officials of defendant No. 4 in case FIR No. 22/2014, dated 3.1.2004, as alleged? OPP
3. Whether the plaintiff is entitled for damages, as alleged ? OPP
4. Whether the suit is not maintainable in the present form, as alleged? OPD
5. Whether the plaintiff has not approached to the Court with clean hands? OPD
6. Whether the plaintiff has no cause of action to file the present suit, as alleged? OPD
7. Relief.

5. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court dismissed, the plaintiffs' suit. In an appeal, preferred therefrom by the plaintiff, before the learned First Appellate Court, the latter Court also dismissed the apposite appeal, and, affirmed the findings recorded by the learned trial Court.

6. Now the plaintiff/appellant herein, has instituted the instant Regular Second Appeal before this Court, wherein he assails the findings recorded in its impugned judgment(s), and decree(s), by both the learned Courts below.

7. Even though, the plaintiff, as displayed in Ext. PW1/B, is the registered owner of the offending tractor, (a) and, the defendants, for the latters, being construable, in being negligent to keep, it, in a roadworthy condition, are, averred, to, keep the tractor in an open ground, (b) and are also averred, qua

despite, the, enumerated extensive repairs, being required to be carried thereon, (c) yet, the defendants, intentionally derelicting, to, effect the requisite repairs, upon the tractor, hence rendering it un-roadworthy. Moreover, though the offending tractor, stood evidently handed over, under spurdari, to the defendants, (d) thereupon though the contesting defendants, hence were required, to, ensure rectification(s), of, all the mechanical snags, as occurred therein, and, were also enjoined to ensure the replacement, of, the apt defective parts, of, the offending tractor, (e) conspicuously, during the tenures, of, its spurdari, with them (f) yet it was not incumbent, upon, the contesting defendants, to also make all the requisite expenses, for hence ensuring the roadworthiness, of, the offending tractor. Contrarily, it was incumbent, upon, the plaintiff, to, make motion(s) before, the authority concerned, or it was also incumbent, upon, the plaintiff to make motion(s) before the authority/court concerned, for, his therethrough striving, to, obtain, the, apt leave, hence for, the requisite mechanical snags, or defects, rather at his expenses, being removed therefrom, and, also, qua the defective parts, being replaced, at his expenses, for, ensuring its roadworthiness. However, a perusal of the record, discloses, that none, of, the afore apposite motion(s), were resorted to by the plaintiff, before the authority concerned, or before the Court concerned.

8. Be that as it may, the afore omissions, on the part of the plaintiff, do not, obviously bestow any leverage, upon him, to contend that the contesting defendants, during the relevant period, whereat they held the tractor, under spurdari, being enjoined, to, at their expense(s), hence ensure the roadworthiness, or the pliability, of, the tractor concerned, (a) nor also any defects/snags, as occurred thereat, hence therein, from any averred omissions, if any, on the part of the defendants, to hence ensure, its roadworthiness, can bestow, any leverage upon the plaintiff, to, contend that monetary damages, as claimed against the defendants, are affordable to him, (a) emphatically when affording(s) of relief, of, monetary damages qua him, is entirely dependant, upon, the requisite expenses being incurred, for, all the relevant purposes, rather by the plaintiff, and when the defendants, were not enjoined to make the requisite expenses, for, ensuring the upkeep, and, maintenance, of, the tractor, (b) whereas his visibly omitting, to, make the afore requisite motions, thereupon he is barred from espousing, qua, there being any negligence, on the part of the contesting defendants, in either maintaining or keeping the tractor, in a roadworthy condition, nor reiteratedly, any monetary damages, as espoused in the plaint, are renderable, qua him. No question, of, law, muchless, any substantial question, of, law arises, for, determination.

8. In view of this, there is no merit in the instant appeal and the same is dismissed and the impugned judgment(s) and decree(s), rendered by both the learned courts below, are maintained and affirmed. Also, the pending application(s), if any, are also disposed of. No costs.