(2014) 04 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 577 of 1988

State of Punjab and Others APPELLANT

Vs

State Transport Co-Operative Society RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Punjab Land Revenue Act, 1887 — Section 158(2)(iv), 78
Punjab Motor Vehicles Taxation Act, 1924 — Section 14

Citation : (2014) 176 PLR 47

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Harsimrat Rai, Deputy Advocate General, Advocates for the Appellant

Judgement

Paramjeet Singh, J.—Instant regular second appeal has been preferred by the appellants-defendants against the judgment and decree dated 28.09.1987 passed by learned Additional District Judge, Ferozepur, whereby judgment and decree dated 17.11.1986 passed by learned Sub Judge, Ist Class, Fazilka has been set aside and suit of the plaintiff has been decreed. For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

2. The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for declaration to the effect that notice dated 20.06.1984 is illegal, null and void and is not binding upon it and also sought for permanent injunction restraining the defendants from recovering the amount of Rs. 84,500/- as arrears of token tax in respect of bus No. RRK-4358. It was averred that plaintiff society is owner of two buses bearing registration Nos. PBK 786 and PBX-386 and it has no relation with bus RRK-4358 regarding which tax has to be deposited. It was also averred that bus in question is registered at Sri Ganga Nagar, Rajasthan and is owned by Zimidara Transport

Company Ltd. It was also averred that the plaintiff had requested defendants to refrain from effecting recovery of token tax allegedly due in respect of Bus No. RRK-4358 and issued a notice under Section 80 CPC. But defendants failed to heed to request of plaintiff and thus, suit was filed.

3. Upon notice, defendants appeared and resisted the suit on the ground that jurisdiction) of the civil Court is barred in view of Section 14 of the Punjab Motor Vehicles Taxation Act, 1924 and Section 158(2)(iv) of the Punjab Land Revenue Act. The suit is not maintainable without first depositing the amount under Section 78 of the Punjab Land Revenue Act. According to the defendants, the plaintiff society in its letter dated 10.04.1980 had intimated that the society had purchased the bus in question. The plaintiff society did not get the vehicle registered) in the State but had been plying it unauthorisedly since 31.07.1979. No road tax had been paid By the plaintiff in Punjab State under the Motor Vehicles Taxation Act.

4. Plaintiff filed replication denying the averments in the written statement and reiterating the averments in the plaint.

5. On the basis of the pleadings of the parties, the Courts of first instance framed the following issues:-

"1. Whether the civil Court has no jurisdiction to entertain and try this suit? OPD

2. Whether the suit against defendant No. 1 is not maintainable? OPD

3. Whether a valid notice u/s. 80 C.P.C. has been served? If not its effect? OPD

4. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD

5. Whether the plaintiff is entitled to the relief of declaration and permanent injunction as prayed for? OPP

6. Relief."

6. The Court of first instance after perusal of the evidence led by the parties recorded issue-wise findings and dismissed the suit vide judgment and decree dated 17.11.1986. Against that, plaintiff preferred an appeal, which has been allowed and suit of the plaintiff has been decreed vide judgment and decree dated 28.09.1987 by the lower appellate Court. Hence, this second appeal.

7. At the time of admission, no substantial question of law was framed. However, learned State counsel submits that only substantial question of law which arises in the present appeal is:-

"Whether the judgment of the lower appellate Court is perverse being result of non-reading and misreading of evidence on record?"

8. I have heard learned State counsel and perused the record.

9. Admittedly, as per the record ownership of the vehicle in question i.e. RRK-4358 vests in the Zimidara Transport Company Limited, Sri Ganga Nagar which has been proved on record by way of certificate issued by me District Transport Authority, Sri Ganga Nagar which is placed on record as Ex. P8. Furthermore, as per Ex. P9 which is also a copy of the register maintained by the Transport Authority, the ownership has been shown in the name of Zimidara Transport Company Limited, Sri Ganga Nagar. Since the notice is for recovery of tax with respect to the arrears of vehicle No. RRK-4358 and plaintiff is not owner of the same, a notice under Section 80 C.P.C. was issued by plaintiff before filing of suit. The recovery was sought to be effected by defendants alleging that the ownership of the vehicle vests in the plaintiff, but the defendants have failed to prove it. Once the plaintiff is not Owner of the vehicle in question, recovery cannot be effected from it. Notice with regard to amount issued in a wrong name, is not binding upon the plaintiff as such. Since the notice-vide which recovery was sought to be effected is itself illegal, jurisdiction of civil Court cannot be said to be barred and plaintiff is entitled to declaration and permanent injunction as prayed for. Reference in this regard may be made to judgment of this Court in Roshan Lal Vs. State of Punjab, .

10. Learned State counsel has failed to show that the findings recorded by the learned lower appellate Court are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, the said findings of fact do not warrant interference in the second appeal. No question of law, much-less substantial question of law arises for adjudication in this second appeal. No other point has been urged.

Dismissed. No order as to costs.

