

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Civil Suit No. 66 of 2000**

**Judgment reserved on 26.9.2006**

**Date of decision : 31.10.2006**

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**Nikka Ram**

**...Plaintiff.**

**Versus**

**Parkash Chand and others**

**...Defendants.**

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***Coram***

**The Hon'ble Mr. Justice : Surjit Singh, Judge.**

**Whether approved for reporting?**

**For the plaintiff : Mr. Tarlok Chauhan, Advocate.**

**For the defendants : Mr. H.K. Bhardwaj, Advocate, for  
defendants No. 1, 2 and 4.**

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**Surjit Singh, Judge**

Plaintiff has filed this suit for recovery of a sum of Rs.16,53,948/- against defendants No. 1 to 4. The cause of action, as stated in the plaint, may be summed up thus. Plaintiff is an Ex-serviceman. He purchased a Mini Truck DCM Toyota on 13.5.1991 by raising a loan of Rs.3,12,000/- from H.P. Financial Corporation and the H.P. Ex-servicemen's Corporation. Defendant No. 2 is brother-in-law (Sala) of the

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**Whether reporters of Local Papers may be allowed to see the Judgment?**

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plaintiff and defendant No. 1 is the son of defendant No. 2. Both being the relatives of the plaintiff, approached him that the truck be given to them for being managed and operated and assured that they would regularly pay the instalments of the loan to the H.P. Financial Corporation and would also maintain record of income and expenditure. Since defendant No. 1 knew driving and defendants No. 1 and 2 were not having any source of income, the plaintiff took pity upon them and agreed to their proposal. Defendants No. 1 and 2, in connivance with defendants No. 3 and 4, got prepared a document dated 1.8.1991 and obtained plaintiff's signatures on the said document. Defendants No. 3 and 4 connived with defendants No. 1 and 2 in the sense that in spite of their knowing that the signatures of the plaintiff had been obtained on that document without making him understand the contents thereof, attested that document. On the strength of that document, which was represented to be only power of attorney authorizing defendant No. 1 to drive, manage and operate the truck, possession of the truck was taken over by defendant No. 1. He started operating the truck and also paid a few loan instalments, but thereafter stopped paying the same. When the plaintiff came to know about non-payment of instalments of loan, he cancelled the power of attorney through a notice dated 2.9.1997. On receipt of the notice, defendants No. 1 and 2 approached the plaintiff and assured that all the instalments, due to the Financial Corporation, shall be paid soon and account of income from the operation of the truck rendered. Upon such assurance the plaintiff allowed defendant No. 1 to continue to operate the truck. However, the defendants did not honour the assurance.

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2. On 11.4.1994 through an affidavit sworn on the said date, defendant No. 1 with a view to cheating the plaintiff, sold the truck for Rs.3,50,000/- to one Daroga Ram and received a sum of Rs.70,000/- from him as earnest money and misappropriated that amount of money. When the vehicle had been with Daroga Ram, on account of the aforesaid fraudulent transfer in his favour by defendant No. 1, an accident took place resulting in injury to a third party. That third party filed a petition before the Motor Accident Claims Tribunal in which the plaintiff, being the registered owner of the vehicle, was impleaded. The Tribunal ordered him to pay Rs.50,000/- by way of compensation. The plaintiff having no money to pay the compensation, award was sent to the Collector, Hamirpur for execution and the plaintiff apprehended that his movable and immovable property would be attached by the Collector in execution of the said award.

3. On 9.10.1998 the plaintiff lodged an FIR against defendant No. 1 and some other persons, under Sections 418, 420, 423, 465, 468, read with Section, 34 of the Indian Penal Code. The police during the course of investigation of that FIR seized the truck. When the plaintiff applied for release of the truck in his favour, defendant No. 1 filed objections and claimed that he was the owner of the truck. Ultimately when the order was passed in favour of the plaintiff by the Magistrate, defendant No. 1 filed a revision petition against that order. That revision was dismissed. After getting the truck released, the plaintiff had to spend Rs.64663/- on its repair to make it roadworthy and to arrange this amount the plaintiff had to sell his land.

4. The plaintiff has sought a declaration that the power of attorney, dated 1.8.1991, purportedly executed by him in favour of

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defendant No. 1, is fabricated, false and unconscionable, besides seeking a decree for recovery of money. He has claimed Rs.9,39,285/-, on account of the money now due to the H.P. Financial Corporation on account of the loan and the interest due thereon, Rs.64,663/-, on account of the money spent on repair of the vehicle and payment of token tax, Insurance premium etc., Rs.50,000/-, which has been awarded against him by the Motor Accident Claims Tribunal by way of compensation, Rs.50,000/- as litigation expenses for defending various proceedings and Rs.5.00 lacs as general damages.

5. Defendants No. 1, 2 and 4 have filed a common written statement. Defendant No. 3 has been proceeded against exparte. They have raised a few preliminary objections, besides contesting the claim on merits. It is stated that the suit is bad for misjoinder of parties. Further it is alleged that the plaintiff has not approached the Court with clean hands and has suppressed material facts.

6. On merits it has been admitted that the plaintiff had purchased a truck and had taken a loan of Rs.2,37,742/- from the H.P. Financial Corporation, impleaded as proforma defendant No. 5. It has been alleged that defendant No. 1 extended financial help to the tune of Rs.50,000/- to the plaintiff for the purchase of the truck and that this fact has been suppressed by the plaintiff. It is further alleged that defendant No. 1 was approached by the plaintiff before taking the loan and offered to employ him as driver and that in fact defendant No. 1 was only a driver / co-driver on the truck. It is stated that the instrument, i.e. power of attorney dated 1.8.1991, had been executed by the plaintiff voluntarily as a security for the amount of Rs.50,000/-, which defendant No. 1 had lent to the plaintiff for the

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purchase of the truck. It is alleged that defendant No. 1 used to hand over all the earnings, by way of freight, to the plaintiff and as and when the plaintiff gave any amount of money either in cash or in the form of draft for being paid to proforma defendant No. 5, i.e. H.P. Financial Corporation, towards the repayment of its loan, defendant No. 1 promptly deposited the same with the said proforma defendant. It has been admitted that the power of attorney was cancelled. It has been denied that defendant No. 1 had sold the truck to Daroga Ram. Instead it is alleged that the plaintiff had himself entered into an agreement with said Daroga Ram and that defendant No. 1 executed the sale agreement on behalf of the plaintiff on the strength of the power of attorney dated 1.8.1991. It is admitted that the earnest money amounting to Rs.70,000/- was received from Daroga Ram by defendant No. 1, but it is alleged that the same had been handed over to the plaintiff. It has been admitted that the plaintiff had lodged an FIR against defendant No. 1 and some other persons. However, it has neither been admitted nor denied that the plaintiff's application for release of the truck in his favour, after it was seized by the police, was opposed by defendant No. 1 or that revision petition against the order of release of the truck in favour of the plaintiff was filed by defendant No. 1.

7. In the replication the plaintiff denies that he had been paid Rs.50,000/- by defendant No. 1 by way of margin money to enable the plaintiff to purchase the truck. Other averments made in the written statement have also been denied and the facts stated in the plaint reiterated.

8. This Court, vide order dated 21.8.2001, framed the following issues:-

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- “1. Whether the power of attorney executed by the plaintiff on 1-8-1991 in favour of defendant No. 1 is fabricated, false and unconscionable document? If so, its effect? OPP
2. Whether the plaint is bad for misjoinder of parties? If so, its effect? OPD 1, 2 and 4.
3. Whether the plaintiff has not approached this Hon’ble Court with clean hands and has suppressed important facts? If so, its effect? OPD 1, 2 and 4.
4. To what amount, if any, is the plaintiff entitled to recover and from whom? OPP
5. Relief.”

9. I have heard the learned counsel for the parties and gone through the record. My issue-wise findings are as follows.

**Issue No. 1**

10. The plaintiff himself examined a witness from the office of Registration Authority, namely Dinesh Kumar, Registration Clerk, as PW-2 and got proved copy of the document, in question. The same is Ext. PW-2/A. The plaintiff, while in the witness box as PW-5, has not stated even in general terms that the document is fabricated, false or unconscionable, leave alone the details or the particulars of the alleged fabrication, falsehood or unconscionableness of the document. He simply stated that the vehicle was taken to Tehsil Headquarters, where certain documents and instrument power of attorney were executed and his signatures obtained on those documents. He has not stated that the contents of those documents were not read over or explained to him nor does he say that the contents of such documents, particularly Ext. PW-2/A, are not correct.

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11. There being no evidence in support of the allegations that the document is fabricated, false or unconscionable, the issue is found against the plaintiff and in favour of the defendants.

**Issue No. 2.**

12. Though in the plaint it is alleged that the document, copy Ext. PW-2/A, was fabricated by defendants No. 1 and 2 in connivance with defendants No. 3 and 4, yet during the course of the trial the plaintiff has not led any evidence even to support the allegation that the document is fabricated, false or unconscionable, leave alone leading some evidence indicating that defendants No. 3 and 4 assisted, in any manner, defendants No. 1 and 2 in getting the document fabricated or falsely prepared etc. Therefore, the suit is held to be bad for misjoinder of defendants No. 3 and 4, who are the marginal witnesses of the document, copy Ext. PW-2/A.

**Issue No. 3.**

13. It is the plea of defendants No. 1 and 2 that the plaintiff had raised certain amount of money by way of loan from the H.P. Financial Corporation and that that loan amount was not equivalent to the price of the truck, which he had purchased and that the margin money amounting to Rs.50,000/- had been provided to the plaintiff by them, but this fact has been suppressed / concealed by the plaintiff. The plaintiff, while in the witness box as PW-5, though denied that defendants No. 1 and 2 had provided the margin money of Rs.50,000/- for the purchase of the truck, he did admit that at the time of the purchase of the truck his financial condition was not as sound as that of defendants No. 1 and 2. Ext. PW-2/A, proved by the plaintiff himself, records that the entire margin money for the purchase of the truck had been paid by defendants No. 1 and 2. Defendant

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Parkash Chand in his testimony as DW-1 has categorically stated that a sum of Rs.50,000/- was lent by him to the plaintiff for the purchase of the truck.

14. In view of the above stated position, it is held that the plaintiff has suppressed the fact that defendants No. 1 and 2 provided him financial help to the tune of Rs.50,000/- to enable him to purchase the truck, in question. However, this finding cannot be said to be of any consequence, as regards the merits of the case, except that the testimony of the plaintiff is to be considered with extra circumspection.

#### **Issue No. 4**

15. The plaintiff seeks to recover money from the defendants through the present suit on the following counts to the extent mentioned against each :-

- (i) Money due to the H.P. Financial Corporation, = Rs.9,39,285/-  
i.e. defendant No. 5, on account of the loan,  
which defendants No. 1 and 2 undertook to  
repay but have not repaid;
- (ii) Money spent on repair of the truck and = Rs. 64,663/-  
payment of token tax and insurance  
premium etc. after the truck was retrieved  
from defendant No. 1;
- (iii) Compensation awarded by the Motor = Rs. 50,000/-  
Accident Claims Tribunal in an accident,  
which took place when the truck was  
with defendant No. 1;
- (iv) Litigation expenses for defending various = Rs. 50,000/-  
Proceedings;
- (v) General damages = Rs.5,00,000/-.



16. There is no evidence in support of the plaintiff's contention that defendants No. 1 and 2 had undertaken to repay the loan raised by the plaintiff from the H.P. Financial Corporation, except his bald statement, which has been controverted by defendant Prakash Chand, while appearing as DW-1, with equal strength. Under these circumstances, claim on account of money due to the H.P. Financial Corporation, on account of the loan raised by the plaintiff, does not stand established and, therefore, nothing is recoverable by the plaintiff on this count.

17. Though the stand taken by defendant No. 1 is that he was engaged only as a driver of the truck and that he never operated the truck nor did he ever conduct himself as the owner of the truck, the evidence on record suggests that not only he had been holding out to others that he was the owner of the truck, but even contested the plaintiff's own claim for the release of the truck in his favour in the Court of law. The plaintiff has placed on record copies of two judgments, which the defendants admitted at the time of admission / denial of documents. One judgment is passed by the learned Additional Chief Judicial Magistrate, Hamirpur for the release of the truck in favour of the plaintiff on two separate applications for the release of the truck, one moved by the plaintiff and the other by defendant No. 1. A reading of the judgment shows that defendant No. 1 contested the plaintiff's right to have the custody of the truck as owner and claimed himself to be the owner of the truck and hence entitled to its custody. The learned Additional Chief Judicial Magistrate dismissed the defendant's application and allowed that of the plaintiff. The defendant did not stop there. He filed a revision petition in the Sessions Court, which was dismissed by judgment dated 30.1.1999. These two judgments corroborate

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the plaintiff's version that defendant No. 1 had been operating and dealing with the truck as if he was its owner.

18. During the course of the trial of this case the plaintiff appeared as PW-5 and testified that after getting the truck released, he had to spend Rs.65,000/- to make it roadworthy, because it had been damaged in an accident, which took place when the truck was with one Daroga Ram, on account of its having been sold to him by defendant No. 1. Though the defendants in their written statement deny that the truck was sold by them to Daroga Ram and instead it was pleaded that it was the plaintiff himself, who had negotiated with Daroga Ram for the sale of the truck and that defendant No. 1, acting on the instructions of the plaintiff executed the papers regarding sale of the truck to Daroga Ram, being attorney of the plaintiff, the evidence, which has come on record, shows that defendant No. 1 Prakash Chand sold the truck to Daroga Ram on his own and out of the sale consideration received Rs.70,000/- from Daroga Ram. Reference in this behalf may be made to the testimony of Daroga Ram, PW-4, who has categorically stated that the vehicle was sold to him by defendant No. 1 and the deal was also struck by him (defendant No. 1) with him (the witness). The two judgments of Additional Chief Judicial Magistrate and Sessions Court, referred to above, also belie the defendants' plea that defendant No. 1 sold the truck on the instructions of the plaintiff. If it were so, defendant No. 1 would not have contested plaintiff's claim for the release of the truck in his favour.

19. From the above discussion it can safely be concluded that the accident took place, when the truck was with Daroga Ram, to whom it had been sold by defendant No. 1 Parkash Chand. The plaintiff himself did not

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sell the truck to Daroga Ram. Thus there was no privity of contract between Daroga Ram and the plaintiff and so the plaintiff could not have claimed anything from Daroga Ram, on account of the damage caused to the truck in the accident. His claim would lie only against defendant No. 1 to whom he had handed over the truck as his attorney.

20. Plaintiff's testimony that he had to spend Rs.65,000/- on the repair of the truck after its release in his favour, pursuant to the orders of the learned Additional Chief Judicial Magistrate, has remained unchallenged. Therefore, it is held that the plaintiff is entitled to recover Rs.64,663/-, on account of repair charges, payment of token tax and insurance premium.

21. As regards item (iii) of the claim, admittedly an accident had taken place when the truck was with the aforesaid Daroga Ram, to whom it had been sold by defendant No. 1, acting as the attorney of the plaintiff. It is also not in dispute that a claim petition was filed before the Motor Accident Claims Tribunal to claim compensation for the death of a lady in the said accident. It is also not in dispute that the compensation money had been ordered to be paid by the plaintiff. As already noticed, at the time when the accident took place, the truck was with one Daroga Ram, to whom it had been sold by defendant No. 1. Therefore, the plaintiff is held to be entitled to recover Rs.50,000/- from defendant No. 1, on account of the compensation awarded against him by the Motor Accident Claims Tribunal.

22. Regarding item (iv), no evidence has been led. So the plaintiff is not entitled to recover anything for this item.

23. As regards item (v), the plaintiff is held to be entitled to Rs.1,00,000/- inclusive of the earnest money of Rs.70,000/-, which

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defendant No. 1 received from Droga Ram for the sale of truck to him, but did not hand over the same to the plaintiff.

**Relief**

24. In view of the above findings, decree for a sum of Rs.2,14,663/- is passed in favour of the plaintiff and against defendant No.1 with proportionate costs and interest at the rate of 6% per annum from the date of institution of the suit to the date of the satisfaction of the decree.

Decree sheet be drawn accordingly.

**October 31, 2006 (BC)**

**( Surjit Singh )  
Judge**

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**C.S. No. 66 of 2000**

31.10.2006 Present: Mr. Tarlok Chauhan, Advocate, for the plaintiff

Mr. H.K. Bhardwaj, Advocate, for defendants  
Nos. 1, 2 and 4.

Per separate judgment placed on the file, decree for a sum of Rs.2,14,663/- is passed in favour of the plaintiff and against defendant No. 1 with proportionate costs and interest at the rate of 6% per annum from the date of institution of the suit to the date of the satisfaction of the decree.

**October 31, 2006 (BC)**

**( Surjit Singh ), J.**