

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.328 of 1997

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1. Smt. Vidyawati wife of late Gurumukh Singh, R/o Mohalla- Sarda Prasad Ghose Lane, Govind Mitra Road, P.O.- Bankipur, P.S.- Pirbahore, District- Patna
 2. Sardar Mahendra Singh, son of Late Gurumukh Singh, R/o mohalla- Nayatola, Bhikhna Pahari, P.O.- Bankipur, P.S.- Kadam Kuan, District- Patna
 3. Smt. Charanjit Kuar, Daughter of late Gurumukh Singh wife of Sardar Jogendra Singh, R/o mohalla- Naya Tola, Opposite Sapna Apartment, P.O.- Bankipur, P.S.- Kadam Kuan, District- Patna
 4. (a) Most. Rajindra Kaur, wife of late Sardar Kulwant Singh @ Kantu, R/o- Opposite Sapna Apartment, Naya Tola, P.O. & P.S.- Kadam Kuan, District- Patna
 5. Harbansh Singh son of Sardar Gurumukh Singh
 6. Indrapal singh @ Soni
 7. Ranjit singh @ Pinki
 8. Kamaljit Singh @ Sharu
- all sons of Harbansh Singh, R/o Govind Mitra Road, Sardar Prasad Lane, P.O. & P.S.- Pirbahore, District- Patna

.....Defendants/Appellants.

Versus

Sardar Harbansh Singh Ajnahi, son of Shri Parmanand Ajnahi, R/o mohalla- Sapna Apartment, Flat No. A/2, Naya Tola, P.O.- Pirbahore, P.S.- Pirbahore, District- Patna

..... Plaintiff/Respondent

Appearance :

For the Appellant/s	:	Mr. Binod Kumar Singh, Advocate Mr. Vagisha Pragya Vacaknavi, Advocate
For the Respondent/s	:	Mr. Sukumar Sinha, Sr. Advocate Mr. Diwakar Upadhyaya, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 12-10-2017

The instant appeal is directed against the judgment dated 30.06.1997 and decree dated 11.07.1997 passed in Title Suit No. 101 of 1993 by Shushil Chandra Jha, the then Sub-judge X, Patna whereby and whereunder the suit filed by the plaintiff-respondent was decreed on contest with cost.



2. The plaintiff filed the suit for declaration that he is the sole owner of Deepak Decorators and its godown fully described in Schedule I of the plaint and further for delivery of possession for recovery of possession over shop no. 7 and 11 and its godown along with the articles detailed in Schedule II of the plaint and the plaintiff be put in possession through the process of the court and, in case, the articles are not handed over to the plaintiff, then a decree for compensation and damages amounting to Rs. 3 lakhs be passed with interest at the bank rate in favour of the plaintiff and against the defendants.

3. Briefly stated, the case of the plaintiff is that he is the sole owner of Decorating Shops named and described as M/s Deepak Decorators and is in possession which are situated in Officers' Flat Market Bailey Road, Patna-1. The shop stands registered in the name of the plaintiff under the Bihar Shops and Establishment Act by the Patna Municipal Corporation. There are two godowns. The descriptions of shops and godown is given in schedule I of the plaint. The plaintiff further claimed that in order to settle his son, Shri Raghubir Singh, and to engage him, started an exclusive crockery business in the name and style of Deepak Decorators in shop no. 7 and 11 near Officers' Flat, Bailey Road, Patna. The son of the plaintiff has been sitting in shop, the plaintiff took telephone



in the name of the said shop Deepak Decorators. The plaintiff has made investment for the improvement of the business of the said Deepak Decorators. He withdrew a sum of Rs. 1,86,000/- from time to time from his account in the year 1989 and purchased various articles for it for which he holds bills/cash memos. In the month of May, 1989 the business was started and the claims of the defendants to be contrary are false. The plaintiff and his sons have exclusively dealt with Deepak Decorators. The defendants have falsely alleged that defendant no. 1 has advanced Rs. 1,50,000/- through cheque and again Rs. 50,000/- through another cheque. It is true that cheques were given but they were paid to the plaintiff on being pressed for account of Janta Crockeries and after one day of the said payment, the plaintiff gave cheque of Rs. 1,50,000/- to the Dream Land Co-operative Society for purchase of flat. It has also been falsely alleged that Rs. 50,000/- was paid orally. The plaintiff also took shop no. 7 for godown from Dilip Kumar and took shop no. 11 from Santosh Kumar Kohli and has been paying its rent. The defendants had nothing to do with the shop. Any documentary evidence produced by the defendants that must be forged and fabricated. The Deepak Decorators has its own account with the bank and is operated only by the plaintiff being proprietor. The plaintiff has been paying the income tax as proprietor and



throughout it is recorded as proprietor concerned of the plaintiff. But the defendants have grown dishonest and has started trouble with him. The said shops are also recorded in Shop and Establishment in Labour Department. The plaintiff is paying electric bills and getting its receipt from Electricity Department. The plaintiff and defendant no. 1 are jointly owning and possessing a shop named as Janta Crockery situated in Mohalla Kadamkuan. The plaintiff and defendants invested fifty-fifty capital in the said Janta Crockery business and joint account was opened in the name of plaintiff and defendant no. 1 in Punjab National Bank. The defendant no. 1 was incharge of the documents and register etc. of the said Janta Crockery and the plaintiff was incharge of the purchasing of the articles, arrangements and supply to the customers. The defendant no. 2 to 6 are of criminal nature and they are associates of defendant no. 1. The defendant no. 1 with the help of other defendants started creating troubles for the said Janta Crockery for which the plaintiff filed a miscellaneous case and thereafter started a series of cases. Due to dispute with regard to Janta Crockery, the defendants started threatening to disturb the smooth running of Deepak Decorators and they also tried to harm and endanger to the plaintiff and his family members, though the defendants have no



concern with the said Deepak Decorators. Thus, on being such oppressive and illegal threats given on several dates by the defendants, the plaintiff filed the suit before the court. It is further case of the plaintiff that after the filing of the suit on 20.07.1993 in the evening the defendants in collusion with each other dispossessed the plaintiff from the shop, godowns and business of Deepak Decorators and forcibly took possession of its articles, the some of which are being detailed in Schedule 2 of the plaint. The articles taken by the defendants were more than those mentioned in the schedule II but it has been mentioned as far as the plaintiff has been able to recollect as they removed all the register, account register etc. The cause of action arose on several dates and lastly on 25.02.1993 when the plaintiff filed said petition before the C.J.M., Patna which was sent to the Police and on being aware of the same from the Police, on 27.02.1993, in the evening the defendant no. 2 to 6 with their associates came to the said shop Deepak Decorators and threatened the plaintiff for dire consequences and on 28.02.1993 at Sapna Apartment where the plaintiff with his family resides the defendants with some other criminals came and gave undue pressure and threat to relinquish his claim on said Janta Crockery otherwise they will destroy the said Deepak Decorators shops of the plaintiff. After the suit on



20.07.1993 the defendants dispossessed the plaintiff and illegally took possession of the articles of Deepak Decorators, its shops, godowns, business and documents relating to the same.

4. The defendants appeared and contested the suit by filing written statement. Defendant no. 2 Kulwant Singh @ Kantu has filed separate written statement, similarly the defendants no. 3, 5 and 6 filed separate written statement. Defendant no. 1 Sardar Gurumukh Singh filed separate written statement, thereafter, after the death of Sardar Gurumukh singh, his legal heirs filed written statement and further the defendant no. 2 filed additional written statement.

5. From perusal of the written statements, it reveals that the defence of the defendants and the case make out are the same. The case of the defendant no. 2 is that the plaintiff has got no cause of action. The suit is barred by limitation, waiver, estoppel and acquiescence. The suit is also barred by Section 34 of the Specific Relief Act. The suit is bad for misjoinder and non-joinder of necessary party. The business of Janta Crockery is completely an independent and separate business which has no concern with the business of Deepak Decorators. Janta Crockery is sole business of defendant no. 1. No suit can be maintainable against a partner. The business made and described as Deepak Decorators is a



partnership business between the plaintiff and defendant no. 2 which was started initially in the year 1989 by verbal agreement between the parties to share the profit and loss half and half besides other benefits who made excess investment. The defendant no. 2 was unemployed and as such the defendant no. 2 requested his father defendant no. 1 to provide capital for starting a decoration business. The defendant no. 1 provided Rs. 50,000/- in cash for making arrangement to purchase furniture and Almirah etc. for starting a decoration business in the shop room no. 11 taken in sub-tenancy by defendant no. 2. The said sum of Rs. 50,000/- in cash was given to the plaintiff for getting the shop started with furniture, almirah etc. by purchasing out of sum of Rs. 50,000/- paid by defendant no. 1 and to engage defendant no. 2 as partner. The plaintiff having experience of business under took to make arrangement for starting of partnership decorating business with this defendant. Out of the initial capital of cash given to him by the father of this defendant for running the business with this defendant no. 2 as partner of the 50 % of the share in the business with the plaintiff, the plaintiff applied for telephone connection to be used for the business of Deepak Decorators and deposited the security money for telephone connection out of the cash money given to him by defendant no. 1 for starting decoration business



described as Deepak Decorators subsequently to purchase further material required for decoration business and Deepak Decorators and to meet the other requirements for running and for development of the said business, money were provided time to time, the defendant no. 1 gave to the plaintiff a sum of Rs. 1,50,000/- under cheque in the name of the plaintiff bearing cheque no. 4462 dated 05.09.1989 of the Central Bank of India, Naya Tola Branch, which was withdrawn by the plaintiff from the account of the defendant no. 1 bearing account no. 2756 for the purpose of fulfilling the requirements of partnership business of Deepak Decorators. The plaintiff, at the time as partner in the business, asked for further money from defendant no. 2 as the plaintiff was not in a position to invest his money then, again Rs. 50,000/- was given to the plaintiff for the partnership business by cheque no. 4464 dated 05.10.1989 by defendant no. 1 which was withdrawn by the plaintiff. Besides the above capital invested in the business the defendant purchased so many articles which he would prove by documents and receipts of purchase of goods for the business as partner but many of the receipts of purchased articles are kept with the plaintiff who used to sit in the business shop in course of business. The defendant no. 2 has received the profit from the said business money by cheque issued under the



signature of the plaintiff also which will prove the interest of the plaintiff as partner in the business of M/s Deepak Decorators. The defendant no. 2 is the owner and partner of decoration business with Deepak Decorators. The rent of shop no. 11 of aforesaid officers' Flat Market is paid by defendant no. 2 under duly granted rent receipts by Krishi Bazar Utpadan Samiti issued in the name of lessee Santosh Kumar Kohli. The plaintiff is not the sole owner with possession of two decorating shops and the shop named and described as Deepak Decorators situated in Officers' Flat Market. The registration of the business M/s Deepak Decorators under the Shops and Establishments Act by the Patna Municipal Corporation made in the name of the plaintiff was got done fraudulently by the plaintiff in the year 1989 which is apparent from the registration certificate produced by the plaintiff itself. It is submitted that dishonesty crept in the mind of the plaintiff as it appears for first time in 1991 from his conduct who fraudulently got the said partnership business registered in the name to grab the entire business and to swallow the entire capital invested in the business by defendant no. 2 and also the profit of the partnership business. The plaintiff never allowed defendant no. 2 to know that he has got the said partnership business registered in his sole name under the Bihar Shops and Establishment Act taking advantage of the



simplicity and trust of defendant no. 2. The Deepak Decorators has no godown of its own. The alleged godown either in Maurya Lok or in Radha Krishan Thakurbari at Exhibition Road, Patna do not belong to Deepak Decorators business. The shop no. 6 of Krishi Utpadan Bazar Samiti is under the tenancy of Kishlay Pharmacy which can be ascertained by local inspection also. The shop no. 7 of the Officers' Flat Market is in the tenancy of Dilip Kumar who has been paying rent to Kirshi Utpadan Bazar Samiti. It is wrong to say that the plaintiff and defendant no. 1 were or are jointly commanding and possessing the shop described as Janta Crockery situated at Mohalla Kadamkuan, Patna. The plaintiff has no concern with the ownership of Janta Crockery. The plaintiff has no capital to invest. Deepak Decorators was started on the basis of capital provided by defendant no. 1 to settle defendant no. 2. The plaintiff being active partner has dishonestly created some documents. Deepak Decorators is a partnership business of the plaintiff and the defendant no. 2. The plaintiff having an experience of the said business was engaged as a working partner in the said business of Deepak Decorators. The claim of the plaintiff that he is the sole owner of Deepak Decorators is totally false, hence, the suit is fit to be dismissed.



6. On the basis of the pleadings of the parties the following issues were settled on recast by the learned court below :-

(I) Is the suit as framed maintainable ?

(II) Has the plaintiff got valid cause of action for the suit ?

(III) Is the plaintiff sole owner of the business named and styled as Deepak Decorators and its three godowns as detailed in schedule I of the plaint ?

(IV) is the plaintiff entitled to a decree for recovery of possession over the suit properties ?

(V) Is the plaintiff entitled to a decree for compensation and damages of Rs. 3 lakhs along with interest at bank rate ?

(VI) To what relief/reliefs as prayed, if any, is the plaintiff entitled to ?

7. The learned trial court took up the issue no. (iii), (iv) and (v) together and decided the same in favour of the plaintiff holding that the plaintiff is the sole owner of the business named and styled as Deepak Decorators and its three godowns as detailed in schedule 1 of the plaint, the plaintiff has been dispossessed from schedule 1 property by the defendants on 20.07.1993 forcibly so, he is entitled to a decree of recovery of possession and further the plaintiff is entitled for recovery of the articles of the firm and if the articles are not recovered, he is entitled to get Rs. 1,50,000/- by



way of compensation from the defendants along with interest at the bank rate i.e. 12 % per annum. Issue no. (i) was also decided in favour of the plaintiff and it was held that the suit as framed is maintainable. Issue No. (ii) has also been decided in favour of the plaintiff and it was held that the plaintiff has got valid cause of action for the suit. Thereafter, issue no. (vi) was taken and it was held that the plaintiff is not entitled to any other relief besides the aforesaid reliefs and accordingly, that issue was decided and accordingly the suit was decreed on contest with cost.

8. The defendants being aggrieved and dissatisfied with the said judgment and decree preferred this appeal challenging the legality, correctness and propriety of the same.

9. Learned counsel for the appellants arguing in this appeal has submitted that the impugned judgment and decree under appeal are wrong and erroneous both on facts as well as in law. Learned court below should have framed the issue on the question whether the firm M/s Deepak Decorators is a partnership firm with 50% share of the plaintiff respondent or not but the most important issue has not been framed and no finding is given, although it is clear and specific case of the defendants appellants that M/s Deepak Decorators was a partnership firm wherein the plaintiff was working as partner with 50% share in profits. The plaintiff



respondent has filed the suit claiming himself to be the sole owner of the business M/s Deepak Decorators but subsequently by amendments the plaintiff respondent made out a new case that he has started the said business for settling his son Raghubir Singh in business but from evidence it reveals that the son of plaintiff was student at the time of opening of the said business on 12.05.1989. The story of dispossession and possession of Kulwant Singh over the shop from 02.07.1993 is false. The story of dispossession is after thought and has been made realizing that the suit as framed is not maintainable in law. The specific case of the defendants appellants from beginning is that the defendant no. 2-appellant no. 4 Kulwant Singh was unemployed and have no experience of business, so the father of Kulwant Singh, namely, Sardar Gurumukh Singh invested his capital and got the business of M/s Deepak Decorators started through plaintiff respondent to get Kulwant Singh settled in business as the plaintiff respondent had gained experience of business while working as paid employee in Janta Crockeries. The plaintiff respondent being the son of Sharhu of Sardar Gurumukh Singh, therefore, Sardar Gurumukh Singh had full faith on plaintiff respondent. Sardar Gurumukh Singh entrusted the plaintiff the management of the business as working partner and for this work Sardar Gurumukh Singh agreed to give



half share to the plaintiff respondent in the income of the business of Deepak Decorators for looking after and doing the affairs of the said business.. The trial court should have dismissed the suit on the basis of the evidence of the plaintiff itself. It is admitted case of the parties that the plaintiff was resident of Khandwa in the state of Madhya Pradesh where the father of the plaintiff lives. The plaintiff came to Patna in the year 1958 and worked as paid employee in the business of Janta crockery with Sardar Gurumukh Singh. The plaintiff has further admitted in his evidence that he has dispute with Sardar Gurumukh Singh from February, 1993 and prior to that Sardar Gurumukh Singh had full faith on the plaintiff and the plaintiff had also faith on Sardar Gurumukh Singh and this fact supports the case of the appellants. Learned court below has failed to consider the material evidence and case of the appellants that Sardar Gurumukh Singh advanced Rs. 1,50,000/- by cheque dated 05.09.1989 through cheque no. 4462 and another cheque for Rs. 50,000/- dated 05.10.1989 bearing cheque no. 4464 to the plaintiff for development of the business of M/s Deepak Decorators being opened on 12.05.1989 and further he has given Rs. 50,000/- in cash to the plaintiff. The plaintiff has admitted in his evidence that payment of Rs. 2,00,000/- by cheque was made to him by Sardar Gurumukh Singh. Learned court below has erred



in accepting that Rs. 2,00,000/- paid by Sardar Gurumukh Singh to the plaintiff was in lieu of alleged accounting of the business of M/s Janta Crockeries. The plaintiff has been falsely claiming himself to be the partner of Sardar Gurumukh Singh in the business of M/s Janta Crockeries. Without any evidence on the record and without any finding, learned court below has erroneously erred in believing the wrong explanation of the plaintiff that Rs. 1,50,000/- was not given for development of the disputed business M/s Deepak Decorators. Learned court below should have disbelieved the case of the plaintiff that the amount of Rs. 2,00,000/- paid through cheques by Sardar Gurumukh Singh was for purchasing Flat no. A/2 in Sapna Apartment by plaintiff respondent in lieu of the amount of M/s Janta Crockeries. The two passbooks Ext. 12 and 12/A do not show withdrawal of Rs. 3,20,000/- in the month of August -September, 1989 and it falsifies the explanation given by the plaintiff respondent that he has purchased the flat from that amount. The learned court below has committed serious error of record in stating the case of the defendants appellants that the plaintiff respondent has no concern with the business of M/s Deepak Decorators or its godowns. In fact, the specific case of the defendants appellants that the said business was started by the capital invested by Sardar Gurumukh



Singh and the plaintiff respondent was made partner to the extent of 50% in the profit and income of the business of M/s Deepak Decorators for working and for managing the business. Learned trial court has erred having not properly considered the admission of the plaintiff respondent and his son Raghubir Singh in their evidence that the appellant Kulwant Singh has been riotting and used to do the said business being the son of late Sardar Gurumukh Singh. The evidence of the plaintiff respondent proves the case of the defendants appellants that the business was established by Sardar Gurumukh Singh for Kulwant Singh with the help of plaintiff respondent. In view of the admission and non-explanation given by the plaintiff respondent that for what purpose and for which work the plaintiff has issued cheque of Rs. 528/- in the name of Sardar Kulwant Singh from the account of Deepak Decorators, the court below should have dismissed the suit. Learned court below has wrongly held that the plaintiff respondent is the sole owner of the business M/s Deepak Decorators on the basis of registration of the said firm in the name of Sardar Harbansh Singh Ajanhi under the Shops and Establishment Act under Patna Municipal Corporation and has failed to inquire into and consider the case of the defendants appellants whereas the defendants appellants have succeeded in proving the investment



of capital paid by Sardar Gurumukh Singh for starting and developing the business of M/s Deepak Decorators. Learned court below has not categorically analyzed the oral evidence of the witnesses but he has distorted and misconstrued the evidences of all PWs and DWs for giving categorical finding. Learned trial court has erred in holding that M/s Deepak Decorators has its three godowns as described in schedule I of the plaint. The learned court below ought to have been held that the Deepak Decorators has no godown at least at Maury Lok or at Radha Krishan Thakurbari as the plaintiff respondent has failed to establish that the alleged godowns belongs to the business of M/s Deepak Decorators. Learned trial court has erred in not properly considering the documentary evidences filed by the defendants appellants and has come to erroneous finding and erroneous conclusion and thus, the judgment and decree is liable to be set aside. The learned trial court has lost the sight to consider Ext. 3 series properly and has come to erroneous finding. Ext. 3 B is prior to filing of the suit and it shows that the appellant Kulwant Singh has purchased the articles for the business of M/s Deepak Decorators and it bears his signature. The said exhibit also proves the case of the defendants appellants that Kulwant Singh was sitting in the shop and was running the shop as partner of the same. The trial court has failed



to consider Ext. 2 series which shows the rent of the shop premises have been paid by Kulwant Singh in the name of its tenant to Krishi Bazar Samti and it proves that Kulwant Singh has been exercising the act of ownership over the business of M/s Deepak Decorators. In view of the admission of the plaintiff respondent that it has admitted in Income Tax Tribunal at Kolkata that he is the Manager of Janta Crockeries and as such the story of plaintiff respondent that he is the partner of M/s Janta Crockeries is false. Learned court below has failed to consider the documentary evidences of the defendants which are Exts. A, B, C and Ext. D series properly. If the documents are properly analyzed the same will prove the case of the defendants appellants is true and correct and the plaintiff is not the sole owner of M/s Deepak Decorators rather he is working as partner. The evidences of Dws have also not been considered properly by the learned trial court. The reasons assigned by the trial court for not accepting the evidences of Dws is perverse. Learned trial court has not considered the contradictions in the evidences of PWs and according to the choice, he has accepted their evidence. The learned trial court has given incorrect finding on all the issues and has erred in deciding the same. Learned subordinate Judge has committed grave error in believing the letter dated 08.05.1989 and 19.05.1989 to the



Telephone Department for Telephone Connection i.e. Ext. 8. Letter dated 08.05.1989 proves forgery of plaintiff respondent that when admittedly M/s Deepak Decorators was opened on 12.05.1989, there can be no occasion for applying for telephone connection on 08.05.1989 in the name of Deepak Decorators by plaintiff respondent, when the firm itself was not in existence on 08.05.1989. No plausible reasons has been assigned in paragraph 18 of the judgment while giving finding on Exts. A, B, C and D series. The learned Subordinate Judge has erred in allowing Rs. 1,50,000/- as compensation recoverable from the defendants appellants by the plaintiff respondent. There is no evidence on record that on 20.07.1993 the materials valued at Rs. 1,50,000/- were available in M/s Deepak Decorators or in its alleged godowns. All the findings of the learned trial court is erroneous and otherwise, bad in law and on facts and the same is not sustainable and as such the same is fit to be set aside. The learned Subordinate Judge should have dismissed the suit. Ext. 5 is the Bill of Deepak Decorators and over that Ext. 5 there is signature of Kulwant Singh as K. Singh and Ext. B series are also Bill of Deepak Decorators having signature of Kulwant Singh as K. Singh. In Ext. 12/A which is Pass Book there is no description of the plaintiff as owner and it is only mentioned as Deepak



Decorators and in transaction there is payment to K. Singh and thus, from the evidence of the plaintiff itself the case of the defendants appellants is proved.

10. On the other hand, learned counsel for the respondent has argued that the plaintiff has succeeded in proving the case that he is the sole owner of M/s Deepak Decorators and the defendants appellants have no concern with the said business. The defendants appellants have dispossessed the plaintiff respondent forcibly and as such learned trial court has rightly decided all the issues and rightly decreed the suit. No chit of paper has been filed on behalf of the defendants appellants to show that he has received profit out of the business of M/s Deepak Decorators, no income tax return form or any other paper has been filed in this regard. Learned Sub-Judge after considering the case and evidences of the parties properly has rightly decided the suit and there is no illegality, incorrectness or impropriety in the judgment and decree of the learned trial court. The oral evidences as well as documentary evidences, adduced on behalf of the plaintiff respondent, are sufficient enough to prove the case of the plaintiff respondent that the plaintiff respondent is the sole owner of M/s Deepak Decorators and its godowns fully described in Schedule I of the plaint. The plaintiff has succeeded in proving that his only



son Raghbir Singh started exclusive crockery business in the named and styled as Deepak Decorators. The plaintiff respondent has proved that he has sufficient capital to establish the business of M/s Deepak Decorators and the amount paid by Sardar Gurumukh Singh was in the account of M/s Janta Crockeries which was utilized in purchasing the flat. The arguments advanced by the learned counsel for the appellants is not convincing, simply signature as K. Singh over some of the documents of the plaintiff does not prove the case of the defendants. K. Singh cannot be termed as Kulwant Singh. Learned Sub-Judge has rightly decreed the suit after passing the correct judgment and giving proper finding. The appeal filed by the appellants is not maintainable and is fit to be set aside.

11. The points for consideration in this appeal are:(i) As to whether the plaintiff is sole owner of the business named and styled as Deepak Decorators and its three godowns as detailed in schedule I of the plaint or the said business is being run jointly by the plaintiff and defendant Kulwant Singh and the plaintiff is the working partner thereof ? (ii) Is the plaintiff entitled to a decree for recovery of possession over the suit properties and (iii) is the judgment and decree passed by the learned court below is fit to be affirmed ?



12. Point No. 1:- The plaintiff has examined altogether 12 witnesses. Out of them Pws 1, 3, 4, 5, 9, 10, 11 and 12 are the formal witnesses. PW 2 is the plaintiff Harbansh Singh, PW 6 Rabinder Verma, PW 7 Raghubir Singh the son of the plaintiff and PW 8 Jwala Prasad Sinha are the material witnesses of the plaintiff. The formal witnesses have proved the documents. PW 1 Shailesh Prasad has proved Vakalatnama Ext. 1, PW 3 Bachhu Narayan Lal has proved rent receipts Ext. 2 series, PW 4 Shailesh Nandan Karn has proved the receipts of Bazar Samiti Ext. 3 series, PW 5 Uma Prasad has proved the receipts Ext. 3 series, PW 9 Ranjit Kumar has also proved the Ext. 3 series, PW 10 Deep Narayan Singh also proved the receipts Ext. 3 series, PW 11 Rambhawan Pandey has proved the electric bills Ext. 7 series and Ext. 3 series. PW 12 Suresh Singh has proved the petitions filed in Complaint Case No. 614 C of 1993 and 317 C of 1993 Ext. 9 and 9/A. Ext. 1 is the Vakalatnama, Ext. 2 series and 3 series are different receipts, Ext. 4 is the quotation and Ext. 5 is the bill of the shop in question. Ext. 6 is the receipt of payment of electric bills, Ext. 7 series are the electric bills, Ext. 8 series are different letters and Ext. 9 and 9/A are the petitions filed in complaint cases aforesaid Ext. 10 to 10/D are certified copy of orders, Ext. 11 to 11/A are income tax details. Ext. 12 and 12/A are pass books.



13. The defendants have examined 22 witnesses. DW 1 Chandrika Prasad has proved receipts of Bazar Samiti Ext. A to A/24, DW 2 Dilip Kumar Pandey has proved the receipts Ext. A/25 to A/28. DW 3 Bijay Kumar Singh has proved the receipts Ext. A/29 to A/34, DW 5 Mahesh Prasad Singh has proved receipts Ext. A/35 to A/38. DW 6 Parmanand Singh has proved receipts Ext. A/39 to A/43, DW 9 Ram Narain Singh has proved corporation receipts Ext. C to C/2. DW 12 Rajdeo Sharma has proved the Bills Ext. B/1 to B/6. DW 15 Sachida Nand Singh has proved the Bills Ext. D to D/4. DW 17 Madnesh Prasad has proved the Bills Ext. D/5 to D/7, Ext. 19 Ajay Kumar has proved the receipts Ext. D/8, DW 20 Sanjay Kumar Singh has proved the receipts D/13 and D/14. DW 21 Arvind Kumar has proved the receipts Ext. D/15 and C/3. These witnesses are formal witnesses. Remaining DW 4 Chunni Lal, DW 7 Om Prakash Nayar, DW 10 Rajan Singh, DW 11 Raja Bhar Singh, DW 13 Dipak Kumar Sinha, DW 14 Jogendra Singh, DW 16 Harbans Singh. DW 18 Mahendra Singh and further DW 1 is the defendant no. 2 Kulwant Singh who has been examined by the Advocate Commissioner.

14. According to the plaintiff, he is the sole owner of the business M/s Deepak Decorators whereas according to the defendants, the said business was started by Sardar Gurumukh



Singh with his own capital to settle his son Kulwant Singh and the plaintiff being experienced was engaged as partner in the said business. Learned trial judge has wrongly considered the case of the defendants and accordingly dealt with the evidences, resulting in wrong conclusion. It was never the case of the defendants that he is the sole and exclusive owner of the same and the plaintiff was only an employee of the same, rather it is the definite case of the defendants that the plaintiff was working partner as he was experienced one, though in the said business Sardar Gurumukh Singh has invested the capital and which is admitted one. The cheques given by Sardar Gurumukh Singh has been encashed by the plaintiff. According to the plaintiff, he was dispossessed on 20.07.1993 forcibly and all the articles of the shop were taken by the defendants. The plaintiff in his evidence has admitted that Sardar Gurumukh Singh was his own Mause. He has also admitted that he has taken Rs. 1,50,000/- from Gurumukh Singh through cheque and he deposited the same in the account. He has also stated that he used to take cash from Gurumukh Singh occasionally. According to him, the said business was established by him exclusively to settle his son Raghurbir Singh Azwani. The aforesaid business stands registered under the Shops and Establishment Act and in his name telephone connection stands.



He has opened the bank account in the name of aforesaid business in the Punjab National Bank. There are three godowns attached to this business. Income tax returns are also being filed. Kulwant Singh has not done any work in the said firm nor he has purchased any articles for the said firm. Criminal cases between him and son of Gurumukh Singh are going on. He has filed the papers of the said firm which were with him and remaining papers were taken away by Kulwant Singh as they were kept in the said shops. From the evidence of plaintiff itself it is proved that the plaintiff has encashed the two cheques given by Sardar Gurumukh Singh and the plaintiff has admitted this fact in his cross-examination. PW 6 Rabindra Verma has also stated that he always used to see Raghubir Singh sitting in Deepak Decorators but since 20.07.1993 he is not sitting there. PW 7 Raghubir Singh is the son of the plaintiff. He has stated that his father has established the firm aforesaid after investing Rs. 1,86,000/- in order to settle him and the shop stood in the name of his father. Shops No. 7 and 11 were allotted in the name of Satyendra Kohli and Dilip Kumar and he pays the rent in their names to Bazar Samiti. According to this witness Om Prakash, the staff, is now in collusion with Kulwant Singh and his father has lodged a criminal case for the same which is pending. The defendants have forcibly dispossessed him from



the said shop on 20.07.1993. PW 8 Jawala Prasad Sinha has stated that the said firm belongs to the plaintiff and his son and he has been seen sitting on that shop and he has never seen defendant Kulwant Singh sitting on that shop. During cross-examination this witness has become incompetent. So far as the oral evidence of the defendants is concerned, DW 4 Chunnilal has stated that he has been going to the house of the defendants since last 40 years and he and his family members have participated in the Bhandara of late Sadar Gurumukh Singh, he further stated that he used to see Kulwant Singh and plaintiff and he has supported the case of the defendants that the said firm was being run jointly by the plaintiff and Kulwant Singh the defendant but the learned trial judge has taken the same otherwise and it has recorded his evidence on this score. DW 7 Om Prakash Nayar has also proved the case of the defendants and he has stated that the shop in question was opened by Gurumukh Singh and he has also kept the plaintiff with the defendants and both of them used to run the said shop and both of them used to divide their respective half share in its income and he has been working in the said shops since the beginning. He has proved the Bills of the said shops. During cross-examination also, he has shown his competency by stating that he does the accounts of the shop, he has admitted that he is on bail in criminal case and



on that ground the learned trial judge has disbelieved his testimony. DW 12 Rajdeo Sharma has stated that he has been seeing Kulwant Singh sitting inside the shop. He has further stated that he is seeing the plaintiff also sitting in the said shop. He has further stated that the plaintiff used to do outer work and Kulwant Singh used to sit in the shop. During cross-examination he has also stated that plaintiff is also a partner of the said firm but on this ground his evidence has been discredited by the learned trial judge. DW 11 also proved the case of the defendants. He has stated that plaintiff and defendant Kulwant Singh are the owners of the said firm. He is an employee of the said firm. DW 13 Deepak Sinha has stated that the said firm run in the shop no. 11 since 1989 and he used to take articles from there on hire from defendant Kulwant Singh. During cross-examination also nothing has come to disbelieve his testimony. DW 14 Jogendra Singh has stated that his father-in-law Gurumukh Singh and his Sala had opened the said firm. DW 16 Harbansh Singh is defendant no. 3. He has also stated that his father has opened the said firm for his brother Kulwant Singh and his father kept the plaintiff as a partner of the same. Kulwant Singh has been examined by the Advocate Commissioner as DW 1 as he has fully supported the case. From Ext. 5 which is Bill of Deepak Decorators, it reveals that there is



signature of Kulwant Singh and he has signed for Deepak Decorators. This document which is of the plaintiff clearly proved that the defendants Kulwant Singh was also sitting in the said shop as partner thereof and he was signing the Bills also. Ext. 12 is the Pass book of State Bank of India in the name of Shri Harbansh Singh and in this pass-book there is no mention of Deepak Decorators. Ext. 12/A is the pass-book of Punjab National Bank standing in the name of Deepak Decorators. In this pass-book at several places in the transactions it is mentioned K. Singh and this goes to prove that Kulwant Singh was having interest in the said firm since beginning. This pass-book Ext. 12/A which was filed by the plaintiff and which is in the name of Deepak Decorators proves the case of the defendants that Kulwant Singh was also a partner in the said firm and he was having interest. The entries in the pass-book regarding transactions to K. Singh have not been explained by the plaintiff. It is well settled principle of law that the plaintiff must stand on his own leg and he cannot take advantage from the weakness of the case of the defendants. Here from the documents of the plaintiff itself, the case of the defendants is proved. The learned trial judge has not considered all these evidences properly and has come to the wrong finding. On behalf of the defendants also documents have been filed which are Ext. A series, different



receipts Ext. B series Bills of the said firm and from these bills the case of the defendants is proved. Ext. D/ 6 and D/9 also proves the case of the defendants. Learned trial judge has wrongly construed the case of the defendants and as such he has been carried away and the documents of the defendants have also not been discussed. There is no reliable evidence on the records that the plaintiff has been dispossessed from schedule I property by the defendants on 20.07.1993 forcibly. The admission of the plaintiff during cross-examination regarding encashment of cheques given by Sardar Gurumukh Singh by him and Ext. 5 and 12/A, the two documents filed by the plaintiff established the case of the defendants that Kulwant Singh was sitting in the said firm as partner thereof and the plaintiff was working partner so telephone connection and shop in his name do not prove the case of the plaintiff that he was the sole owner of the said firm. In the result, this point is decided in favour of the appellant and against the respondent.

15. Point No. 2:- As discussed above, from the documents of the plaintiff itself, it is manifest that the plaintiff is not the sole owner of the business named and styled as Deepak Decorators rather he is the working partner therein and having 50 % share and the defendant Kulwant Singh is the partner thereof. So the plaintiff has not been able to prove that he was dispossessed forcibly from



the said business on 20.07.1993 by the defendants rather the defendant Kulwant Singh was having interest in the said business since its starting and the defendants never dispossessed the plaintiff. The evidence adduced on behalf of the defendants, both oral and documentary, are reliable and convincing. It is also manifest that the plaintiff has filed the suit only with a view to grab the entire business after taking the advantage of his status as working partner in the said business. Thus, it is held that the plaintiff is not entitled to a decree for recovery of possession over the suit property. This point is accordingly, decided in favour of the appellants and against the defendants.

16. Point No. III:- In the light of the discussions as made above, the judgment and decree passed by the learned trial judge being unsatisfactory and further not passed on the facts and law are fit to be set aside and it is not fit to be affirmed. The learned trial judge has misread and misconstrued the case of the defendants and accordingly, he evaluated the evidences adduced on behalf of the defendants, resulting, in wrong finding. The learned trial judge has completely failed to consider the evidences adduced on behalf of the parties in right perspective. Ext. 5 and 12/A which are the documents of the plaintiff have not been considered properly as from those documents the case of the



defendants is proved. Thus, it is held that the judgment and decree is not fit to be affirmed and accordingly, the same is hereby set aside.

17. In the result, this appeal stands allowed on contest but under the circumstances without cost.

avin/-

(Jitendra Mohan Sharma, J)

AFR/NAFR	NAFR
CAV DATE	11.09.2017
Uploading Date	12.10.2017
Transmission Date	12.10.2017

