

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 6585 of 2016 (O&M)
Date of Decision: January 07, 2019**

Sher Singh and others

.....APPELLANTS

VERSUS

Om Parkash

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Lokesh Sinhal, Advocate
for the appellants.

Mr. Rahul Sharma, Advocate
for the respondent.

SURINDER GUPTA, J.(Oral)

Heard.

The plaintiff/respondent filed suit seeking relief of mandatory injunction directing the defendants/appellants to hand over the vacant possession of the disputed property shown with letters ABCD in the site plan (Annexure-1) of the plaint with the plea that defendants were given possession of this portion of the property as licensee on mutual understanding that they would vacate the same as and when they get constructed their own house in the village.

The defendants/appellants while contesting the plea of plaintiff/respondent alleged that his possession over the suit property is under agreement dated 06.06.1994. He had purchased the plot vide that

agreement and paid ₹30,000/- to the plaintiff as earnest money. Separate receipt of payment of ₹30,000/- was also obtained from him. The balance sale consideration was paid in the year 1994 but without any receipt. The actual possession of the plot was delivered to defendant Dharambir by the plaintiff but the sale deed could not be executed, in view of mutual understanding between the parties that the same would be executed at some mutual and convenient date. Thereafter, the defendants constructed their residential house over the plot and started residing there. The electric and water connection in the house are also in the name of defendants.

On the agreement, learned Civil Judge (Junior Division), Palwal recorded the findings as follows:

12. *“On the other hand the defendant has placed reliance upon agreement to sell dated 6.6.1994. The defendant has successfully proved the due execution of agreement to sell dated 6.6.1994 by examining stamp vendor Deep Chand as DW1, Dalbir Singh son of Deed Writer Radha Raman as DW 2, Gulab Singh an attesting witness as DW4. The defendant has also examined handwriting expert Sh. Satish Chandra Varshney as DW6 who in his report Ex. DW6/B has opined that disputed thumb impression of Om Prakash on agreement to sell dated 6.6.1994 Ex. D2 and receipt Ex. D3, Mark D1-D2, D3-D4 and specimen thumb impression of Om Prakash on specimen LTI Mark S2 are identical. All these thumb impressions have been taken from the same thumb of Om Prakash. To rebut the contention of the defendant the plaintiff has not led any evidence. The plaintiff in his replication has only denied that he never entered into agreement to sell with the defendant. The plaintiff has failed to prove the licensor-licensee relationship. An injunction is equitable remedy, the party who seeks relief, must come with clean hands. The plaintiff has not come to the court with clean*

hand and therefore he is not entitled to equitable relief.....”.

The above findings of the learned trial Court was affirmed by the Ist Appellate Court and it was observed that “the plea taken by the defendants/respondents with regard to the appellant executing agreement Ex.D2, receipt Ex.D3 and receiving earnest money of ₹30,000/- stand proved”.

After recording the above findings, the learned Ist Appellate Court proceeded to determine the question as to whether defendant No.2 has attained right of ownership on the basis of agreement to sell Ex.D2. It was observed that the agreement does not confer any title and regarding possession of appellant over the suit property and there was no recital in the agreement or receipt that the possession of plot was handed over under this agreement.

Once the Courts below have recorded the findings that execution of the agreement regarding the suit property and payment of earnest money of ₹30,000/- is proved, the question of transfer of title of the disputed property on the basis of agreement to sell did not arise and learned Ist Appellate Court was not required to delve on this issue and record findings to this effect. It is nowhere the case of plaintiff/respondent that he had ever entered into agreement to sell the suit property to defendants. This plea was raised by the defendants in the written statement but denied by the plaintiff in replication. The moment it is proved that agreement to sell was executed by the defendants, earnest money was received and the agreement is regarding the suit property where the defendants/appellants have also raised the construction of house, no other inference than that the possession was delivered to the defendants under the agreement can be drawn. Learned

trial Court while dismissing the suit has rightly observed that “plaintiff has failed to prove that the suit property was given to defendants as licensee”. The findings and the observations recorded by the Ist Appellate Court that the possession is not proved under the agreement and the defendants are in possession as licensee are not perverse and not based on the proper appreciation of evidence on record. The limited question for determination in this case is as to whether suit for mandatory injunction is maintainable. As the possession of defendants over the suit property is not proved as licensee, learned trial Court has rightly observed that the plaintiff is not entitled to relief of injunction as claimed by him.

The plaintiff has not challenged the findings regarding the agreement as recorded by the learned trial Court and the Ist Appellate Court. Suit of plaintiff seeking relief of mandatory injunction is not maintainable. This appeal is accepted and the judgment and decree passed by the Ist Appellate Court is set aside and judgment and decree passed by trial Court is upheld.

January 07, 2019

Jyoti-II

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No