

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

**RSA No.10 of 2021 (O&M)
Date of Order:18.01.2021**

Vinod Kapoor

..Appellant

Versus

Manju Rani and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Narinder Sharma, Advocate,
for the petitioner.

ANIL KSHETARPAL, J(Oral)

Defendant no.2 has filed this regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing a suit for possession of property bearing Municipal No.2799/4 and recovery of use and occupation charges of the property.

The plaintiffs-respondents filed the suit claiming to be owners of the property on the basis of registered sale deed dated 16.10.1979, Ex.PW2/A and Ex.PW2/B. It was claimed that the defendants have no right, title or interest in the property.

Defendants No.1-A(i)(v)(vi) took a stand that they have taken the shop in question on rent from defendant no.2. Initially, the firm M/s Malhotra Mills Store was working from the premises in question which was dissolved on 16.05.2011 and now Vijay Kumar and Sukhwant Kaur continue to be in possession.

Defendant No.1-A(ii)(iii)(iv) including Vijay Kumar and Sukhwant Kaur pleaded that they are in permissive possession of the

property pursuant to a fiduciary agreement with defendant no.2. Whereas he (Vinod Kapoor) took a stand that in fact the property was purchased by his father from Joint Hindu Family funds and he is using the property as a godown for the past 30 years. He further pleaded that Surinder Kumar Kapoor (plaintiff no.1's husband) shifted to Rajkot (Gujrat) long back.

Trial court on appreciation of evidence found that the plaintiffs, being owners, are entitled to the possession of the property. The court further ordered that the defendants are liable to pay use and occupation charges @ Rs.3000/- per month from April 2010, till handing over the vacant possession of the property.

Two first appeals filed challenging the judgment of the trial court were dismissed by first appellate court after re-appreciating the pleadings and the evidence.

This court has heard learned counsel for the appellant at length.

Learned counsel for the appellant submits that M/s Kapoor Mills Store is in possession of the property as a tenant prior to its purchase by the plaintiffs-respondents on 16.10.1979. He submits that the tenancy continues in favour of defendant no.2, who is the sole proprietor of M/s Kapoor Mills Store and, therefore, no decree for possession could have been passed.

It may be noted here that inspite of request made, learned counsel for the appellant failed to draw the attention of the court to such pleadings in the written statement filed by the appellant. Thus, the argument of learned counsel is beyond pleadings.

Still further, defendant no.2 has claimed ownership of the property on the ground that his father had purchased the property from Joint

Hindu Family funds. Thus, the defendant-appellant cannot be permitted to take a new defence in the regular second appeal.

Learned counsel for the appellant further submitted that M/s Kapoor Mills Store has not been impleaded as party and therefore, the suit is not maintainable.

On a court question, learned counsel did not dispute that M/s Kapoor Mills Store is now the sole proprietorship of Vinor Kapoor-the appellant. Thus, the firm M/s Kapoor Mills Store is only a trade name of business of the appellant. In these circumstances, non impleadment of the firm, which is only a trade name, cannot be fatal to the case of the plaintiffs.

Keeping in view the aforesaid facts, there is no ground to interfere.

Hence, dismissed in limine.

18th January, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No