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

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Reserved on:- 20.11.2023
Pronounced on:- 15.12.2023

Ashok Kumar Chuchra

...Appellant

Versus

Suresh Kumar and Ors.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. R.D. Bawa, Advocate with
Mr. Dipanshu Kapoor, Advocate
for the appellant.

Mr. V.D. Sharma, Advocate
for respondent No. 1.

Mr. Narender Singh Behgal, AAG Haryana.

AMARJOT BHATTI, J.

1. The appellant/defendant No. 1 has filed the present Regular Second Appeal against impugned judgment and decree dated 12.11.2013 passed by learned Additional District Judge, Yamuna Nagar at Jagadhri vide which the appeal preferred by the plaintiff Suresh Kumar was allowed and the judgment and decree dated 03.06.2010 passed by the learned Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri, dismissing the suit filed by the plaintiff was set aside.

2. The facts of the case are that plaintiff Suresh Kumar filed suit for mandatory injunction directing the defendants to hand over the actual, physical vacant possession of shop bounded as mentioned in head note of

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the plaint along with consequential relief of permanent injunction restraining the defendants from alienating the shop in question in favour of anybody else by way of sale, lease, gift, mortgage or otherwise in any manner, whatsoever and further restraining the defendants from changing the existing nature of the suit property in any manner, whatsoever. It is the case of plaintiff that he entered into an agreement for purchase of shop in question on 28.12.1990 with one Raj Kumar son of Sh. Hans Raj for a sale consideration of Rs. 45,000/- and an agreement was duly executed between the plaintiff and said Raj Kumar in the presence of witnesses. At the time of agreement dated 28.12.1990, a sum of Rs.42,000/- was paid and it was agreed that the plaintiff shall be entitled to get the sale deed executed and registered from Raj Kumar at any given time on payment of balance sale price of Rs. 3,000/-. The possession of the shop was delivered to the plaintiff and he started his business of tailoring in the said shop in the name and style of M/s Luxmi Tailors. The plaintiff contacted said Raj Kumar several times for execution and registration of sale deed on receipt of balance sum of Rs. 3,000/- but the said Raj Kumar kept on putting off the matter on one pretext or the other and for the last three years, the whereabouts of said Raj Kumar were not known to plaintiff. It was further alleged that defendant No. 1 was a depot holder in Camp Colony, Yamuna Nagar and defendants No. 2 and 3 were police officials. That defendant No. 1 in connivance with defendants No. 2 and 3 harassed the plaintiff and on 01.09.1996, he along with 3-4 other *gunda* type of persons came to the shop of the plaintiff and threatened to leave the said shop. The plaintiff then moved an application to the Superintendent of Police, Yamuna Nagar on 02.09.1996. On 15.09.1996, when the plaintiff reached his shop at

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10:00 am, he found that the shutter of the shop in question was lying damaged and a portion of the wall was also damaged. Thereafter, on 18.09.1996, the plaintiff moved another application to Superintendent of Police, Yamuna Nagar but no action was taken. Thereafter, the defendant No. 1 filed false and frivolous application against the plaintiff and committed mischief in connivance with defendants No. 2 and 3. On 18.04.2001, the plaintiff was summoned in the police station at the instance of defendant No. 1 and was made to sit in the police station, Farakpur by defendant No. 2. The plaintiff was threatened by defendants No. 1 to 3 of dire consequences in case the plaintiff did not vacate the shop. It was further alleged that during the pendency of present suit on 17.06.2002, while the plaintiff alongwith his family had gone to Dehradun to attend the marriage ceremony, the defendants took undue advantage of his absence and forcibly occupied the shop in question by breaking the locks. The defendants had also stolen the articles of the plaintiff from the shop in question. After returning back, the plaintiff reported the matter to the police on 18.06.2002 but the police did not take any action, rather recorded a twisted version of the plaintiff. The plaintiff also approached the defendants and requested them to hand over the actual and physical possession of suit property but to no effect. Ultimately, the present suit was filed.

3. Notice of the suit was given to defendants No. 1 to 3. Despite service, defendants No. 2 and 3 did not appear before the trial Court to contest the civil suit and were proceeded against *exparte*. In the written statement filed by defendant No. 1, preliminary objections regarding locus standi; maintainability; not coming to Court with clean hands etc. were

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taken. It was admitted that previously one Raj Kumar was recorded owner in possession of shop in question along with other shops and other property including residential property. However, it was alleged that on 19.11.1993, said Raj Kumar entered into an agreement to sell of property in question and other shops as well as residential building in favour of answering defendant vide agreement to sell dated 19.11.1993 which was reduced into writing, for sale consideration of Rs.2,00,000/- and the said Raj Kumar had received Rs. 50,000/- through Bank Cheque from the answering respondent as earnest money. Said Raj Kumar also received part payment of Rs. 50,000/- in cash on 28.05.1994 and executed a valid receipt in favour of answering defendant. At the same time, Raj Kumar delivered actual physical possession of the disputed shop alongwith other properties to answering defendant. Raj Kumar again received part payment of Rs. 50,000/- against balance sale consideration on 15.12.1995. It was further alleged that some dispute regarding arrears of House Tax was pending between Raj Kumar and the Municipal Committee, Yamuna Nagar and the appeal was preferred by Raj Kumar. Since, the litigation was pending, therefore, sale deed of the disputed shop and other property could not be executed by Raj Kumar in favour of answering defendant. However, a sum of Rs. 10,000/- was deposited by the answering defendant with the Municipal Committee, Yamuna Nagar on account of arrears of House Tax through Bank Cheque in the year 1995. Thus, a total sum of Rs.1,60,000/- was paid by the answering defendant to Raj Kumar in advance. Said Raj Kumar died in the year 1996, leaving behind his legal heirs. Thereafter, the plaintiff filed suit for permanent injunction against the legal heirs of Raj Kumar and got stay from the Civil Court. That Raj

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Kumar never agreed to sell the suit property or any other property to the plaintiff and further denied the execution of alleged agreement of sale dated 28.12.1990 in favour of the plaintiff. The alleged agreement of sale is a forged and fabricated document. Moreover, Raj Kumar became owner of the property in dispute on 11.01.1993 vide Civil Suit No. 1077 of 12.12.1992. Therefore, the question of alleged agreement to sale dated 28.12.1990 did not arise at all. It was further alleged that on the photocopy of alleged agreement to sale dated 28.12.1990, the plaintiff had shown the witnesses who are his father Kanshi Ram and grandfather and the alleged agreement of sale did not bear the signature of Raj Kumar. The plaintiff was very much in the knowledge that Raj Kumar had already expired prior to institution of the suit but the plaintiff knowingly did not implead his legal heirs as defendants. Therefore, the present suit was bad for non-joinder of necessary parties. The remaining averments were denied. It was prayed that the suit filed by the plaintiff may kindly be dismissed with costs.

4. In replication, the plaintiff denied the facts stated in the written statement and reiterated his claim in the plaint. From the pleadings of the parties, following issues were framed by the trial Court on 02.12.2004 :-

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| (1) <i>Whether the plaintiff is entitled for injunction as prayed for?</i> | <i>OPP</i> |
| (2) <i>Whether the plaintiff has no locus standi?</i> | <i>OPD</i> |
| (3) <i>Whether the suit is not maintainable?</i> | <i>OPD</i> |
| (4) <i>Whether the plaintiff has not come to the Court with clean hands?</i> | <i>OPD</i> |
| (5) <i>Whether the suit is not properly valued?</i> | <i>OPD</i> |
| (6) <i>Relief.</i> | |

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5. In order to prove the suit, the plaintiff Suresh Kumar himself stepped into the witness box as PW4. He further examined Sharbati Devi as PW1, Nirmala Devi as PW2 and Kanshi Ram as PW3 and closed the evidence on 06.09.2008.

6. In order to rebut the case of the plaintiff, the defendant Ashok Kumar himself stepped into the witness box as DW1 and closed the evidence on 14.05.2009.

In additional evidence, the defendant No. 1 Ashok Kumar tendered judgment and decree dated 23.01.2006 as Ex.R4 and Ex.R5 and closed the additional evidence.

7. In rebuttal evidence, the plaintiff examined Jiwan Lal UDC, Industrial Area, Sub Division, UHBVN as PW5 and closed the evidence on 21.05.2010.

8. After hearing the arguments advanced by learned counsel for both the parties, the suit filed by the plaintiff was dismissed vide judgment and decree dated 03.06.2010. Feeling aggrieved of this judgment and decree, the plaintiff filed Civil Appeal, which was allowed vide impugned judgment and decree dated 12.11.2013. Feeling aggrieved of this judgment and decree, the present Regular Second Appeal has been filed by the appellant/defendant.

9. I have heard the arguments advanced by learned counsel for both the parties. The learned counsel for the appellant/defendant No. 1 argued that Suresh Kumar plaintiff had filed suit for permanent injunction restraining the defendants from interfering in his possession over the shop in dispute on 08.05.2001. Later on, the plaintiff amended the plaint and sought the relief of mandatory injunction directing the defendants to handover the possession of the shop to him. He levelled the allegations

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against the appellant/defendant No. 1 that he took forcible possession of the shop on 17.06.2002. The version put forward by the respondent No.1/plaintiff and the evidence led by him was disbelieved and the suit filed by him was dismissed vide judgment and decree dated 03.06.2010 by the Court of learned Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri. However, the respondent No. 1/plaintiff preferred civil appeal and the same was accepted by passing impugned judgment and decree dated 12.11.2013. As a result of this, the present Regular Second Appeal has been preferred by the appellant/defendant No. 1. The learned First Appellate Court has failed to appreciate the facts and the law involved in this case, as a result it has caused miscarriage of justice. The respondent No. 1/plaintiff has based his claim on the basis of agreement of sale dated 28.12.1990, allegedly executed by Raj Kumar, now deceased. The original agreement to sell has not been placed on record to show that it was signed by late Raj Kumar. It is further admitted that the respondent No. 1/plaintiff never filed any suit seeking specific performance of agreement to sell dated 28.12.1990. Therefore, the stand taken by the respondent No. 1/plaintiff is without merits. The learned counsel for the appellant/defendant No. 1 further pointed out that there is convincing evidence on record to show that Raj Kumar was not owner of the shop at the time of execution of alleged agreement to sale dated 28.12.1990. He became owner of the property by virtue of judgment and decree dated 11.01.1993 passed in Civil Suit No. 1077 of 12.12.1992 by Sub-Judge 1st Class, Jagadhri Ex.RW2.

The said Raj Kumar had executed agreement to sale regarding the shop along with other property on 19.11.1993 and received sale

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consideration from time to time. Raj Kumar expired in the year 1996. The present appellant/defendant No. 1 had filed suit for specific performance regarding the said agreement against the legal heirs of Raj Kumar which was ultimately decreed in his favour vide judgment and decree dated 23.01.2006 Ex.RW4 and Ex.RW5. The sale deed was executed and registered through the Court. Therefore, the appellant/defendant No. 1 became owner of the shop in question along with other property.

The suit filed by the respondent No. 1/plaintiff seeking mandatory injunction is not maintainable. It has come in the cross-examination of plaintiff witnesses that he was dispossessed in the year 2000, whereas, he filed the suit for permanent injunction on 08.05.2001. He was required to file suit for possession and the present suit filed by the respondent No. 1/plaintiff is barred under Section 41(h) of Specific Relief Act, 1963. The aforesaid facts are duly proved on record by the appellant/defendant No. 1 by stepping into the witness box as DW1. It is further pointed out that the learned First Appellate Court has wrongly relied upon the electricity bills which are in the name of Raj Kumar, the vendor of appellant/defendant No. 1. Under these circumstances, the factual position and the evidence on record was not correctly appreciated by the learned First Appellate Court and the appeal was wrongly accepted by passing judgment and decree dated 12.11.2013 and the suit filed by the respondent No. 1/plaintiff was wrongly decreed. It is argued that the present appeal preferred by the appellant/defendant No. 1 may be accepted and the judgment and decree 03.06.2010 passed by learned Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri may kindly be upheld.

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10. On the other hand, the learned counsel for the respondent No.1/plaintiff Suresh Kumar argued that the facts of the case and the evidence on record were rightly appreciated by the learned First Appellate Court and the suit filed by him seeking mandatory injunction for directing the appellant/defendant No. 1 to handover the vacant possession of the shop in dispute was rightly decreed in his favour. In order to prove the facts of the case, Suresh Kumar the plaintiff had stepped into the witness box as PW4 and confirmed the stand taken by him in the plaint. He also proved on record the copy of agreement to sale dated 28.12.1990 Ex.P1 by way of secondary evidence. On the basis of this agreement to sell, he was handed over the possession of the shop in question where he was running his shop under the name and style of M/s Luxmi Tailors. The version put forward by the respondent No. 1/plaintiff was confirmed by his father Kanshi Ram who also stepped into the witness box as PW3. He has proved on record the electricity bills paid by them which are Ex.P3 to Ex.P7. The electricity connection stood in the name of Raj Kumar and the electricity bills were paid by them. He also placed on record the letters received by him at their shop which are Ex.P8 to Ex.P11. The possession of respondent No.1/plaintiff is also confirmed by Sharbati Devi Ex M.C. as PW1 and Nirmala Devi as PW2. The electricity connection standing in the name of Raj Kumar is also confirmed by Jiwan Lal UDC, as PW5. It is argued that there was sufficient evidence on record to confirm that the respondent No. 1/plaintiff was in possession of the shop in question. During the pendency of the case, he was forcibly dispossessed on 17.06.2002, as a result of which the suit was amended from suit for permanent injunction to suit for mandatory injunction. The said amendment was rightly allowed by the

trial Court. There is nothing on record to show that the possession of shop in dispute was ever delivered in favour of the appellant/defendant No. 1. Therefore, he had no right to dispossess him illegally and forcibly with the help of defendants No. 2 and 3. The respondent No. 1/plaintiff regarding the threats received by him had filed several complaints to the police but the police did not take any action and ultimately the appellant/defendant No. 1 succeeded in dispossessing him in an illegal and unlawful manner. Therefore, the facts of the case and the evidence on record were rightly appreciated by the First Appellate Court and by accepting the appeal vide judgment and decree dated 12.11.2013, his suit seeking mandatory injunction was rightly decreed. It is submitted that the appeal preferred by the appellant/defendant No. 1 is without merits and the same may kindly be dismissed.

11. I have considered the arguments advanced before me and have carefully gone through the evidence on record. Initially Suresh Kumar respondent No. 1/plaintiff filed suit for permanent injunction for restraining the defendants i.e. Ashok Kumar Chuchra, S.H.O. Police Station Farakpur and The Incharge, Police Post Gandhi Nagar, Yamuna Nagar from interfering in his peaceful, actual, physical possession over the shop with the boundaries as detailed in the plaint near railway crossing Gandhi Nagar, Yamuna Nagar as owner or to dispossess him illegally and forcibly. Later on, the plaint was amended to a suit for mandatory injunction directing the defendants to hand over actual physical possession of the shop in question with the relief of permanent injunction restraining the defendants from alienating the said shop as detailed in the plaint. A para No. 9-A was included in the amended plaint where it was claimed that

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on 17.06.2002 he along with his family had gone to Dehradun to attend the marriage ceremony and in his absence the defendants occupied the shop by breaking the locks of the same illegally and forcibly. It was further alleged that the defendants had stolen his articles lying in the shop. It is the case of respondent No.1/plaintiff that he had agreed to purchase the shop in question on the basis of agreement to sell dated 28.12.1990 from Raj Kumar in a sum of Rs.45,000/- out of which he had paid Rs. 42,000/- in the presence of witnesses. The sale deed was to be executed any time on the payment of balance of Rs. 3,000/-. As per the version of respondent No. 1/plaintiff, he was handed over the possession of the shop where he was running a tailor shop in the name and style of M/s Luxmi Tailors. On the other hand, it is the case of appellant/defendant No. 1 that Raj Kumar s/o Sh. Hans Raj had agreed to sell the shop along with other properties on the basis of agreement to sell dated 19.11.1993. He gave detail of amount which was paid by him from time to time. Ultimately, Raj Kumar died in the year 1996 and thereafter, he filed suit for specific performance on the basis of said agreement to sell against the legal heirs of Raj Kumar and the same was decreed in his favour. Later on, the sale deed was executed regarding the shop in question along with other properties through the process of the Court. Therefore, both appellant/defendant No. 1 as well as respondent No.1/plaintiff claimed that Raj Kumar had entered into an agreement of sale with them. The learned counsel for the appellant/defendant No. 1 has placed on record copy of judgment and decree in civil suit No. 1077 of 12.12.1992 titled Raj Kumar versus Vijay Luxmi and others, which was decreed in favour of Raj Kumar on the basis of statements of the parties vide judgment and decree dated 11.01.1993,

which is Ex.RW-2. Therefore, it is rightly pointed out by learned counsel for the appellant/defendant No.1 that at the time of execution of said agreement to sell dated 28.12.1990 Ex.P1 in favour of Suresh Kumar respondent No. 1/plaintiff, Raj Kumar was not owner of the shop. He became owner subsequently on the basis of aforesaid judgment and decree dated 11.01.1993. It has further come in the cross-examination of plaintiff witnesses i.e. Kanshi Ram father of the plaintiff as PW3 who admitted that at the time of execution of said agreement to sell, they did not see the title in favour of Raj Kumar. He further admitted that he came to know in the year 1996 that Raj Kumar was not owner of the property earlier. He further admitted that they have not filed any suit for specific performance of agreement to sell dated 28.12.1990 Ex.P1. On the other hand, Ashok Kumar filed Civil Suit No. 665/09.01.2001 titled "Ashok Kumar versus Anju Bala and others" seeking possession. During the pendency of this case, the matter was compromised between the parties and it was accordingly decreed vide judgment and decree dated 23.01.2006. The copy of judgment and decree sheet is Ex.RW4 and Ex.RW-5. On the basis of said decree, sale deed was executed in favour of the appellant/defendant No. 1 which is Ex.RW-1. On the basis of said sale deed, the appellant/defendant No. 1 became owner of the property.

12. However, in the case in hand, the title of appellant/defendant No. 1 or respondent No. 1/plaintiff is not to be proved. The matter in controversy is that the respondent No. 1/plaintiff claimed that he was illegally and forcibly dispossessed from the shop in dispute during the pendency of the case and regarding this he has filed suit for mandatory injunction directing the defendants to handover the vacant, physical

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possession of the shop in question. Therefore, in order to grant this relief of mandatory injunction, the Court was required to see the possession of respondent No. 1/plaintiff over the shop in question. In order to establish possession, firstly he has relied upon the agreement to sell dated 28.12.1990 Ex.P1, on the basis of which the possession of shop was given to him. Apart from the oral testimony of Suresh Kumar PW4, Kanshi Ram PW3 who is father of respondent No. 1/plaintiff, he has examined Sharbati Devi Ex MC as PW1 and Nirmala Devi as PW2 who confirmed that it was respondent No. 1/plaintiff who was running a tailor shop in the shop in question. Kanshi Ram PW3 has further proved on record the electricity bills standing in the name of late Raj Kumar which were paid by them. The bills are Ex.P3 to Ex.P7 which are dated 26.09.1992, 04.11.1992, 26.07.1993 and 02.01.2003. The respondent No. 1/plaintiff has further placed on record the inland letter card received at their shop which was being run under the name and style of M/s Luxmi Tailors. The same are Ex.P8 to Ex.P11. On the other hand, the appellant/defendant No.1 has failed to lead any convincing evidence to show that he was ever handed over the possession of disputed shop by Raj Kumar. Even if the appellant/defendant No. 1 got the sale deed executed in his favour by filing a civil suit based on agreement to sale dated 19.11.1993, even then he had no right to dispossess the respondent No. 1/plaintiff illegally and forcibly. Nobody can be permitted to take the law in his own hand. It was for the appellant/defendant No. 1 to follow due procedure of law to get back the possession of the disputed shop from the hands of respondent No.1/plaintiff.

Therefore, considering these facts, the judgment and decree

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dated 12.11.2013 passed by learned Additional District Judge, Yamuna Nagar at Jagadhri is on sound footing and it does not require any interference. The facts of the case and the documents on record were rightly considered by the First Appellate Court. With this observation, the judgment and decree dated 12.11.2013 passed by learned Additional District Judge, Yamuna Nagar at Jagadhri is accordingly, upheld. Resultantly, finding no merits in the present Regular Second Appeal preferred by appellant/defendant No. 1, the same is dismissed.

Pending application(s) if any, shall also stands disposed of.

The photocopies of records received from the two Courts below be sent back to the concerned quarters.

15.12.2023

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(AMARJOT BHATTI)
JUDGE

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