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

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Date of Decision: 27.02.2024.

Suresh Kumar

...Appellant.

Versus

Partap Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Ajay Jain, Advocate
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/
plaintiff against the concurrent findings recorded by both the Courts below
vide which the suit of the plaintiff was dismissed.

2. Brief facts of the case as per plaint are that the present suit was
filed for permanent as well as for mandatory injunction by the appellant/
plaintiff claiming that he had taken the shop No.154 from defendant No.2
Municipal Council, Rewari, on monthly rent of Rs.620/- on 01.12.1987 in
the open auction, regarding which an agreement of tenancy was duly
executed with defendant No.2 and accordingly possession had been
delivered to him. Since then the plaintiff had been regularly paying the rent
to defendant No.2. Defendant No.1 has no concern with tenancy and he was

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merely hired as a labour for preparing tea in the shop which was opened in the year 1990 and later on from the year 2002, due to shifting of civil Court in New Judicial Complex, he was being given 30% of the earnings in lieu of his labour work.

3. It was alleged that in March 2003, defendant No.1 in collusion with defendant No.2 Municipal Council, Rewari, had got the tenancy transferred in his name by making false representations. He was minor in the year 1992 and was incapable to give his consent. He never gave any representation in writing to defendant No.2 to transfer tenancy in the shop in dispute in favour of defendant No.1 and the said representation was never signed by him. A complaint under Sections 420, 467, 468, 471 and 120-B IPC was filed by the plaintiff against defendant No.1, Secretary and the concerned Clerk of Municipal Council, Rewari which was pending in the Court of Chief Judicial Magistrate, Rewari. The handwriting and fingerprints experts had also submitted their reports to the effect that his signatures upon the representation were forged and the accused had already been summoned to face trial. It was also alleged that the false representation did not confer any right, title or interest in the shop in dispute in favour of defendant No.1 and was not binding upon the plaintiff and status of defendant No.1 is merely of a trespasser.

4. The suit of plaintiff was dismissed by the trial Court, vide judgment and decree dated 10.03.2012. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was also dismissed, vide judgment and decree dated 08.09.2016. Hence, the present Regular Second

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Appeal has been filed by the appellant/ plaintiff.

5. Learned counsel for the appellant/ plaintiff has contended that the Courts below have not properly adjudicated the controversy in the present suit and it has not been decided that whether the possession of defendant No.1 over the shop in dispute was as a servant of the plaintiff or whether the entries in the record of Municipal Council as tenant are legal or not. He has also contended that as per the transfer record of defendant No.2, shop in dispute was transferred from the plaintiff to defendant No.1 in the tenancy record on the basis of two applications, one was given by defendant No.1 and admitted by him in his pleadings as well as in the evidence and the second was allegedly given by the plaintiff which has been challenged by the plaintiff on the ground that signatures and writing over the same were forged and no such application had ever been given by the plaintiff. He has argued that the admission regarding joint possession of defendant No.1 in the admitted document as Ex.PW3/3, is sufficient to decide the possession of the plaintiff over the suit property. So findings regarding the exclusive possession of defendant No.1 over the shop in dispute and the suit being not maintainable are totally perverse, illegal, wrong and unsustainable being contrary to the facts, admitted by defendant No.1 in his application Ex.PW3/3, which is basis of transfer of tenancy in the municipal record from the plaintiff to defendant No.1. The admission of defendant No.1 to the effect that he was working with plaintiff is sufficient to decide his status as a servant. It has also been contended that the plaintiff has successfully proved before the Courts below by examining the experts, that the signatures on the

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application of transfer and agreement are forged. He has argued that the authenticated evidence of the plaintiff led in rebuttal has wrongly been not relied upon by holding the same as not admissible, though, while closing the affirmative evidence the plaintiff had reserved his right to lead the evidence in rebuttal. He has contended that the undue weightage has been given to the possession of defendant No.1 over the suit property, who is proved to be a tenant of the plaintiff. It is settled proposition of law that the possession of a servant is possession of owner. He has also submitted that by leading cogent evidence, it has been established on record by the plaintiff that he was a minor in the year 1992 as well as in the year 1988, so any alleged consent/ agreement obtained/ entered with a minor is of no consequence.

6. I have heard learned counsel for the appellants and gone through the records thoroughly.

7. The plaintiff has claimed himself to be a tenant in the shop in the dispute and has alleged that fraud has been committed upon him and no transfer of tenancy had been made by him. He has also claimed that the disputed signatures on the agreement Ex.DW3/1 dated 15.12.1998 had not been appended by him.

8. But in order to prove his tenancy over the shop in dispute, no rent receipt had been placed on record by the plaintiff. Rather during his cross-examination, it has been admitted by the plaintiff that he had seen son of defendant No.1 in the shop in dispute, in which they are having tea stall as well as photostat machine. Thus, he has admitted that respondent No.1 is in actual possession of the shop in dispute, where he had been running a tea shop. The appellant/ plaintiff was to prove that respondent No.1 had been in

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possession of the shop in dispute under him on payment of 30% of earnings in lieu of his labour work, but besides the oral statement made by the plaintiff as PW5, no other cogent and convincing evidence has been brought on record to that effect. He has categorically admitted that the rent of the shop in dispute is being deposited by respondent No.1 with the Municipal Council and he had never deposited the rent since the year 2002, when the Civil Courts were shifted to New Judicial Complex. He has admitted that the electricity connection and the water connection in dispute were not obtained by him and electricity and water charges were not being paid by him. He also could not tell the present rate of rent of the shop in dispute being paid by respondent No.1 to the Municipal Council.

9. On the other hand, respondent No.1 had placed on record the rent receipt Ex.D1 to Ex.D120 from which it stands proved that rent of the shop in dispute since 15.12.1988 till date was being paid by respondent No.1. DW12 Kanwar Singh Cashier and DW13 Ram Rattan, Rent Clerk have also admitted that the rent of the shop in dispute was being regularly deposited by respondent No.1 Partap Singh. The municipal record has also been produced, where respondent No.1 has been recorded to be in possession of the shop in dispute as a tenant under the Municipal Council, since the year 1992. No such evidence has been adduced by the plaintiff to prove that the appellant/ plaintiff ever came into possession of the shop in dispute since the year 1992 or that he had been receiving 70% of the earnings of the shop in dispute from respondent No.1 or that he had ever deposited the rent of the shop in dispute with Municipal Council, Rewari

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since the year 1988. PW6 Hira Lal, the brother of the appellant had also admitted during his cross-examination that respondent No.1 had been doing the business in the shop in dispute for the last 18 years under the name and style Shyam Tea Stall. From the record produced by DW1 Jitender Kumar, Clerk of the office of the Public Health Department and DW2 Mahender Kumar, the Clerk of the Nigam, it is proved that the water and electric connections in the shop in dispute were released in the name of respondent No.1 and respondent No.1 had been making the payment of the electricity and the water bills.

10. Thus, both the Courts below have rightly held that the oral as well as the documentary evidence on record and the admissions made by the appellant leaves not doubt that respondent No.1 had been in exclusive possession over the shop in dispute as a tenant under the Municipal Council, Rewari. It has also been rightly held that when appellant was not proved to be in established possession of the shop in dispute on the date of filing of the present suit then he was not entitled to the relief of the permanent injunction.

11. The relief of mandatory injunction has also been sought by the plaintiff for directing respondent No.2 Municipal Council to restore his name in the municipal record as lawful tenant of the shop in dispute. This fact is not disputed that the shop in dispute was allotted in the name of the appellant Suresh Kumar in open auction on 01.12.1987 on monthly rent of Rs.620/-. As per the appellant, he had never executed the agreement dated 15.12.1988 Ex.DW3/1 in favour of respondent No.1 and also did not make

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any representation Ex.PW3/2 with the Municipal Council, Rewari, so as to transfer the tenancy rights of the shop in dispute in favour of respondent No.1. He has claimed that his signatures on the agreement Ex.PW3/1 and the representation Ex.PW3/2 have been forged by respondent No.1. To prove his said contention, the appellant has examined PW3-Shamsher Singh Malik and PW9-Parveen Pahuja, Handwriting and Fingerprint Experts, who have submitted their reports Ex.PW4/A and Ex.PW9/A respectively to the effect that the questioned signatures of the appellant on the agreement Ex.DW3/a were not that of the appellant. To counter the said evidence respondent No.1 has also examined DW11 V.B. Kashyap, Handwriting and Fingerprint Expert, who submitted his report dated 03.10.2011 Ex.DW11/2 to the effect that the questioned signatures of the appellant on the agreement Ex.DW3/1 tally with his standard signatures. So, both the experts have given different and inconsistent reports.

12. The law is well settled that the evidence of Handwriting and Fingerprint Expert is not a substantive piece of evidence and cannot be acted upon unless it is substantially corroborated. The expert witnesses are generally try to defend their clients. So findings of the Court cannot be based merely on the basis of an expert opinion and the entire evidence on record is to be appreciated. It is also well settled that the science of comparison of handwriting/ signatures is not a perfect science. So in the instant case, when the contradictory reports have been given by the experts based on different reasons then much weightage can not be given to the reports given by them and the other oral and documentary evidence

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produced is to be appreciated for reaching at the correct conclusion.

13. DW3 Ram Singh and DW8 Arjun Lal, the attesting witnesses of the agreement Ex.DW3/1 have been examined by respondent No.1. The Municipal Council record had been produced by DW12 Kanwar Singh and DW13 Ram Rattan, Rent Clerk, has produced record pertaining to the allotment and tenancy of the shop in dispute.

14. It has been rightly observed that even it is presumed that no such agreement dated 15.12.1988 Ex.DW5/1 was entered into between the appellant and respondent No.1 and no such representation was made by the appellant for transfer of the tenancy rights, even then the appellant cannot be held entitled to the relief of mandatory injunction, in light of the fact that when entry in the municipal record was made in the year 1992 then why the appellant remained silent for a period of more than 13 years, before filing of the present suit. Nothing has been brought on record to prove this plea of respondent No.1 that he came to know regarding the transfer of the tenancy rights of the shop in dispute in the name of respondent No.1, only in the month of march 2003. No evidence has been led to prove the alleged fraud committed while changing fraudulently, the municipal entries by officials of the Municipal Council at instance of respondent No.1. It is well settled law that a fraud like any other charge is required to be established and just oral statement made by the appellant is not sufficient to prove the said allegations.

15. The appellant has claimed his date of birth as 10.09.1974, and has alleged that he was a minor on the date when the auction took place. But

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while appearing in the witness box, he changed his stand while deposing that shop in dispute was taken on rent in open auction in his name by his father. Whereas the auction proceedings Ex.PW3/1, nowhere shows the presence of father of the appellant Suresh Kumar at the time of auction. In the light of the above discussion it has been rightly observed that the appellant/ plaintiff is not entitled also to the mandatory injunction.

16. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

17. Appeal stands dismissed being bereft of any merits.

18. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

27.02.2024.*komal*

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No