In the Court of Indu Bala, Additional Civil Judge, (Sr. Division), Yamuna Nagar at Jagadhri (UID No.HR0322).

Filing No.	:CS/1886-2017
Date of filing/Instt.	: 24.07.2017
CNR No.	: HRYN02001887-2017
CIS No.	: CS/1310-2017
Date of Decision	:13.03.2025

Manoj Kumar son of Mohan Lal, R/o Khera Mohalla, Bilaspur, Tehsil Bilaspur, Distt. Yamuna Nagar.

----- Plaintiff.

Versus

1. Mahindra Finance Limited, Branch Jagadhri, through its Branch Manager.
2. Gaurav Employee of Mahindra Finance Limited, both residents of 2nd Floor, SCO No. 102, Commercial Belt, near Petrol Pump, Jagadhri Branch, Sector 17, HUDA, Jagadhri, Distt. Yamuna Nagar.
3. Subhash Chand son of Nirmal Dass, R/o Vill. Mussimble Hinduan, Tehsil Jagadhri, Distt. Yamuna Nagar.
4. Shamsher son of Raj Kumar, R/o Vill. Garhi Gausain, P.O Thana Chhappar, Distt. Yamuna Nagar.
5. Gurvinder Arora son of not known, R/o Faridabad, Distt. Faridabad, Haryana.
6. Ravinder Singh (since deceased) son of Sukhbir Singh through his following legal heirs :-

   Mumtaz wife of Ravinder Singh son of Sukhbir Singh, R/o Vill. Bhamnbholi, Distt. Yamuna Nagar (daughter-in-law)
7. Manish Kumar son of Raj Kumar, R/o C/o Subhash Chand son of Nirmal Dass, R/o Vill. Mussimble Hinduan, Tehsil Jagadhri, Distt.

Yamuna Nagar.

----- Defendants.

Suit for mandatory injunction

Present: Sh. Sachin Panjeta, Counsel for the plaintiff
Sh. Balraj Rana, Counsel for defendants No.1&2
Sh. Pankaj Kamboj, Counsel for LR of defendant No.6
Defendants No. 3 and 4 exparte V.O.D. 02.07.2024
Defendant No. 5 exparte V.O.D. 13.12.2024
Defendant No. 7 exparte V.O.D. 03.10.2024

JUDGMENT:

Present suit has been filed by the plaintiff against the defendants seeking a decree of mandatory injunction directing the defendants No. 1 and 2 not to recover the balance loan amount from the plaintiff in respect of Innova Car bearing Registration No.HR38P7844 standing in the name of Shamsher Singh son of Sh. Raj Kumar- defendant No.4 and to recover the balance loan amount in respect of Innova Car from defendants No. 3 and 4 and further directing defendants No. 3 and 4 to pay the balance amount of loan in respect of Innova Car to defendants No.1 and 2 and for permanent injunction restraining defendants No. 1 and 2 from taking possession of Innova Car, forcibly and by use of force from the peaceful custody of the plaintiff or his employee, in any manner whatsoever.

2 The brief facts, as stated, by the plaintiff in the plaint are that plaintiff has purchased Innova Car bearing Registration No.HR38P-7844

in good faith believing upon defendant No.3 vide agreement to sell dated 13.10.2015 for a sale consideration of Rs.4,80,000/- from defendant No.3 and out of this sale consideration, plaintiff has paid Rs.1,25,000/- to defendant No.3 in cash and balance amount of Rs.3,55,000/- was to be paid to defendants No.1 and 2 in the shape of balance loan installments as defendant No.1 is financier. As per agreement dated 13.10.2015, the plaintiff has repaid Rs.3,61,000/-i.e. more than Rs.3,55,000/- to defendants No. 1 and 2. In this way, the plaintiff has paid Rs.4,86,000/- in place of sale consideration of Rs.4,80,000/- to defendants No. 1 to 3. It is further submitted that the plaintiff has purchased the vehicle from defendant No.3 and, defendant No.3 has handed over the actual possession of the vehicle in question to the plaintiff but later on plaintiff came to know that defendant No.4 is registered owner of the vehicle in question as per Registration Certificate of the vehicle in question. In this way defendant No.3 has cheated the plaintiff and played serious fraud with the plaintiff. The defendants No.1 and 2 have been demanding the balance outstanding of loan amount from the plaintiff regarding the vehicle in question. The plaintiff has requested defendants No. 3 and 4 to pay the balance loan amount to defendants No. 1 and 2, but the defendants No. 1 and 2 have flatly refused to pay the balance loan amount to defendants No. 1 and 2. Plaintiff has also requested defendants No. 1 and

2 to recover the balance loan amount from defendants No. 3 and 4 and not from the plaintiff as plaintiff is not responsible and liable to pay the balance loan amount to defendants No. 1 and 2, but defendants No. 1 and 2 have flatly refused to accept the genuine request of the plaintiff and threatened the plaintiff to take possession of the vehicle in question, forcibly by use of force from the custody of the plaintiff or his employee. Hence the present suit.

3. Upon notice, defendants No. 1 and 2 appeared and filed written statement taking preliminary objections of maintainability of the suit, locus standi, cause of action, concealment of true and material facts, suit is bad for mis-joinder and non-joinder of necessary parties, suit is liable to be dismissed under Order 7 Rule 11 CPC, etc.

On merits, it is submitted that plaintiff is not owner of Innova Car No. HR38P-7844 as this car had been got financed from defendants No. 1 and 2 vide loan agreement dated 31.03.2014 and this car stands hypothecated with defendants No. 1 and 2 and loan is pending as defendant No.4 defaulted in making repayment of loan installments. It is further submitted that defendant No.4 without any legal right and authority has sold the hypothecated vehicle to defendant No.3, from whom the plaintiff is alleging to have purchased the car in question, which acts of plaintiff as well as defendants No. 3 and 4 are against law and terms and conditions of agreement dated 31.03.2014. The alleged agreement of sale qua the car in question between the plaintiff and defendant No.3 has no legal value or force in the eyes of law. Since, loan is standing on the hypothecated car in question and it has been cleared by defendant No.4 loanee as well as by defendant No.3 or the plaintiff before entering into any such dealing with defendant No.4, as such they are legally bound to clear first the outstanding amount of defendants No. 1 and 2. The defendants are not taking forcible possession of the car in question. Only in accordance with the provisions of law and in legal manner, the possession of the car shall be taken if the outstanding amount is not cleared which is obligatory on the part of the plaintiff as well as defendants No. 3 and 4. The defendants denied remaining averments of the plaint and prayed for dismissal of the suit.

Defendant No.3 filed separate written statement taking preliminary objections of maintainability of the suit, locus standi, cause of action, concealment of true and material facts. On merits, it is submitted that no agreement has been executed by defendant No.3 as he is not legal owner of the vehicle in question. The defendant No.2 purchased the said vehicle from Manish and the plaintiff has purchased the said vehicle from defendant No.3 for a sum of Rs.7,00,000/- in good faith and paid Rs.1,20,000/- to defendant No.3 and Rs.4,83,000/- was to be paid to defendant No.1- finance company and after fulfill the installments to defendant No.1, the plaintiff has to pay remaining amount of Rs.97,000/- to defendant No.3 in the shape of cheque. The plaintiff has checked all the documents of the vehicle before its purchase. The defendant No.3 is not registered owner of the vehicle in question. The plaintiff to save his skin from his liability to deposit the installments to defendant No.1 and remaining payment to defendant No.3 has filed this false and frivolous suit against defendant No.3. The defendant denied remaining averments of the plaint and prayed for dismissal of the suit.

Defendant No.4 filed separate written statement taking preliminary objections of maintainability of the suit, cause of action, concealment of true and material facts, suit is bad for non-joinder and mis-joinder of necessary parties. It is submitted that no amount is recoverable by defendant No.1 from defendant No.4 in respect of car in question on account of any loan. Gurvinder Arora purchased new Innova Car bearing registration No. HR38P-7844 and he sold the above mentioned car to Sh. Ravinder Singh- defendant No.6 and Ravinder Singh sold the above said car to defendant No.4 for total sale consideration of Rs.7,15,000/- and he received the entire sale consideration from defendant No.4 and handed over the actual and physical possession of car in question to defendant No.4. The defendant

No. 4 got the above mentioned car transferred in his name. The defendant got the above said car financed from defendant No.1 against loan of Rs.5,50,000/- on 31.03.2014 repayable in 48 equal installments of Rs.17,200/- each and deposited six installments of Rs.17,2000/- each which comes to Rs.1,03,200/-. Thereafter, defendant No. 4 sold the above mentioned car to Manish Kumar for total sale consideration of Rs.6,90,000/- on the basis of agreement dated 05.09.2014. At the time of sale of car by defendant No.4 to Manish Kumar, 42 installments were due and Manish Kumar had agreed to pay the remaining installments to defendant No.1. Thus, defendant No.4 is not liable to pay any amount to defendant No.1 regarding the above said car.

LRs of defendant No.6 filed separate written statement taking preliminary objections of maintainability of the suit, estoppel, suit is bad for mis-joinder and non-joinder of necessary parties, concealment of true and material facts, etc. On merits, it is submitted that defendant No. 6 has no knowledge regarding the loan or car in question after March 2014 as Sh. Ravinder Singh since deceased had sold the car to one Mr. Shamsher Singh and after sale defendant No. 6 has no personal knowledge regarding the whereabouts of car or its condition. The defendant denied remaining averments of plaint and prayed for dismissal of the suit.

4 Replication was not filed. From the pleadings of the parties, following issues were framed vide order dated 24.07.2023 by the court of Ms.Monika, the then learned ACJ(JD), Jagadhri :-

1. Whether the plaintiff is entitled to the relief of mandatory injunction, as prayed for? OPP

2. Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for? OPP

3 Whether suit of the plaintiff is not maintainable ? OPD

4. Whether plaintiff has no cause of action to file the present suit ? OPD

5. Whether plaintiff has concealed true and material facts from the court ? OPD

6. Whether suit is liable to be rejected under Order 7 Rule 11 CPC ? OPD

7. Whether suit is bad for mis-joinder of the parties ? OPD

8 Relief.

5 In order to prove his case, the plaintiff examined following witnesses :-

1. PWI Manoj Kumar

2. PW2 Data Ram, stamp vendor

Besides this oral testimony, plaintiff has placed reliance upon the following documents:-

Ex.P1	:	Agreement dated 13.10.2015

Ex.P2	:	Copy of register of stamp vendor
Ex.P3 to P21	:	receipts
Ex. P22	:	Copy of Registration Certificate of Car

Thereafter, plaintiff closed his evidence on 09.01.2025.

6. In order to rebut the evidence of plaintiff, the defendants have examined Arun Panwar as DW1.

Besides this oral testimony, defendants have placed reliance upon the following documents:-

Ex.D1	:	Loan agreement dated 31.03.2017
Ex.D2	:	Copy of statement of vehicle loan
Ex.D3	:	Copy of Power of Attorney

Thereafter, evidence of defendants was closed by court order dated 17.02.2025.

7. No rebuttal evidence has been led by the plaintiffs despite availing sufficient opportunities, hence, the rebuttal evidence of the plaintiffs has been closed by Court order.

8. I have heard the learned counsel for both the parties at length and have gone through the case file thoroughly and carefully. My findings on aforesaid issues are as under-

ISSUES No. 1 and 2:-

9. Both these issues are taken up together being interconnected

with each other. The onus to prove these issues was upon the plaintiff. In order to prove his case, plaintiff Manoj Kumar himself appeared into witness box as PW1 and placed on record his duly sworn affidavit Ex. PWI/A in his examination-in-chief, wherein he has reiterated the contents of the plaint. He has been cross-examined,wherein he has deposed that no agreement was executed between him and Mahindra Finance Company, but admitted that vehicle No.HR38P-7844 Model 2009 is financed by Mahindra Finance. He further deposed that he purchased the vehicle from Subhash, who is resident of Mussimble. Subhash also purchased the vehicle from Shamsher Singh and as on today vehicle is in the name of Shamsher Singh.

Further, in order to prove the agreement to sell dated 13.10.2025, plaintiff has examined Data Ram, stamp vendor as PW2, who has brought the record and deposed that on 13.10.2015, two stamps of Rs.10/- were purchased by Manoj Kumar son of Mohan Lal for agreement, which were entered in his register at Sr. No.11386 and 11387 and signatures of plaintiff Manoj Kumar are available in the record register. He has identified the stamp Ex.P1, on which agreement was executed between Manoj Kumar and Subhash, which is correct as per his record. But in the endorsement Sr. No. 10386 was wrongly written instead of 11386. When the mistake came to his knowledge, he has rectified it. He has identified his stamp and seal on the agreement Ex.P1 and signature of purchaser. He has produced certified copy of his register as Ex.P2. He further depsoed that at the time of purchase of stamp he did not take any document of identification from Manoj Kumar.

On the other hand, in order to rebut the evidence of the plaintiff, the defendants have examined Arun Panwar, Senior Legal Manager as DW1. He has placed on file his duly sworn affidavit Ex.DW1/A, wherein he has testified the version of the written statement. He has also placed on file documents Ex.D1 to Ex.D3. He has deposed in the cross-examination that documents Ex.D1 to Ex.D3 are not in original, whereas photocopy has been placed on file. As per his statement monthly installment of 16.09.2014 to 20.06.2017 have been paid. They have no concern with defendant No.6. Neither defendant No. 6 obtained loan, nor any claim is against him.

DW1 Arun Kumar has been further cross-examined by learned counsel for the plaintiff wherein he has deposed that loan agreement was not executed in his presence and the amount was also not released in his presence. There is separate recovery collection team in his Company. He is not aware, who are in his collection team. He has admitted that if anyone default in making payment they take his vehicle and conduct proceedings as per arbitration.

(Indu Bala)
ACJ(SD)/Jagadhri.

10. No other evidence led.

ARGUMENTS:

11 Learned counsel for the plaintiffs has argued that plaintiff purchased the vehicle i.e. Innova Car bearing No.Hr38P-7844 from defendant No.3 vide agreement to sell dated 13.10.2015 for sale consideration of Rs.4,80,000/- and paid Rs.1,25,000/- in cash to defendant No.3 and balance sale consideration of Rs.3,55,000/-was to be paid. Learned counsel for the plaintiff further contended that as per terms of the agreement to sell dated 13.10.2015, plaintiff has paid Rs.3,61,000/-to defendants No. 1 and 2 which is more than total balance amount of Rs.3,55,000/-. Learned counsel for the plaintiff further contended that plaintiff was in good faith that defendant No.3 is registered owner of vehicle No.HR38P7844 and in terms of agreement to sell dated 13.10.2015 possession of the vehicle was also handed over to the plaintiff, but later on he came to know that defendant No.4 is registered owner instead of defendant No.3. When defendants No.1 and 2 demanded balance amount from the plaintiff, he requested defendants No. 3 and 4 to pay remaining amount but they flatly refused and also threatened to take possession of the vehicle forcefully. Learned counsel for the plaintiff further contended that defendants No. 1 and 2 threatened the plaintiff to take possession of the vehicle by beating the plaintiff and his employee

driver if they will find any opportunity to do so, for which they have no right, title or authority as defendants No. 1 and 2 should recover the balance amount from defendants No. 3 and 4 and not from the plaintiff. With these averments, prayed for dismissal of the suit.

12. On the other hand, learned counsel for defendants No. 1 and 2 has argued that present suit is not maintainable and has been filed just to harass the defendants. The plaintiff is not owner of vehicle No.HR38P7844, which was got financed from the defendants and loan installments have not been repaid by defendant No.4. So, the vehicle No.HR38P7844 is still stands hypothecated with defendants No. 1 and 2 . Learned counsel for the defendants further contended that plaintiff has not come to the court with clean hands and manipulated the documents as well as things just to get benefit of his own wrongs. The defendant No.4 without any legal right sold the hypothecated vehicle to the plaintiff, which acts of the plaintiff as well as defendants No. 3 and 4 are against the law. Learned counsel for the defendants further contended that vehicle No.HR38P7844 was got financed by defendant No.4 from defendants No. 1 and 2 vide loan agreement dated 31.03.2014 and defendant No.4 defaulted in making payment of installments and without clearing the loan amount, he can not alienate the vehicle to defendant No.3 or the plaintiff. The defendants No. 1 and 2 never threatened the plaintiff to take the

vehicle in possession forcefully, rather he equally liable for legal action for committing forgery, cheating or fraud. With these averments, prayed for dismissal of the suit.

Learned counsel for defendant No.6 has argued that present suit is not maintainable and has been filed just to harass the defendant. Ravinder Singh had purchased a car bearing No.HR38P7844 from Mr. Gurvinder Arora and in the year 2014 he further sold the car to defendant No. 4 Shamsher Singh and possession of the car was also handed over to Shamsher Singh and after selling the car defendant No.6 has no concern with the car as well as loan also not liable to pay the loan amount to defendants No. 1 and 2. After selling the car, Ravinder Singh died and his family members also did not use the car. So, no relief can be claimed by the plaintiff against defendant No.6 and present suit has been filed just to harass and humiliate the defendant. The defendant No. 6 was neither owner, nor in possession of the car in question. So, defendant No.6 has been falsely implicated by the plaintiff and suit is liable to be dismissed on the ground of mis-joinder of necessary parties. With these averments, prayed for dismissal of the suit.

FINDINGS:

13. The present suit of the plaintiff is simplicitor suit for mandatory injunction directing the defendants No. 1 and 2 not to recover

the balance loan amount from the plaintiff in respect of Innova Car bearing Registration No.HR38P7844 standing in the name of Shamsher Singh son of Sh. Raj Kumar- defendant No.4 and to recover the balance loan amount in respect of Innova Car from defendants No. 3 and 4 and further directing defendants No. 3 and 4 to pay the balance amount of loan in respect of Innova Car to defendants No.1 and 2 and for permanent injunction restraining defendants No. 1 and 2 from taking possession of Innova Car, forcibly and by use of force from the peaceful custody of the plaintiff or his employee, in any manner whatsoever.

14. In the present suit, the case of the plaintiff is based on the agreement to sell dated 13.10.2025 which was allegedly executed between plaintiff and defendant No.3 Subhash Chand for purchase of disputed vehicle Innova Car bearing No.HR38P-7844 in sum of Rs.1,25,000/-. As per plaintiff, it was also agreed between the plaintiff and defendant No.3 that the responsibility to pay the installment along with interest will be of plaintiff and after the payment of installment he shall be bound to get transferred the vehicle in the name of plaintiff. However, PW1 Manoj Kumar has specifically deposed in his evidence that vehicle No.HR38P7844 was purchased by him from defendant No.3, but he has also admitted that vehicle is registered in the name of Shamsher Singh. In order to prove the agreement to sell plaintiff has examined PW2 Data

Ram stamp vendor, who has proved that Manoj Kumar purchased to stamps of Rs.10/- on 13.10.2025 end entry was entered in his register at Sr. No. 11386 and 11387 and on the stamp agreement to sell was executed between plaintiff and defendant No.3. By appearing in the witness box he has proved that agreement to sell was executed on the stamp purchased by him.

15. Though, the plaintiff has PW2 Data Ram Stamp Vendor to prove the agreement to sell, but he has not examined any witness to prove the agreement to sell. But the main issue which arise that whether defendant No.3 Subhash Chand was entitled to sell the above said vehicle to the plaintiff or not. While appearing in the witness box plaintiff has himself admitted in the cross-examination that defendant No.3 Subhash Chand was not the owner of the vehicle bearing No.HR38P7844, rather the vehicle is registered in the name of Shamsher Singh. After notice defendant No.3 appeared and filed written statement wherein he has admitted that disputed vehicle was purchased by him from defendant No. 7 Manish Kumar in sum of Rs.7,00,000/- and amount in sum of Rs.1,20,000/- was paid to defendant No.3 and remaining amount was to be paid by finance company in installments and amount in sum of Rs.90,000/- was paid to defendant No.3 in shape of cheque but no evidence in this regard has been led by defendants No.3 and 4 as they

proceeded exparte vide order dated 02.07.2024. Similarly, defendant No.4 appeared and filed written statement taking defence that vehicle was purchased by Gurvinder Arora-defendant No.5 and got registered under Registration No.HR38P7844 and he further sold the car to Ravinder Singh. Further, Ravinder Singh sold the above mentioned vehicle bearing No.HR38P7844 on 27.03.2014 to defendant No.4 and physical possession of the vehicle was also handed over to him. Plaintiff has placed on record R.C of the vehicle Ex. P22 which reveals that vehicle is registered in the name of Shamsher Singh son of Raj Kumar but same has not been placed in original and only the photo copy of R.C. Merely exhibiting the document does not dispense with mode of proof. Therefore, it stands disproved that vehicle was registered in the name of defendant No.4. As per sequence the vehicle was initially purchased by defendant No.5, who got financed the vehicle from defendant No.1 and further sold the vehicle to defendant No.6 Ravinder Singh. The vehicle in question was again sold by defendant No.6 to defendant No.4 and defendant No.1 further sold the vehicle to defendant No.7. Lastly defendant No.7 sold the vehicle to defendant No.3 from where plaintiff alleged that he purchased the vehicle from defendant No.3 on payment of consideration amount in sum of Rs.4,80,000/-.

16. The plaintiff has not proved agreement to sell dated

13.10.2015 as per Section 68 of Indian Evidence Act. He has examined stamp vendor but he has not examined either of the witness of agreement to sell, therefore, agreement to sell dated 13.10.2015 is not proved as per law. Apart from this, whether seller defendant No.3 had valid title to transfer the property to the plaintiff or not. Plaintiff has himself alleged that he was under the good faith and believing upon defendant No.3 executed agreement to sell dated 13.10.2025 but despite being a simple lay man he should have enquired about the ownership of the disputed vehicle and the "buyers must be aware before purchase of a good". Plaintiff should have enquired about the ownership of the vehicle which has not been done by him. If the person is executing agreement to sell for the purchase of the vehicle and completing formalities, then he can not be considered to be an illiterate layman . He should have enquired about the ownership of the vehicle and the person who is not the owner of the vehicle can not transfer better title than he has.

On appreciation of evidence of PW1 and documents placed on record, it is evident that plaintiff has not come to the court with clean hands, rather he has made superficial allegations against defendant No.1 that defendant No.1 has threatened the plaintiff to take the vehicle in possession, which denied by defendant No.1 and if it is so, defendants No.1 and 2 are entitled to recourse the amount from loanee as per law and terms of agreement. Even if document Ex.P2 is considered, the plaintiff should have check the title, which is in the name of defendant No.3.

17. In view of above discussions, this court is of the considered opinion that plaintiff has failed to prove that he is entitled to seek relief for directing defendants No.1 and 2 not to recover balance loan amount from the plaintiff against the vehicle standing in the name of Shamsher Singh. Plaintiff has come to the court on the basis of agreement to sell and paid amount in sum of Rs. 1,25,000/- but agreement to sell not proved, and it is also not proved that amount in sum of Rs.1,25,000/- paid by him to defendant No.3 Subhash Chand. Therefore, plaintiff is not entitled for any relief. However, defendants No. 1 and 2 are at liberty to recover the amount, as per law from the loanee.

18 In view of above discussions, the court is of the considered opinion that the plaintiff has failed to prove his case. Therefore, Issues No.1 and 2 are decided against the plaintiff and in favour of defendants.

19. No other point raised or argued by learned counsel for both the parties.

ISSUES No. 3 to 7.

20. Onus to prove these issues was on the defendants and at the time of argument these issues were not pressed by the defendants. Hence, these issues are decided against the defendants.

(Indu Bala)
ACJ(SD)/Jagadhri.

<u>ISSUE No. 8 (RELIEF)</u>:

21. As a sequel to my findings on the above issues especially on Issues No.1 and 2, the suit of the plaintiff is hereby dismissed with costs. Decree-sheet be prepared accordingly. File be consigned to the record room, after due compliance.

Pronounced in open Court: (Indu Bala)
13.03.2025. Addl. Civil Judge (Sr.Divn.),
Yamuna Nagar at Jagadhri
(UID No.HR0322)

Note: All the 20 **pages** of the judgment have been checked & signed by me.

(Indu Bala)
Addl. Civil Judge (Sr.Divn.),
Yamuna Nagar at Jagadhri.

(Subhash)