

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

CR No. 3520 of 2015 (O&M)

Date of decision: 06.08.2015

Puran Chand and others

... Petitioner

versus

Lakhmira and others

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.S. Dinarpur, Advocate for the petitioners.

Mr. C.B. Goel, Advocate for respondent No.1.

K.Kannan, J.

With the consent of both the counsel appearing for the parties,
the revision is itself taken up for hearing

The revision is at the instance of the plaintiff who has failed in his attempt to secure the interim relief of injunction from dispossession of the property which is an agricultural land of extent of 15 kanals 04 marlas. The plaintiff had been ordered to be redeemed of a mortgage by the order of the Collector and the suit had been filed challenging the order who pleaded for rights of foreclosure of the mortgage. The defendant's contention was that the plaintiff's assertion of a right was a moonshine since the issue has been finally settled by Hon'ble the Supreme Court that there could be no period of limitation for redemption and that, therefore, the plaintiff cannot seek for any such right of foreclosure. Two Courts have held that there is no prima facie case for the plaintiff to prevent defendant through executing the order of redemption issued by the Collector.

The counsel appearing on behalf of the petitioner states that he has moved an application for amendment before the trial Court contending that he was already a lessee before the mortgage was executed and if it were to be contended that the mortgage is extinguished or liable to be redeemed, the right as a tenant would revive and that therefore is entitled to hold his possession as a lessee and on such a plea the plaintiff has sought for assertion of fresh rights through the application. Admittedly, the application is not been disposed of yet. I cannot, bring the suit to naught at this stage, for, there is no consideration for the rejection of the amendment application. If the petitioner would plead alternatively that he is a lessee and supports his plea by an application which is alleged to have been filed, then it would only be appropriate that he pays to the defendant an adequate sum which will meet the ends of justice for the owner who is kept at bay by a person setting up some legal niceties as a shield against the recovery of possession. The petitioner would state that the income from the rent per acre would be Rs. 10,000/- but counsel for the respondent says that batai for the property for one acre would be not less than Rs. 40,000/-. There is no basis for either of the parties to prove what they did not have.

With no definite materials available and when I asked the respondent counsel to give some objective basis, both of them opt for an adjudication before the trial Court, such an adjudication if made shall be effective from the date of the filing of the petition before the Collector and shall be paid within a period of two months from the date of such adjudication. The amount shall be paid as a condition precedent to the grant of injunction, for the benefit of protection against dispossession. If the amount determined is not paid for the past period, within the stipulated

time of two months, the injunction against dispossession will stand vacated. This direction will continue till the disposal of the suit and the final adjudication will determine the rights of the parties and the fact same amount is directed to be paid now will not be used by the plaintiff that his status as a tenant has been accepted.

The orders passed already shall stand set aside and modified to the above extent.

The civil revision petition is ordered on the above terms.

The directions given are only for the purpose of consideration on a plea for injunction against the dispossession and will not come in the way of an objective judicial appraisal for the amendment application filed by the plaintiff which is pending adjudication. The adjudication regarding mense profits will be done expeditiously.

(K.KANNAN)
JUDGE

06.08.2015

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