

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2441 of 2013 (O&M)

Date of Decision.14.09.2015

Gurdit Singh and another

.....Appellants

Versus

The State of Haryana and others

.....Respondents

Present: Mr. P.K. Ganga, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.(ORAL)

1. The plaintiffs who misguided the Court by filing a suit for declaration and injunction, obtained the relief of declaration at the trial Court but lost out their prayer for injunction. While declining the prayer, the Court observed that the plaintiffs had themselves filed an earlier suit in Civil Suit No.968-C of 2004 against the 3rd defendant seeking for injunction and the suit was dismissed on 25.02.2011 making reference to the fact that the plaintiffs' vendor Bhagwant Kaur had actually mortgaged half the share of the property for 64 kanals 11 marlas by registered mortgage dated 28.5.1992 and the plaintiffs had not proved their possession with reference to the same. Having suffered the decree which had become final, the plaintiff could not have filed his suit again for the same relief of injunction without filing a suit for redemption of the mortgage and take possession from the mortgagee. If there was still any obstruction to possession after taking delivery, they could have come with

suit for injunction. The plaintiffs were merely referring to nehri girdawaries which showed that the plaintiffs were in possession. The entries will have no relevance after a civil court decree that dismissed the plaintiffs' suit holding that the plaintiffs were not in exclusive possession of the property and that there had not been any official records with reference to half share specifically. The plaintiffs' action for relief of injunction was clearly barred by virtue of the earlier suit proceedings in that the relief of injunction sought against the defendant was denied only on the ground that the mortgage had not been discharged. The plaintiffs cannot maintain the action without proof of discharge of mortgage. The relief of injunction was rightly declined and I find no reason to modify the same.

2. I do not find that there is any substantial question for law for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

September 14, 2015
Pankaj*