

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

RSA No.3739 of 2015 (O&M)
Date of Decision.26.08.2015

Nain Singh and others

.....Appellants

Versus

Stapal (since deceased) through LR's and others

.....Respondents

Present: Mr. R.S. Athwal, 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. Delay of 10 days in filing the appeal is condoned.
2. The plaintiffs filed a suit for injunction making reliance on the revenue entries showing themselves to be in possession. The defendants' contention was that between the plaintiffs' predecessor and defendants' predecessor, there had been earlier proceedings where a claim to possession was sought and it was dismissed upto the High Court. The relief of injunction cannot be sought for by them against the tenor of judgment of High Court. The reference to the earlier judgment passed between the same parties bears out that the suit by the plaintiffs' predecessor was on the ground that there had been a mortgage in relation to the property in 1877 and a subsequent endorsement extending the period of limitation in 1895. The suit came to be dismissed holding that the plaintiffs had not established that the mortgage had been

redeemed and the recovery of possession of the property could not be, therefore, sought. The judgment is relevant to the extent that the plaintiffs were owners of property but had mortgaged the property to the defendants. If present suit is for the relief of injunction on the basis that the property had fallen into their possession, the only relevant issue was the finding regarding possession. If the defendants' reliance was only on the judgment which was disposed of in the year 1952 referring to the fact that the plaintiffs were not entitled to recovery of possession, it cannot prevail any longer now when the suit is filed not for redemption of mortgage but for injunction. The injunction relief must be considered only in the context of whether the plaintiffs are able to prove their possession or not. That proof was available before the Courts below by reference to the revenue entries. It will be the most reliable document to pronounce the judgment in a suit brought by a party claiming to be in possession and I will find no error in the approach adopted by the Courts below. The previous judgment, far from helping the defendants to assert any independent right to the property, would confine a predecessor's right as mortgagee, who could not have held back the possession if the mortgage had been redeemed. I do not know whether the mortgage had been redeemed or not. If the suit was for the bare relief of injunction and the plaintiffs were relying on the revenue entries and there is no reference to the defendant or his predecessor as party in possession, I take them to be sufficient basis for the Courts below to render a judgment in favour of the plaintiffs.

3. I find no scope for intervention with the judgments passed by the Courts below. There is no substantial question of law arises for

consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 26, 2015
Pankaj*