

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

**RSA No. 3981 of 2015 (O&M)  
Decided on : 20.08.2015**

**Narinder Nath**

**...Appellant**

**Versus**

**Master Neeraj Batra and others**

**...Respondents**

**CORAM : HON'BLE MR. JUSTICE K. C. PURI**

Present : Mr. Sukhmeet Singh, Advocate,  
for the appellant.

**K. C. PURI, J.**

This is an appeal directed by the plaintiff against the judgment and decree dated 6.5.2015 passed by Sh. S.K. Sachdeva, Additional District Judge, Chandigarh vide which the appeal preferred by the plaintiff against the order dated 12.2.2014 passed by Sh. Pradeep Synghal, Civil Judge (Junior Division), Chandigarh was dismissed.

Briefly stated Baldev Raj Sagar and Narinder Nath sons of late Sh. Hans Raj filed a suit for redemption of mortgage property and in that suit, an application under Order 39 Rules 1 & 2 CPC was filed. Learned trial Court while observing that matter in question has already been decided by the Hon'ble Apex Court

dismissed the application for injunction as well as the suit as having been rendered infructuous.

The factual matrix is that one Raj Kumar Batra filed a suit for recovery of mortgage amount by sale of mortgage property against Hans Raj predecessor-in-interest of plaintiffs and that suit was decreed and thereafter said Raj Kumar Batra filed execution and after completing the due process, Raj Kumar Batra purchased the property and Hans Raj judgment-debtor predecessor-in-interest of the plaintiffs filed objections challenging the same but during the pendency, the matter was compromised and he accepted a further sum of Rs.35,000/- paid by decree holder by depositing the same in the Court. The judgment-debtor Hans Raj predecessor in interest of the plaintiff agreed to deliver the possession but later on backed out and the objections preferred by Hans Raj were dismissed and sale certificate was issued. Hans Raj challenged the sale certificate and took various objections and all the objections were dismissed by all the Courts including this Court and the Hon'ble Supreme Court. The Hon'ble Apex Court in judgment/order dated 8.9.2010 has decided the question whether the decree in execution was a mortgage or was a simple money decree and the same has been answered in favour of the decree holder. Further the Hon'ble Apex Court has also held that the matter has already been decided and the other party has become owner of the suit property on account of sale certificate. It has been further observed by the Hon'ble

that, the matter is being lingered on for sufficient long period. So by going through the judgment of the Hon'ble Apex Court, the trial Court vide order dated 12.2.2014 passed by Sh. Pradeep Synghal, Civil Judge (Junior Division), Chandigarh reached to the conclusion that the present suit is not maintainable as the possession has already been delivered and sale certificate has already been issued in compliance to the earlier litigation.

Feeling dis-satisfied with the above said order dated 12.2.2014, the plaintiff Narinder Nath filed appeal before the lower appellate Court and the same has been dismissed vide judgment and decree dated 6.5.2015 passed by Sh. S.K. Sachdeva, Additional District Judge, Chandigarh.

The plaintiff Narinder Nath has now challenged both the order dated 12.2.2014 and the judgment and decree dated 6.5.2015 before this Court by filing present regular second appeal.

Learned counsel for the appellant has framed following substantial questions of law:-

- a) Whether the Id. Trial Court is justifiable in dismissing the suit as infructuous without considering the evidence on record as when the case was already fixed for defendant evidence?
- b) Whether the finding of the Id. Courts below are perverse and against the facts and circumstances on record ?

I have heard learned counsel for the appellant and have gone through the case file.

Admittedly, the matter was earlier adjudicated between the parties and the predecessor in interest of plaintiff lost the litigation upto the Hon'ble Apex Court. The suit property was sold in the auction. The judgment debtor Hans Raj agreed to have another sum of Rs.35,000/- but later on, he resiled and filed objections. His objections were dismissed upto the Hon'ble Apex Court. The plaintiff has again opened the litigation regarding the same property which has already been decided between the parties upto the Hon'ble Apex Court. Even after losing before both the Courts below, the plaintiff has filed the present regular second appeal. In fact, no substantial question of law has arisen. There was no necessity of deciding the suit after taking evidence as the matter has already been decided between the parties upto the Hon'ble Apex Court and the Hon'ble Apex Court has given a categorical finding that appellant is delaying the delivery of possession inspite of sale certificate in favour of the decree holder. This is clearly an abuse of the process of law. After having lost the legal battle upto the Hon'ble Apex Court, another spell of litigation has been initiated. The Court has power to dismiss the suit at the very outset when it reached to the conclusion that the suit is false on the face of it. In spite of the order of the Hon'ble Apex Court, the plaintiffs have started litigation by filing the civil suit. This is clearly an abuse of process of

the Court. This tendency is required to be curbed with heavy hands and as such the present appeal requires to be dismissed with special costs. So, in these circumstances, the appeal stands dismissed with costs of Rs.1 lac. The said amount of costs is to be deposited before the Legal Services Authority, Chandigarh within three months from today failing which the said amount shall be recovered from the appellant by executing this order.

20.8.2015  
SN

**(K.C.PURI)**  
**JUDGE**