

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

**RSA No.3011 of 2014 (O & M)
Date of Decision:28.01.2015**

Jarnail Singh

....appellant

Versus

Ajit Singh and another

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.B.S.Bali, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 20.12.2013. Appeal preferred against the said decree failed and was dismissed on 01.05.2014. This is how, plaintiff is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for a decree for injunction restraining the defendants from causing interference or dispossession of the plaintiff from the land measuring 18K-7M being half share of the land measuring 36K-14M comprised in khasra numbers as depicted in the plaint, situated in village Sauna,

Tehsil and District Nawanshahar. It was averred that Sada Ram son of Dhani son of Deva, uncle of the plaintiff was owner in possession of the suit property. Sada Ram had mortgaged the suit land with possession with Avtar Singh son of Mohan Singh for a consideration of ₹ 50,000/- pursuant to a registered mortgage deed dated 05.06.1989. As Sada Ram died issueless, his estate devolved upon the parties to the suit. And in an oral family settlement, the suit property had fallen to the share of the plaintiff. Plaintiff-Jarnail Singh redeemed the suit land from Avtar Singh (mortgagee) on payment of mortgage amount i.e. ₹ 50,000/-, vide writing that was recorded at the back of the mortgage deed. Accordingly, plaintiff was put in possession of the suit land and the mutation qua the redemption of the suit property was sanctioned in his favour. Therefore, plaintiff was the owner in possession of the suit property and also a mortgagee. It was maintained that the defendants had no right, title or interest in the suit land but as they threatened to interfere and forcibly dispossess the plaintiff, thus the suit.

In defence, it was pleaded, inter alia, that Sada Ram son of Dhani was the owner of the suit land. It was also admitted that he had mortgaged the suit land with possession. However, it was denied that the suit land had fallen to the share of the plaintiff pursuant to any oral family settlement that was purportedly arrived at between the parties. It was also denied that the plaintiff was ever put in possession of the entire suit property. It was maintained that all the three brothers i.e. parties to the suit had redeemed the suit property after contributing their respective share qua the mortgage

amount. As plaintiff happened to be the eldest of the three brothers, he was asked to get the land redeemed. If at all plaintiff had got any endorsement at the back of the mortgage deed, the same was of no consequence. Possession over the suit property was claimed to be of all the three brothers. So much so, a compromise dated 26.02.2007 was reached between the parties in the presence of respectables of the village. Further, the present suit was instituted as a counter blast to the suit filed by Gurmit Kaur mother of the parties against the plaintiff as he had played fraud upon her. Accordingly, it was averred that the plaintiff was only a co-sharer in the suit land to the extent of his share as reflected in the record of rights.

Trial Court, on a consideration of the matter in issue and the evidence on record, found that there was no dispute qua the fact that the suit property was got redeemed on payment of mortgage amount. In reference to the decision of this Court in a case titled as ***“Naroti Dass versus Smt.Phul Kaur and others, 2007 (4) Recent Civil Reports, 258”***, it was observed that even though only one of the co-sharers had got the entire property redeemed, he would not acquire the status of a mortgagee as regards the other co-sharers. Insofar as the claim of the plaintiff that pursuant to an oral family settlement the suit property had fallen to his share and he had thus, become the owner thereof, remained un-substantiated on record. Nothing was brought on record to prove that any such family settlement was ever arrived at between the parties. That being so, plaintiff as well as defendants were just co-sharers in the suit land.

PW3 i.e.Jarnail Singh(plaintiff), testified in his cross-examination that

after the death of Sada Ram the suit property was inherited by the plaintiff and his two brothers i.e.the defendants. He further admitted that he never met the patwari to intimate him any family settlement that was purported to have been arrived at between the parties. So much so, he testified in his cross examination that post death of Sada Ram all the brothers were in possession of the suit land to the extent of their respective shares. That being so, it was concluded that even if plaintiff had redeemed the suit land, parties to the suit were in possession thereof as co-sharers. Further, jamabandi (Ex.P1) revealed that the suit land had not yet been partitioned and was still joint between the parties. Accordingly, it was observed that the plaintiff failed to prove himself to be in exclusive possession of the suit property and was, thus, not entitled to injunction prayed for. Resultantly, the suit was dismissed.

Being aggrieved against the said decree, plaintiff preferred an appeal. First appellate Court, reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial Court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in

issue, I am of the considered view that the instant appeal is devoid of merit and thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Ex facie, suit property was owned by Sada Ram son of Dhani, who happened to be the uncle of the parties to the lis. Concededly, Sada Ram died issueless and his estate devolved upon the plaintiff and his two brothers i.e. defendants. It is not in dispute that Sada Ram had mortgaged the suit land with one Avtar Singh son of Mohan Singh pursuant to a mortgage deed dated 05.06.1989. It has also not been disputed that the suit property was redeemed and the mutation in this regard was sanctioned by the revenue agency. Even if, it is assumed that plaintiff got the suit property redeemed by paying the mortgage amount, this could neither confer upon him a status of a mortgagee viz-a-viz the other co-sharers nor could impair the status of other co-sharers in any manner. Claim of the plaintiff that pursuant to an oral family settlement, the suit property had fallen to his share and he had thus become owner thereof, remained un-substantiated on record. Concededly, no date, month or year, in which the said oral family settlement was arrived at between the parties was either pleaded or proved. So much so, plaintiff in his cross examination testified that he never approached the revenue agency to intimate any such family settlement. In fact, he admitted in his deposition that post death of Sada Ram, his estate was inherited by plaintiff and his brothers namely Ajit Singh and Kehar Singh. Needless to assert, for plaintiff to be entitled to a decree for injunction, he was required to prove that he indeed was in

actual physical and exclusive possession of the suit property. Once again, none other than the plaintiff himself admitted in his cross examination that he along with his two brothers i.e. defendants, were in possession of the suit property to the extent of their respective shares. Nothing was brought on record to substantiate that the plaintiff was ever in exclusive possession of the suit land. That being so, he could not claim injunction against the other co-sharers. That being the position, the only and the inevitable consequence was the dismissal of the suit of the plaintiff.

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

28.01.2015

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(ARUN PALLI)
JUDGE