

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

RSA No. 948 of 2014 (O&M)

Date of decision: August 31, 2015

Davinder Lal

...Appellant

Versus

Jaswinder Singh and others

...Respondents

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?**

Present: Mr. Kartik Gupta, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

CM No. 2177 C of 2014

For the reasons stated in the application, delay in re-filing the appeal is condoned.

Main case

1. The defendant is the appellant before this court. The plaintiff had filed a suit for declaration that the khasra girdawaris entered showing the 1st defendant to be in possession of the land by the orders of the revenue authorities was illegal and void. The plaintiff sought for the relief of permanent injunction from interfering into the peaceful possession. The plaintiff claimed himself to be the purchaser from defendants No. 2 to 8 whose names had already been recorded as mortgagees and have been in possession of the suit property. The plaintiff made reference to the fact that the 1st defendant had filed a suit for injunction in respect of the very same subject matter against the plaintiff contending that he was in possession of

the property. Although the defendants succeeded in the court at the first instance, the judgment was set aside and the Appellate Court found that the 1st defendant who had filed the suit for injunction cannot maintain his action for two reasons; one, the mortgagees' names had been found recorded as parties in possession and hence the suit for injunction cannot be maintained. The second objection was that the mortgagees had not even been made parties when they have been shown to be in possession and the suit itself was not competent and more so when the persons claiming to be their power of attorney was the only contesting defendant in the suit filed by the defendants. The said judgment was brought in the second appeal before this court and this court also affirmed the judgment on a single consideration that the suit could not have been maintained without even impleading the parties who were shown to be in possession.

2. There was reversal of array of parties when the previous defendant against whom the suit for injunction brought by the 1st defendant failed when he brought a suit for correction of khasra girdawari making reference to the 1st defendant as party in possession, when from the year 1964 onwards the defendants No. 2 to 8 alone had been shown as mortgagees in possession. The plaintiff was the purchaser from the defendants 2 to 8 and, therefore, the plaintiff claimed that he was entitled to the consequential relief of injunction from in any manner interfering in his possession. The suit was decreed and the Appellate Court also confirmed the judgment.

3. The defendant has filed the appeal to contend that the dismissal of his suit upto the High Court was only on the issue of maintainability and, therefore, the finding regarding the point that he was not in possession and

the mortgagees were in possession was not binding on him and the earlier decision will not constitute a resjudicata against him. The counsel would refer me to a Division Bench ruling of this court in Amar Nath Versus The Financial Commissioner, Taxation, Punjab and others 1978 PLJ 408 that held that if the civil court had no jurisdiction to entertain the suit, any finding on any other matter in the judgment will not be binding. To the same effect was the another case cited by the counsel of the Supreme Court, namely, Chandrabhai K. Bhoir and others Versus Krishna Arjun Bhoir and others 2009 (2) SCC 315 that held that an order passed without jurisdiction would be a nullity. I must observe that reliance on the above two judgments is wholly unjustified. It is one thing to state that the civil court had no jurisdiction but quite another when the court finds that it had the jurisdiction to decide all the issues and found inter-alia the frame of the suit as regards non-joinder of a particular party as fatal to the plaintiff's case. In the previous proceedings when the appeal had been filed against the decree in suit for injunction, the Appellate Court was holding that he could not be stated to be in possession to deserve the relief of injunction and was holding that the mortgagees were actually in possession and they had not even been impleaded as a party. The finding rendered by the court was that the present appellant as plaintiff has not proved his possession against the defendant who is present plaintiff and it became final and constituted resjudicata. The dismissal of the appeal by this court by merely adverting to the fact that the suit was not competent cannot be wrongly understood, as it is now understood, to state that the civil court has no jurisdiction. The civil court alone was the competent court of jurisdiction for injunction relief and when it declined to grant the benefit to the appellant in his earlier round, he

cannot re-open the case again by making reference to the orders passed by the revenue authorities.

4. The further argument of the learned counsel is that the plaintiff has not even stated who was the owner and how he has come by purchase. If the plaintiff has sought to exercise his right as a purchaser from the mortgagees, he will be entitled to such a right and if the appellant has obtained any right which he asserts at the time of arguments as through an agreement from the original owners, Brij Lal or the representatives, the appellant's remedy would be to sue for redemption and cannot fend off an action for injunction brought by the plaintiff as purchaser from the mortgagees.

5. The arguments of the counsel that in the proceedings before the revenue authorities they had actually visited the property on three occasions and found the defendant to be in possession could carry no conviction before me, for, any finding on revenue authority ought to give place to a civil court's decision regarding possession. If the appellant's suit for injunction had been dismissed earlier finding that the mortgagees were in possession, any finding to the contra by the revenue officials cannot defeat the right of the plaintiff who claims through the mortgagees. The decree granted by the courts below conform to law and evidence and there is no new provision of law that would require to be considered or answered in favour of the appellant.

6. The second appeal is dismissed.

August 31, 2015
prem

(K.KANNAN)
JUDGE