

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

**Civil Revision No.5342 of 2016
Date of Decision: 23.12.2016**

Amarjeet Kaur

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Satbir Gill, Advocate
for the petitioner.

Mr. Paramjeet Singh, A.A.G., Haryana.

Mr. Deepak Kaushla, Advocate
for respondent Nos.21 and 22.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 26.07.2016 passed by Civil Judge (Jr. Divn.) Dabwali and order dated 09.08.2016 passed by Additional District Judge, Sirsa, vide which application under Order 39 Rules 1 and 2 CPC filed by her was dismissed by the trial Court and appeal to that effect was also dismissed by the lower Appellate Court.

[2]. Brief facts are that the plaintiff filed a suit for declaration and permanent injunction against the defendants on the ground that the proforma defendants were having strained relationship

with the plaintiff, however their interest was common. The great grandfather of the plaintiff and proforma defendants namely Jeona was owner in possession of the suit land in revenue estate of village Gadrana, Tehsil and District Sirsa. The predecessor-in-interest of private defendants namely Gurmukh Singh and Heera sons of Ram Chand were wrongly recorded as tenants of the suit property. In fact, they never resided in the village, nor cultivated the suit land in any manner or in any capacity. The entries of tenancy were claimed to be wrong as they had already relinquished their right of tenancy and never remained in possession of the suit property.

[3]. Gurmukh Singh and Heera son of Ram Chand had mortgaged their tenancy rights in favour of great grandfather of the plaintiff and proforma defendants i.e. Jeona, who was real owner. Tenancy rights were relinquished in favour of Jeona against receipt of Rs.120/- and they admitted that Jeona was belonging to agriculturist family and they were not agriculturist. The entry in the revenue record in respect of mortgagee of tenancy rights on the basis of mutation No.216 dated 07.01.1927 clearly depicted that Gurmukh Singh and Heera had nothing to do with the suit property and were not residing in the village. Plaintiff further claimed that the defendant Nos.3 to 20 or their fathers never resided in the village as they were residents of

village Kikkar Khera, Tehsil Abohar which was about 150 kms. away from village Gadrana. Their successors were also residents of Rajasthan about 150 kms. away from village Gadrana, who have never cultivated the suit land in the said village. After relinquishment of tenancy in favour of Jeona i.e. the true owner of the land, Gurmukh Singh and Heera had no concern with the suit property and declaring Gurmukh Singh and Heera to be occupancy tenants in terms of Punjab Occupancy Tenancy (Vesting of Proprietary) Act was illegal and was the result of collusion.

[4]. Along with the aforesaid suit, an application under Order 39 Rules 1 and 2 was also filed. Trial Court dismissed the application after noticing the fact that the during life time of Gurmukh Singh and Heera, they orally mortgaged their land vide rapat No.315 dated 18.06.1926 for an amount of Rs.120/- in favour of Jeona. Mutation No.216 was sanctioned in his favour. The mutation No.216 dated 07.01.1927 depicted that Jeona was the mortgagee and Gurmukh Singh and Heera were the mortgagors.

[5]. Defendants submitted that the plaintiff along with others i.e. Sukhdev Singh etc. filed a civil suit for declaration in respect of suit land by admitting defendant Nos.3 to 20 as owners by

purchase from their fore fathers vide oral sale dated 18.06.1926.

The stay application filed in the aforesaid suit was dismissed and thereafter plaintiff withdrew the suit by filing the application. However permission to file fresh suit on the same cause of action was not granted to the plaintiff.

[6]. Thereafter another plaintiff along with others i.e. Sukhdev Singh etc. filed second suit against the defendants in respect of the same property by admitting the fact that the defendants were having no right to redeem the suit land. Plaintiffs claimed that they had become owners by foreclosure. Plaintiffs had admitted the ownership of the defendants in the said suit. The application for redemption of the suit was allowed by the court of DRO, Sirsa vide order dated 06.06.2016 and 13.06.2016 in favour of the defendants and the execution of the orders was pending in the court of DRO, Sirsa for delivery of the possession in favour of the defendants. One of the legal heirs of Jeona namely Roop Singh filed a suit for declaration against the defendants by challenging the order dated 06.06.2016 passed by the court of DRO, Sirsa by claiming themselves to be the mortgagee from the year 1927 and took the stand that he had become owner by foreclosure. The stay application filed by Roop Singh was decided by the trial Court on 19.06.2016 and defendant Nos.19 and 20 were restrained from interfering in

possession of the defendants and proforma defendants except in due course of law. The execution of order dated 06.06.2016 and 13.06.2016 is the legal process of executing the order in due course of law.

[7]. In the present suit, the factum of earlier litigation was conveniently concealed by the plaintiff. Necessary orders had already been passed by the civil Court from time to time. The plaintiff is conspicuously silent about these facts. Plaintiff has nowhere mentioned that earlier a suit against the order of the court of DRO was filed. On the one hand, she has accepted the defendants to be owners of the suit property, but they have no right to redeem the same. On the other hand, plaintiff has put the claim in the suit that the defendants were never the mortgagors of the suit property.

[8]. Plaintiff was found to be guilty of suppressing facts from the Court as they did not come to the Court with clean hands. A party, who has not come to the Court with clean hands, does not deserve equitable relief. On this premise, the trial Court was pleased to decline the prayer for *ad interim* injunction. The order passed by the trial Court was upheld by the lower Appellate Court.

[9]. I have considered the submissions made by learned

counsel for the parties.

[10]. It has been noticed by the Courts below that the earlier litigation filed by plaintiff and other co-plaintiffs did not yield any favourable result in favour of the plaintiffs. In a civil suit No.93 dated 25.05.2016 filed by Sukhdev Singh and others, the name of the present plaintiff was at serial no.21. This fact was concealed by the plaintiff while drafting the plaint in the present suit. Similarly in civil suit No.292-C instituted on 02.07.2015 by Sukhdev Singh and others, name of the present plaintiff was at serial No.15. In the said suit, learned counsel for the plaintiffs made a statement that he did not want to proceed with the suit and the same may be dismissed as withdrawn. In view of statement made by learned counsel for the plaintiffs, the suit was ordered to be dismissed and the original documents were ordered to be returned to the plaintiff. No permission was granted to file fresh suit on the same cause of action. This fact was also concealed by the plaintiff, while drafting the plaint of the present suit.

[11]. In the civil suit filed by the Roop Singh against the defendants, name of the plaintiff was at serial No.40 as proforma defendant. The order of redemption passed by the Court of DRO, Sirsa was challenged therein. In the said suit, the

order dated 19.06.2016 was passed i.e. defendant Nos.19 and 20 can take possession in due course of law. Execution of redemption order is the only process that can be termed as due course of law and, therefore, execution of lawful order cannot be stayed.

[12]. In view of aforesaid, this Court does not find any justification to interfere in the impugned orders passed by the Courts below. This revision petition is according dismissed.

December 23, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No