

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

Civil Revision No.6686 of 2016

Date of Decision: 05.10.2016

Dalip Kumar and another

.....Petitioner

Vs

Pardeep Kumar and another

.....Respondents

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

Present: Mr. Abhinav Jain, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 16.08.2016 (Annexure P-1) passed by Civil Judge (Jr. Divn.), Faridkot whereby application filed respondent No. 2 under Order 1 Rule 10 CPC was allowed.

[2]. Brief facts as gathered from the record are that the plaintiff/respondent No.1 filed a suit for permanent injunction seeking to restrain the defendants from interfering in his peaceful possession in respect of suit property. Applicant Mohammad Anis/respondent No.2 filed an application for impleading himself as party defendant No.3 in the suit on the ground that plaintiff/respondent No.1 had entered into an

agreement to mortgage with possession of his shop with him for an amount of Rs.5 lacs along with all rights of electricity connection, main gate, shutter and *malba* etc. The mortgage amount was duly paid by the applicant/respondent No.2 in cash in the presence of marginal witnesses. After receiving the entire mortgage amount, the plaintiff/respondent No.1 put the applicant/respondent No.2 in actual physical possession of the suit property i.e. a shop. Regular mortgage deed was to be executed on or before 09.03.2013. A day earlier to the target date, plaintiff/respondent No.1 again entered into an agreement to mortgage with the applicant/respondent No.2. An amount of Rs.5 lacs was adjusted and total mortgage amount was settled to be Rs.12 lacs. An additional amount of Rs.5 lacs was paid to the plaintiff/respondent No.1, thereby making total tally to Rs.10 lacs as mortgage consideration. This second agreement to mortgage was executed on 08.03.2013. Regular mortgage deed was agreed to be executed by 28.02.2014.

[3]. The applicant/respondent No.2 claimed himself to be in possession on the basis of aforesaid mortgage deed with possession and on the strength thereof, filed the application in question. Thereafter, the applicant/respondent No.2 came to know that the plaintiff/respondent No.1 in collusion with this brother defendant No.1 and sister defendant No.2 had filed a

suit for permanent injunction in respect of same subject matter. The plaintiff/respondent No.1 was successful in obtaining order of *status quo* from the Court.

[4]. The application was contested by the plaintiff/respondent No.1 as well as defendants/petitioners. It was pleaded that the applicant/respondent No.2 was never ready and willing, nor he attended the office of Sub-Register, Faridkot for execution of the mortgage deed. Applicant/respondent No.1 was only permitted to do business outside the shop and he was given permission to keep his instruments etc. in the shop.

[5]. Trial Court accepted the application. Even though the plaintiff/respondent No.1 also opposed the application, but he did not file any revision petition before this Court. The present revision petition has been filed by the defendants. Co-defendants have assailed the order, which in considered opinion of this is not tenable. Plaintiff being a *dominus litus* can say that he does not want to contest against the applicant/respondent No.2 against his wishes (though the plea has to be decided on merits).

[6]. In the instant case, the claim made by the co-defendants is a very far fetched claim. The plea of the

applicant/respondent No.2 is based on an event of mortgage and he claims himself to be in possession in pursuance thereof. Since the suit itself is for permanent injunction, possessory right of the applicant/respondent No.2 has a vital role to be appreciated by the trial Court, in order to avoid multiplicity of litigation.

[7]. Learned counsel for the petitioners vehemently submitted that the applicant/respondent No.2 is not a necessary party in a suit for injunction because the plaintiff/respondent No.1 does not feel any apprehension against him. Learned counsel relied upon **Amritsar Diocesan Trust Association (Regd.) Amritsar vs. Amritsar Diocesan Trust Association, Amritsar, 1998(4) RCR (Civil) 154** to contend that the scope of suit for permanent injunction is restricted only to the possession. No question of title can be decided in simpliciter suit for permanent injunction.

[8]. There cannot be any dispute regarding proposition of law. In the instant case, the applicant/respondent No.2 claims himself to be in possession on the basis of mortgage deed and payment of mortgage consideration. In the cited precedent, plaintiff was the aggrieved. This is the differentia which makes the present case distinct from the cited precedent.

[10]. In the instant case, co-defendants have come forward to challenge the impleading of applicant/respondent No.2 as necessary party. In my considered view the possessory right of the applicant/respondent No.2 cannot be questioned by co-defendants, particularly when the applicant alleges agreement of mortgage with the plaintiff/respondent No.1 and claims possession in the capacity of mortgagee. Such possessory rights of the applicant/respondent No.2 can be gone into in a suit for permanent injunction in order to avoid multiplicity of litigation at a subsequent stage.

[11]. In view of aforesaid, I do not subscribe the arguments raised by the learned counsel for the petitioners. This revision petition is accordingly dismissed.

October 05, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No