

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

RSA No.2169 of 1990

Date of Decision:01.06.2016

Baldev Singh and others

.....Appellants

Vs

Dalip Singh Through LR's and others

.....Respondents

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

Present: Mr. Tribhuvan Singla, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Defendants have preferred this appeal against concurrent judgments and decrees passed by the Courts below decreeing the suit of the plaintiff-Dalip Singh.

[2]. Plaintiff-Dalip Singh filed a suit for possession with the averment that Boor Chand son of Suba Ram was the original owner of the land. Said land was mortgaged for Rs.1400/- to Smt. Ishar Kaur. Ishar Kaur died and Tulsi Ram son of Gangu Ram inherited the mortgagee rights as heir of Smt. Ishar Kaur. Thereafter, Tulsi Ram transferred the mortgagee rights to Satnam Singh, Santokh Singh and Pyar Singh on 25.09.1961. Santokh Singh transferred/relinquished his mortgagee rights in

favour of Satnam Singh and Pyar Singh. Thereafter, Pyar Singh sold his mortgagee rights to the plaintiff in the year 1967. Plaintiff alleged that since 1967, plaintiff was in possession of land as mortgagee from the date of transfer of mortgagee rights in his favour. Boor Chand died issue less and without any heir. One Smt. Gango claimed herself to be the heir of Boor Chand and got the mutation sanctioned in her favour in the absence of the plaintiff by colluding with the revenue officials. Thereafter, Gango sold the suit land to Baldev Singh son of Virsa Singh, Balbir Singh and Satnam Singh sons of Karnail Singh. Those vendees i.e. Baldev Singh, Balbir Singh and Satnam Singh moved an application for redemption of mortgage before the Collector, Ferozepur against Satnam Singh and Pyar Singh and obtained the order of redemption on 22.06.1968 without impleading the plaintiff. The plaintiff was not informed about the alleged redemption, neither he was given any notice, nor was ever heard by the Collector during redemption proceedings. The plaintiff had already purchased the mortgagee rights and had become mortgagee of the land and was also in possession of the land in question.

[3]. It is further alleged that the plaintiff filed suit for declaration that he was mortgagee in possession and the order of Collector be declared as null and void. Restraint order was

also sought against Baldev Singh, Balbir Singh and Satnam Singh from interfering in his possession in the application for temporary injunction. Trial Court granted temporary injunction. The suit was dismissed on 18.4.1969. However, the appeal was preferred and was decided on 27.03.1971 by Additional District Judge, Ferozepur. It was noticed that Gango was not entitled to inherit the estate of Boor Chand. Baldev Singh, Balbir Singh and Satnam Singh cannot be considered to be successor-in-interest of Boor Chand. They had no better title in the land than the plaintiff. They had no better title as against the plaintiff. They have failed to prove their ownership, therefore, they cannot dispossess the plaintiff, even if the plaintiff has not able to prove his title as mortgagee on account of non-registration of the relinquishment deed. Dalip Singh was held entitled to preserve his possession as against Baldev Singh, Balbir Singh and Satnam Singh. The appeal was partly accepted. A decree for permanent injunction was granted in favour of the plaintiff restraining the defendants Baldev Singh, Balbir Singh and Satnam Singh from dispossessing him from the suit land.

[4]. It was alleged by the plaintiff that despite injunction granted by the Court, dispossession of the plaintiff took place on 23.04.1969 without any right or title which was against law and was an abuse of process of the Court. Since, the plaintiff was in

possession of the suit land and he had already obtained decree of injunction qua restraint against the defendants from dispossession. Thereafter, plaintiff had filed the present suit for possession of land measuring 27 kanals 19 marlas as detailed in the plaint.

[5]. The suit was contested by defendants No.1 to 3 on the ground that Gango was the heir of Boor Chand and was original owner of the land. On death of Boor Chand, mutation was sanctioned in favour of Smt. Gango. It was admitted fact that plaintiff was not impleaded as a party in the redemption proceedings. It was alleged that the plaintiff had not obtained any right from Satnam Singh and Pyar Singh as they never delivered possession to the plaintiff. Fraud was alleged as against the plaintiff and those persons namely Satnam Singh and Pyar Singh. It was alleged that plaintiff-Dalip Singh, Satnam Singh and Pyar Singh had defrauded Smt. Gango in collusion with revenue officials. It was also pointed out that appeal as against the judgment and decree dated 27.03.1971 was pending in the High Court.

[6]. After completion of pleadings, both the parties went to trial on the following issues:-

*“1. Whether the plaintiff is entitled to recover back the possession from the defendants?
OPP*

2. Whether the suit is not maintainable? OPD

3. Relief.”

[7]. Both the parties led their respective evidence. Trial Court vide judgment and decree dated 13.05.1988 decreed the suit of the plaintiff for possession of land measuring 27 kanals 19 marlas. Defendants No.1 to 3-Baldev Singh, Balbir Singh and Satnam Singh remained unsuccessful in the first appeal before the lower Appellate Court in which appeal was dismissed vide judgment and decree dated 12.10.1990. That is how the present regular second appeal came to be filed.

[8]. During pendency of the present appeal, it was noticed in the order dated 02.11.1999 that service qua respondents No.1, 4, 5 and 8 was complete. Respondents No.2, 3, 6 and 7 were reported dead. However, it was contended by the learned counsel for the appellants that respondent No.1 was the only contesting respondent and therefore, it was not necessary to bring on record legal representatives of deceased respondents. Thereafter, appeal was admitted on 20.09.2000. Respondent No.1 died during pendency of the appeal. An application for bringing on record legal representatives of deceased respondent No.1 was moved. Legal representatives namely Ganga Singh son of Fauja Singh, Jita Singh son of Fauja Singh and Deepo daughter of Fauja Singh were brought on record vide order dated 03.04.2003. Thereafter, they were sought to be

served in the present appeal.

[9]. In order dated 06.10.2003, it was recorded that as per office report, Ganga Singh legal representative of Dalip Singh had refused to accept service and he was served through affixation, which was considered to be sufficient service. Other legal representatives namely Jita Singh and Deepo were personally served, but none appeared and therefore, legal representatives of Dalip Singh-respondent No.1 were proceeded against ex parte. Ganga Singh also died on 10.07.2003 and his legal representatives were also impleaded on record vide order dated 20.05.2004.

[10]. Substantial questions of law were not formulated despite number of adjournments sought on that premise.

[11]. I have heard learned counsel for the appellants and have also perused the material on record.

[12]. In the suit for declaration filed by the plaintiff on 01.07.1968, a declaration was sought but suit was dismissed. However in appeal, the lower Appellate Court vide judgment and decree dated 27.03.1971 accepted the appeal and adversely commented upon the alleged title in favour of Smt. Gango. Smt. Gango was not held entitled to inherit the estate of Boor Chand. Consequently, Baldev Singh, Balbir Singh and Satnam Singh were not held to be successor-in-interest of Boor Chand. They

were also not having any better title than the plaintiff-Dalip Singh. They had no better title than the plaintiff as they failed to prove their ownership, therefore, they were not entitled to dispossess the plaintiff. Even, if, the plaintiff could not prove his title as mortgagee on account of non-registration of relinquishment deed, plaintiff was held entitled to preserve his possession as against Baldev Singh, Balbir Singh and Satnam Singh. Injunction was granted in favour of plaintiff and as against Baldev Singh, Balbir Singh and Satnam Singh from dispossessing him.

[13]. The requirement of compulsory registration of the writing executed at the reverse of the mortgage deed Ex.D2 for a consideration of Rs.700/- in the context of proving mortgagee right of the plaintiff has to be considered viz-a-viz the possessory right accruing to the plaintiff mortgagees i.e. defendants No.4 and 5 had given possession of the suit land to the plaintiff in part performance of the contract. Therefore, despite the fact that relinquishment deeds Ex.P5 and Ex.P6 were not registered, plaintiff was entitled to protect his possession. Even though no title was granted on the basis of Ex.P5 and Ex.P6, but Smt. Gango was not proved to be heir of Boor Chand. The transfer made by Gango in respect of land of Boor Chand in favour of defendants No.1 to 3 were not

protected or valid as against the right of the plaintiff. Defendants No.1 to 3 were never the successors-in-interest of Boor Chand and they had no better title over and above the possessory rights of the plaintiff. Admittedly, the land was in possession of mortgagees namely Satnam Singh and Pyar Singh at the relevant time. These persons while appearing in the Court admitted that they had transferred the possession to the plaintiff. The Court had also observed that the plaintiff may have taken possession through his brother Jit Singh in pursuant to the deeds Exs. P5 and P6. The possession of plaintiff-Dalip Singh was upheld and restraint order was passed against defendants No.1 to 3. The Regular Second Appeal No.745 of 1971 was also decided on 23.11.1985. It had emerged from the findings on record that the plaintiff was in possession of the suit land. He was dispossessed by defendants No.1 to 3 and the entry recorded in roznamcha that possession was taken from Satnam Singh and Pyar Singh were factually found incorrect. Jit Singh was none-else than the brother of the plaintiff. The possession of the land was held to be that of the plaintiff. Plaintiff was illegally dispossessed without following any process of law and in the redemption proceedings, he was not made a party.

[14]. The possession on the basis of possessory title is a legal protection as against the stranger, such possession

assumes character of owner/good title as against all words except rightful/true owner. Defendants No.1 to 3 had no such better title than the one held by the plaintiff. They could not have obtained possession in redemption in the absence of the plaintiff. The possession obtained by defendants No.1 to 3 was on account of unlawful act and the plaintiff was rightly held entitled to possession under the decree.

[15]. Plaintiff was dispossessed on 23.04.1969 and the suit for possession came to be filed on 18.05.1971. The suit was filed under Section 5 of the Specific Relief Act and it was not filed under Section 6 of the Act, therefore, limitation was not of six months, rather it was of 12 years as provided under Article 64 of the Limitation Act. Appellants/defendants No.1 to 3 could not be presumed to be mortgagees on account of redemption that took place without impleading the plaintiff. Therefore, their possession was not in consonance with the said redemption of mortgage but their possession was on account of dispossession of the plaintiff on 23.04.1969.

[16]. The application filed under Order 41 Rule 27 CPC was of no consequence and was rightly rejected by the Lower Appellate Court. Since there was no pleading to that effect, therefore, it was rightly held that the appellants were not entitled to continue in possession as mortgagees of the suit land. There

was no material on record to substantiate the plea as sought to be projected by way of additional evidence.

[17]. Lower Appellate Court rightly came to the conclusion that the defendants were not entitled to harp upon a new point which was never pleaded by them before the trial Court. Lower Appellate Court was right in observing that the application for leading additional evidence in terms of Order 41 Rule 27 CPC was sought by the appellants without seeking amendment in the pleadings. Without seeking corresponding amendment in the pleadings, the fact sought to be brought on record could not have been appreciated and the plea of their becoming mortgagees and entitled to continue in possession were lawfully rejected. Such a course could have been demonstrated by way of seeking independent declaration and consequential relief on the basis of alleged title being that vendee of mortgagee right but that fact was not brought in the pleadings. In the absence of any foundation laid in the pleadings, no overt act by means of establishing additional evidence could be considered by the lower Appellate Court. The limitation prescribed for the suit under Section 5 of the Specific Relief Act was of 12 years as prescribed under Article 64 of the Limitation Act. The earlier litigation had conclusively determined the rights of the parties and it was held that plaintiff was in possession. No exception

could have been made to the findings recorded by the lower Appellate Court in its judgment dated 27.03.1971. In the absence of any substantial questions of law formulated herein, this Court cannot appreciate any factual assertion made by learned counsel for the appellants.

[18]. Both the Courts below accordingly decided questions of fact. No re-appreciation of evidence is possible in regular second appeal. The findings recorded by the Courts below even otherwise not found to have suffered with voices of misreading of evidence or suffered with any perversity. Accordingly finding no merit in this appeal, the same is dismissed as such.

01.06.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**