

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

RSA-2969-2018 (O&M)

Date of Decision:-10.5.2018

Kulwant Singh

...Appellant

Versus

Bachittar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Nakul Sharma, Advocate for the appellant.

GURVINDER SINGH GILL, J.

1. This appeal has been preferred by unsuccessful plaintiff Kulwant Singh against judgment dated 1.2.2018 rendered by District Judge, Ferozepur, whereby judgment of learned Civil Judge (Junior Division), Ferozepur, dismissing his suit for permanent injunction, has been affirmed.
2. The case set up by the appellant-plaintiff Kulwant Singh is that respondent-defendant Bachhitar Singh had mortgaged the suit property after taking an amount of ₹ 2,50,000/- and one Udik Singh, who was a property dealer, had acted as a mediator. Plaintiff asserted that defendant now wants to sell the property and is trying to take forcible possession of the premises.
3. The defendant, on the other hand, took a stand that in fact he is owner of the suit property, having purchased the same from Vijay Kumar and Des Raj vide registered sale deed dated 14.5.2004 and that in fact the plaintiff was known to him previously who had approached him to permit him to reside in the premises in question for few months, as he was constructing his

residential house. The defendant had permitted him to reside temporarily in the said house, but despite the fact that the plaintiff had completed construction of his residential house, he had not vacated the defendant's house. The defendant also filed a counter claim seeking possession of the premises in question.

4. The parties were put to proof on the following issues:-
 1. Whether plaintiff is in possession of the suit property and is thus entitled to relief of injunction against the defendant as prayed for? OPP
 2. Whether suit of the plaintiff is not maintainable? OPD
 3. Whether the defendant/counter claimant is entitled to decree for actual possession of the property mentioned in the head note of the counter claim? OPD
 4. Whether counter claim is not maintainable? OPP
 5. Relief.
5. The appellant Kulwant Singh himself stepped into witness box as PW-1 and also examined PW-2 Jagjit Singh. On the other hand, the defendant Bachittar Singh himself stepped into witness box as DW-1 and also examined PW-2 KL Sondhi, Draftsman, Court Complex, Ferozepur and DW-3 Arun Pal, UDC, Accounts PSPCL.
6. The learned lower Court returned its finding on issue Nos.1 and 3 against the appellant-plaintiff holding therein that the appellant had been unable to lead any cogent evidence regarding his having taken the suit property on mortgage for an amount of ₹ 2,50,000/-.
7. The learned counsel for the appellant while assailing the aforesaid findings submitted that factum of mortgage stands duly proved from the testimony of

PW-2 Jagjit Singh, who had categorically stated that the mortgage had been effected in his presence and that an amount of ₹ 2,50,000/- had been paid to the defendant.

8. Apart from the aforesaid oral evidence, no documentary evidence had been led by the plaintiff to substantiate his case as regards mortgage of suit property. It is noteworthy that though the case setup by the plaintiff is that he had been introduced to the defendant by one Udik Singh, when the premises were mortgaged, but for reasons best known to the plaintiff, he has chosen not to examine the said Udik Singh, who would have been the best witness to establish his case. On the other hand the defendant has proved on record the sale-deed indicating his ownership upon the same.
9. In the absence of any cogent evidence regarding the premises having been mortgaged to the plaintiff, this Court does not find any reason to interfere with the concurrent findings of the Courts below to this effect.
10. I do not find any merit in this appeal and the same is hereby dismissed. The appellant is directed to hand over the vacant premises to respondent within a period of six months.

10.5.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No