

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1818 of 1985 (O&M)

Date of Decision: January 14, 2019

Pargat Singh & another

...Appellants

Versus

Tarlochan Singh (since deceased) through L.R. & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ketan Chopra, Advocate for
Mr. Anuj Raura, Advocate,
for the appellants.

Mr. Kuldip Singh Sanwal, Advocate,
for the respondents.

AMIT RAWAL, J.

The appellant-plaintiffs have assailed the denial of relief of injunction in a suit claiming declaration to be mortgagees and in possession of land measuring 8 kanals 18 marlas restraining the appellant-defendants from interfering in the peaceful possession of the plaintiffs. The trial Court granted the declaration but declined the injunction, which was assailed in appeal.

Plaintiffs sought the declaration and injunction on the premise that one Balwant Singh was the owner of the land. He mortgaged the same by means of registered mortgage deed dated 07.02.1967 for ₹ 2000/- for a period of 19 years, but the same had not been redeemed. He died issueless and defendant Nos.1 to 3 inherited his estate. They executed an agreement to sell dated 10.05.1976 with the plaintiffs having an intention to sell the land and would be sold to them only, but till such time fixed the yearly rent of the land. However, defendant No.2 sold the land measuring 8 kanals 11

marlas being half share of the suit land measuring 17 kanals 3 marlas for a sum of ₹15,000/- on 18.05.1982 in favour of defendant No.4, for which he had no right in view of the aforementioned agreement. Defendant No.4 in such circumstances, extended threat and, therefore, cause of action accrued to institute the suit.

Defendant Nos.1 and 2 opposed the suit to be not maintainable and denied the possession of the plaintiffs. The sale by defendant No.2 in favour of defendant No.4 was admitted. It was asserted that Balwant Singh was co-owner in the suit land to the extent of half share and he mortgaged 8 kanals 18 marlas, but created another mortgage of land on 21.05.1967 in favour of the plaintiffs for a sum of ₹ 3,000/- and earlier mortgage dated 07.02.1967 merged in the latter. This was intentionally concealed by the plaintiffs. The latter mortgage was redeemed on 10.05.1976 by defendant Nos.1 to 3, who purchased the share of Balwant Singh by means of sale deed dated 27.01.1971. However, the plaintiffs did not return the original mortgage deed on account of its non-availability. The execution of the agreement dated 10.05.1976 in favour of the plaintiffs was emphatically denied.

Defendant No.4 had taken similar stand as defendant Nos.1 and 2. The objection qua maintainability of the suit and barred by Order 2 Rule 2 CPC was also raised.

The trial Court framed the following issues:-

“1) Whether the present suit is barred under Order 2 Rule 2 CPC? OPD

2) Whether the suit in the present form is not maintainable? OPD

3) Whether the plaintiffs are mortgagees in possession of

land measuring 8 kanals 18 marlas comprised in khasra No.2/21/2, 7/1/1/1, 2/20/2? OPP

4) Whether the plaintiffs are in cultivating possession of land measuring 8 kanals 15 marlas comprised in khasra No.2/20/3, 2/21/1, 2/1/1/2 and 28/12OPP

5) Whether the plaintiffs are entitled to declaration prayed for? OPP

6) Whether the plaintiffs are entitled to the injunction prayed for? OPP.

7) Relief.”

The trial Court, on the preponderance of the evidence, conferred declaration but denied the injunction establishing that the plaintiffs were not in possession of the suit land under the agreement. Appeal taken before the Lower Appellate Court, as noticed above, was dismissed.

Mr. Ketan Chopra Advocate for Mr. Anuj Raura, learned counsel appearing on behalf of the appellant-plaintiffs submitted that the courts below erred in holding that the plaintiffs were not in possession of the suit land, whereas entries in the revenue record showing the possession of land as mortgagees were changed in collusion with the Patwari. In fact, no evidence has been brought on record to show that the mortgage was redeemed. In such circumstances, the plaintiffs could not have been dispossessed. Once the courts conferred the status of the plaintiffs as mortgagees, the injunction qua dispossession was inevitable.

Agreement Ex.P1 dated 10.05.1976 was not interpreted in correct perspective. It revealed that defendant Nos.1 to 3 had given the land measuring 8 kanals 15 marlas on lease at a rental of ₹ 450/- per annum with further undertaking not to sell the land except to the plaintiffs. The sale deed

in favour of defendant No.2 through general attorney Iqbal Singh was null

and void and, thus, prayed for setting-aside the findings under challenge.

Per contra, Mr. Kuldeep Singh Sanwal, learned counsel representing the respondents supported the judgments and decrees qua declining of the injunction on the premise that there was a categorical admission that the plaintiffs were not in possession of the suit land and, thus, prayed for dismissal of the appeal as no substantial question of law arises in concurrent findings vis-a-vis declining of relief of injunction.

I have heard the learned counsel for the parties, appraised the paper book, records of the courts below and of the view that there is no force and merit in the submissions of the learned counsel for the appellants.

The point to be pondered upon is only with regard to the declining of the injunction. The execution of the mortgage was admitted by the defendants, but it was explained that same stood redeemed and subsequent mortgage was created by Balwant Singh. Pargat Singh plaintiff admitted in cross-examination regarding redemption of subsequent mortgage of ₹ 3,000/- but denied redemption of mortgage of ₹ 2000/-. The defendants ultimately failed to prove the redemption.

Khasra girdawari Ex.P3 pertained to only Kharif 1967 to Rabi 1970, whereas the suit was filed in the year 1982. No such evidence with regard to the aforementioned period had been placed on record to establish the possession. On the contrary, defendants brought on record khasra girdawaries Ex.D6 and Ex.D7 to show that defendant No.7 Ajit Singh was in cultivating possession of the suit land since Kharif, 1981, but the agreement appeared to have not been acted upon in absence of any consideration. In such circumstances, the plaintiffs cannot be permitted to rely upon the same. The plaintiffs miserably failed to prove their

possession. In such circumstances, the courts below have rightly declined the injunction.

The argument of the learned counsel for the appellants is not able to bring the case within the realm of perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

January 14, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No