

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

RSA-3973-2003 (O&M)

Date of decision: 24.09.2019

Sukhwinder Kaur (wrongly described as Sibbo wife of Malkit Singh)

...Appellant

Versus

Surjit Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Ms. Sarika Gupta, Advocate for the appellants.

Mr. Anupam Bhardwaj, Advocate
for respondent Nos.1 & 2.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs-Surjit Kaur widow and Chanan Singh son of Amar Singh, both residents of Village Soosan, Tehsil & District Hoshiarpur, had brought a suit against defendants Smt. Sibbo and others, seeking a decree for permanent injunction restraining the defendants from forcibly taking possession or otherwise interfering in the land measuring 118 kanals 5 marlas, fully detailed in headnote of the plaint, situated at Village Soosan, Tehsil & District Hoshiarpur. As per version of the plaintiffs, the suit land is jointly owned and possessed by them as well as other co-sharers. The plaintiffs have 470 share out of 1980 share as detailed in copy of jamabandi for the year 1991. Jaswinder Kaur daughter of plaintiff No.1 was married at Village Khojpur, District Jalandhar. The husband of daughter of plaintiff

No.1-Surjit Kaur maltreated Jaswinder Kaur and raised demand of dowry and for that reason, he turned Jaswinder Kaur out of the matrimonial home in three wearing clothes and she came to reside at her parental place. Defendant No.10 is brother in-law of Jaswinder Kaur. On 13.06.1995 at the instigation of defendant No.1 Sibb and other members of in-laws family of Jaswinder Kaur besides the other defendants along with three police officials entered the house of plaintiff No.1 forcibly. At that time, she was alone in her house. They threatened plaintiff No.1 to execute the sale deed in favour of defendant No.10 regarding the suit land and forcibly took away cash of Rs.2000/- from her. They threatened plaintiff No.1 to withdraw the complaint under Section 406 and 498-A IPC and petition under Section 125 Cr.P.C., filed by Jaswinder Kaur and if it was not so done, then they would forcibly grab the property of the plaintiffs. According to the plaintiffs, the matter was reported to the police. On 01.07.1995, defendant Nos.1 to 9 along with defendant No.10 came to fields of the plaintiffs having a tractor and tried to plough the land which is in possession of the plaintiffs forcibly, however, with the intervention of respectables, situation was saved. At the time of leaving the place, the defendants threatened that they would come again within a week to take forcible possession of the land in question.

Feeling alarmed, the plaintiffs brought the suit before the Civil Court. On notice, only defendant Nos.1 to 8 & 10 put in appearance and filed written statements, while defendant No.9 did not appear despite service and was proceeded against ex parte. In the written statement filed

by defendant No.1, she had raised various preliminary objections, contending that there was no lady by name of Sibbo wife of Malkiat Singh in Village Soosan; that the plaintiffs have not approached the Court with clean hands and they are estopped from filing the suit by their act and conduct. On merits, such defendant denied that the plaintiffs are joint owners in possession of the suit land or that on 13.06.1995, defendant No.1 along with other members of in-laws family of Jaswinder Kaur along with police officials had forcibly entered the house of plaintiffs and threatened to execute the sale deed in favour of defendant No.10 with regard to the suit land or had forcibly taken away cash amount of Rs.2000/- from plaintiff No.1. Allegations in that regard are denied. According to the answering defendant, khasra No.5381/3589 to 3591 were mortgaged/pledged with possession with the bank for raising loan of Rs.9000/- about 12 years back. Since the plaintiffs did not return the loan amount with interest, consequently, land measuring 13 kanals 12 marlas, bearing khasra No.5381/3589 to 3591 was put to open auction by the Sales Officer and the answering defendant had purchased the same. Sale certificate was issued in her favour by the concerned department on 19.04.1995 and the possession was delivered to her at that very time. The said land had been purchased by the answering defendant for a sum of Rs.67,000/-. Thus, she is a bona fide purchaser for a valuable consideration and the plaintiffs have no concern with that land. The answering defendant has no right or interest with regard to other khasra numbers.

The written statement filed by defendant Nos. 2 to 8 & 10 was almost on the same lines as that of defendant No.1.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are entitled to the injunction as prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.
4. Whether the plaintiffs have no locus standi to file the present suit? OPD.
5. Relief

Parties were afforded adequate opportunities to lead evidence in support of their respective claims. During the course of evidence of plaintiffs, Jaswinder Kaur, attorney of plaintiff No.1 herself stepped into witness box as PW-2 and the plaintiffs also examined PW-1 Hari Ram.

After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.) Hoshiarpur decided issue No.1 against the plaintiffs and issue No.2 in favour of the plaintiffs. As a result, suit of the plaintiffs for permanent injunction was dismissed, vide judgment and decree dated 22.11.2000.

The plaintiffs felt aggrieved by the said judgment and decree and filed an appeal before District Judge, Hoshiarpur, which was assigned to Addl. District Judge (Adhoc), Hoshiarpur, who vide judgment and

decree dated 04.06.2003, accepted the appeal, set aside the judgment and decree passed by the trial Court and suit of the plaintiffs to the extent that respondents/defendants were restrained from dispossessing the plaintiffs from the suit land otherwise than in due course of law, was passed in favour of plaintiffs against defendants.

Now, it was turn of the defendants to feel aggrieved and they have approached this Court, by way of filing Regular Second Appeal, notice of which was given to plaintiffs-respondents who have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The trial Court was justified in dismissing the suit filed by the plaintiffs, observing that the plaintiffs had mortgaged the suit land measuring 13 kanals 12 marlas of land with Primary Land Mortgage Bank, Hoshiarpur for raising a loan, which they could not repay. As such, the mortgaged land was put to auction and it was purchased in auction by defendant No.1 and further the plaintiffs had filed the suit for permanent injunction against Primary Land Mortgage Bank, Hoshiarpur, in which, ad-interim injunction was not granted to them. The whole story set up by the plaintiffs does not come out to be convincing or plausible. Defendant No.1 having purchased the land in open auction and sale certificate having been issued in her favour, then, where is the question of such defendant along with police officials trespassing in the house of plaintiffs, holding out threats to them to persuade Jaswinder Kaur to

withdraw the litigation, otherwise, they would take forcible possession of the property of the plaintiffs. As a result of purchase of the suit land by defendant No.1 in auction, she had acquired the title to the said property and the plaintiffs cannot put in rider on her rights to enjoy that property. They are not entitled to any injunction as against defendant No.1 and others. Learned Addl. District Judge (Adhoc) Hoshiarpur, making reference to jamabandi Ex.P3 had observed that in terms of said jamabandi, plaintiffs had 419 share in the suit land measuring 62 kanals 17 marlas out of 1257 shares and Surjit Kaur widow of Chanan Singh had mortgaged that land with Primary Cooperative Land Mortgage Bank, Hoshiarpur for a sum of Rs.9000/-, which was a simple mortgage, meaning thereby that possession had not been delivered to the mortgagee and it remained with plaintiffs and when the loan amount was not returned then the attached land was put to auction, which was purchased by defendant No.1 in open auction for Rs.67000/-. The fact that it is not mentioned in the sale certificate that possession had been delivered to the auction purchaser has weighed heavily on the mind of Addl. District Judge (Adhoc) Hoshiarpur but once the plaintiffs lost title in the suit land and it was acquired by defendant No.1, the plaintiffs cannot seek injunction against defendant No.1 and it was rightly declined to them. Learned trial Court Hoshiarpur on analysis of the relevant provisions had observed that bank was competent to auction the mortgage property without intervention of the Court and a Sale Officer can be appointed in terms of Section 24 of the Punjab Cooperative Land Mortgage Banks Act,

1957 by the State Government. The judgment passed by the Ist Appellate Court is not sustainable and is liable to be set aside, by way of acceptance of appeal, because that judgment is result of misappraisal of evidence and wrong interpretation of law. Therefore, the appeal succeeds; impugned judgment and decree dated 04.06.2003, passed by Addl. District Judge (Adhoc) Hoshiarpur is set aside and the judgment and decree dated 22.11.2000 passed by the trial Court, dismissing the suit of the plaintiffs with costs, are restored.

24.09.2019

sumit.k

(H.S. MADAAN)
JUDGE

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