

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

RSA No. 2262 of 2019(O&M)

Date of decision: 16.7.2019

Harchand Singh

.....Appellant

VERSUS

Harpal Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. H. S. Batth, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.7218-C of 2019

Heard.

Allowed as prayed for.

Annexures A-1 to A-3 are taken on record subject to just exceptions.

Disposed of accordingly.

RSA No.2262 of 2019

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration filed by the appellant claiming himself to be mortgagee in possession in respect of land measuring 14 kanal 6 marlas, detailed in head-note of the plaint and permanent injunction that the respondents/defendants be restrained from interfering or dispossessing the plaintiff from suit land as per jamabandi for the year 2005-06, situated in the revenue estate of village Mundapind, Tehsil Khadur Sahib, District Tarn Taran was

dismissed by the trial Court vide judgment and decree dated 05.12.2017 that came to be affirmed in appeal preferred by unsuccessful plaintiff/appellant.

Counsel for the appellant, at the outset, would inform that he does not press his claim seeking declaration that he is mortgagee in possession of suit land on the basis of mortgage deed dated 20.08.1997 purported to be executed by Hari Singh son of Harnam Singh in favour of Faqir Singh son of Shiv Singh, father of the appellant. However, it is submitted that since the appellant is proved to be in possession of suit land on the basis of oral and documentary evidence available on record including the documents marked as Ex.D6 and D7 produced by the respondents/defendants, the Courts have committed a serious error rather perversity by rejecting claim of the plaintiff/appellant for grant of permanent injunction against his forcible dispossession.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

There is no denial that partition proceedings in respect of the suit land were initiated by Santokh Singh – defendant No.2 against Rajwinder Kaur who is none else but wife of the plaintiff/appellant. The partition proceedings were finalized wherein *sanad takseem* and *naksha eree* were prepared and warrants of possession were issued. Both the Courts have consistently held that the appellant is guilty of concealing the factum of pendency of partition proceedings and as such he is not entitle to discretionary and equitable relief of injunction. It is not plea of the appellant/plaintiff that he was not aware of partition proceedings filed against his wife. It appears to the Court that since defendant No.2 has

taken recourse to appropriate proceedings for partition of the suit land and recovery of possession, the appellant rushed to the Civil Court for getting a decree of injunction by concealing the factum of partition. Examined from another angle, since defendant No.2 had initiated partition proceedings and got the land partitioned wherein warrants of possession have been issued, it can safely be inferred that the defendants/respondents want to recover possession of land of their share in due process of law. That being so, I do not find any reason to interfere in consistent findings recorded by the Courts.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

JULY 16, 2019

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no