

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

RSA-2546-2018

Date of Decision: November 27, 2019

Sat Parkash

...Appellant

Versus

Krishan Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.

Present: Ms. Neetu Prashar, Advocate, and
Mr. Sushil Kamboj, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by the appellant-plaintiff was dismissed by the Trial Court, vide judgment and decree, dated 18.03.2015, and as even the appeal preferred against the said decree failed, and was dismissed on 24.05.2017, he is before this Court in Regular Second Appeal. Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

A suit for recovery of Rs.75,457/-, on account of use and occupation charges of the shop situated at Village Abheypur, Tehsil and District Panchkula, was filed by the plaintiff. In brief, the case set out by him was that he was the absolute owner of the suit property, which he mortgaged with defendant for Rs.80,000/-, vide mortgage deed dated 10.01.1995. It was agreed between the parties that whenever the plaintiff/mortgagor redeems the property on payment of mortgage amount, the possession of the premises shall be handed over to him. However, defendant violated the terms of the mortgage deed as he rented the shop in

question to Ramesh Kumar and started receiving rent. Even though the plaintiff repeatedly approached the defendant to redeem the property, but to no avail. On 10.06.2003, a post dated cheque was issued by the plaintiff to the defendant, which he refused to accept. Subsequently, a notice dated 13.08.2003, was served upon the defendant, and along therewith a cheque dated 28.08.2003, was also sent. However, despite having received the cheque, the defendant did not handover possession of the suit property. Whereafter the plaintiff filed a suit for possession by way of redemption of mortgage on 09.10.2003, which was decreed vide judgment and decree, dated 08.06.2007. The appeal preferred by the defendant against the said decree failed and was dismissed right up to this Court. Even Ramesh Kumar filed a suit against the plaintiff, which too was dismissed for non-prosecution on 01.03.2008. The act of defendant and Ramesh Kumar caused harrassment and mental agony to the plaintiff. Plaintiff deposited Rs.80,000/- in the treasury, in terms of the order dated 19.04.2004, passed by the Civil Court, Panchkula. The rental value of the suit property was Rs.6,000/- per month, and the defendant retained the shop illegally, despite redemption of mortgage and continued to occupy the same. Therefore, the plaintiff was entitled to recover rent @ Rs.6,000/- per month from the defendant, who despite redemption of the suit property continued to be in possession thereof from 10.01.2005 to February, 2008, i.e. period of unauthorised occupation.

In the written statement filed by the defendant, an objection as regards the maintainability of the suit, in terms of Order II Rule 2 of the

Code of Civil Procedure, was raised. Further, it was admitted that suit property was mortgaged with the defendant, but he never inducted Ramesh Kumar as tenant over the suit property. In fact, plaintiff had inducted Ramesh Kumar as tenant. As the suit property was under tenancy, the vacant possession thereof could not be handed over to the plaintiff by the defendant. He never violated terms of the mortgage deed. No mortgage amount was offered by the plaintiff to the defendant to redeem the mortgage. Further, the defendant was not bound to pay the amount claimed by the plaintiff and even otherwise the rate of rent of the suit property was Rs.400/- per month. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that plaintiff-Sat Parkash (PW-1) conceded in his cross-examination that before filing the present suit, he had filed two other cases against the defendant. And the previous case was on similar facts as the present case. The case titled “Satparkash v. Krishan Lal”, was decreed by the Trial Court on 08.06.2007, in his favour and the relief claimed in the present suit was not claimed by him in the said suit. He even filed a recovery suit against the defendant post decision dated 08.06.2007, and another case for damages was also filed by him. Further, he did not have the original mortgage deed and he did not know that rate of rent of the suit property was Rs.300/- per month, which was subsequently increased to Rs.400/-. Even the postdated cheque, to which a reference was given in his affidavit, was never given by him. Concededly, the relief claimed by the plaintiff in the present suit was not claimed in the

earlier suit filed by him in the year 2003, for redemption of mortgage, which was decreed on 08.06.2007. Further, the relief claimed by the plaintiff in the present suit could always be sought in the earlier suit and was available to him when he filed a suit for possession by way of redemption. The provisions of Order II Rule 2 of the Code of Civil Procedure, postulate an absolute bar on splitting of claims and on filing of subsequent suit qua the relief which was omitted or relinquished by plaintiff in the previous suit. In other words, the suit must include whole of the claim which the plaintiff was entitled to make in respect of the cause of action on which he sues and in the event he omits to claim any relief, he shall be estopped to claim the said relief in the subsequent suit.

On being pointedly asked, learned counsel for the appellant could not refer anything on record to show if the relief claimed in the present suit could not be claimed in the earlier suit that was filed in the year 2003, and that the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. That being so, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed. No ground is made out to interfere with the concurrent findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 27, 2019

Pk Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO