

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

RSA No.5946 of 2018

Decided on:06.05.2019

Swaran Singh

.....Appellant

versus

Kuldip Singh and others

....Respondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.Amandeep Singh Manaise, Advocate,
for the appellant.

DR.RAVI RANJAN, J. (Oral Judgment)

This appeal by the plaintiff-appellant is directed against the Judgment and decree dated 01.08.2018 passed by the Additional District Judge, Gurdaspur, in Civil Appeal No.32 of 2017 by virtue of which he has affirmed the Judgment and decree 02.05.2017 passed by the Civil Judge (Jr. Divn.), Gurdaspur, in Civil Suit No.87 of 2013.

Briefly stating, the plaintiff/appellant filed a suit seeking relief of permanent injunction against the defendants/respondents by passing a decree to the effect that the defendants, their servants, agents, assignees, etc. be restrained from interfering in any manner into the peaceful exclusive cultivating possession of the plaintiff and also dispossessing him forcibly, illegally and without seeking due course of law from the suit land measuring 64 Kanal and 12 Marlas, fully described in the plaint.

2. The plaintiff claimed that he is in actual, physical and exclusive cultivating possession of the suit land as mortgagee for the last 50 years. The suit land was never redeemed by the original mortgagors or anybody else. The revenue records reflect possession of the plaintiff and his brothers

and earlier to that their father. The plaintiff has also recently harvested a crop from the suit land. However, the defendants are the headstrong persons and had talks with the top political party and, being strongman, they started using threats to interfere into the peaceful possession of the plaintiff. Hence, the suit was filed.

3. The defendants/respondents by filing joint written statement claimed that the plaintiff is not in possession of the land and infact the original owners of the land preferred a suit for redemption of mortgage which was decreed by the Civil Court. Thereafter, the appeal against the Civil Court decree was also dismissed with certain modifications. Moreover, the original owners have already deposited the mortgage money in the Court. The plaintiff has concealed the material facts from the Court. Further, the defendants/respondents have purchased the suit land from the original owners vide registered sale deed and thereafter, partition in their family *qua* the suit land was also effected.

No replication was filed by the plaintiff.

4. Upon consideration of rival pleadings, the trial Court framed following issues:

1. Whether plaintiff is entitled for relief of permanent injunction as prayed for?OPP
2. Whether suit of the plaintiff is not maintainable in the present form?OPD
3. Whether plaintiff has concealed material facts from the Court?OPD
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Relief.

5. The plaintiff in order to prove his case has examined himself as PW1. PW2 is one Mohinder Singh who also deposed in the lines of the pleadings of the plaintiff.

The defendants have examined Kuldeep Singh as DW1.

Both the parties have brought on record certain documents which stand stated in the impugned judgment.

6. Both the Courts below have noticed that though there is a clear cut case of the plaintiff in the plaint that he is a mortgagee and is in possession of the suit land as such, but, while being cross-examined, he put up a new plea that he is a tenant of one Gyan Chand, the original owner of the suit land and has also replied that he had never given any rent to Gyan Chand under whom he is in possession as tenant.

That apart, though the case of the plaintiff in his pleading is that he is still a mortgagee as the concern mortgage is yet to be redeemed, in his cross-examination he has accepted that mortgage was redeemed vide a civil suit in which he was also a party. But, while being examined as PW1, he deposed that appeal against the redemption is pending before the High Court. He has also admitted as correct that the suit land was redeemed vide a Civil Court decree for a sum of Rs.22,000/-. PW2 also deposed in the same fashion.

Both the Courts in such a circumstance, have held that the plaintiff is guilty of concealment of material facts and, thus, has not come before the Court with clean hands and at the same time he is seeking discretionary relief of permanent injunction claiming his status to be a mortgagee in possession.

7. In view of the aforesaid facts, coupled with the fact that PW1 has contradicted his own case at the time of cross-examination saying that he was a tenant of one Gyan Chand to which he was not paying rent etc., both the Courts have recorded concurrent findings that in such a situation

serious doubt is there regarding the possession of the plaintiff upon the suit property and the entry in the revenue records would not be enough to clear such doubt as it is well settled that such entries neither create nor extinguishes any right, title or interest.

8. In the aforesaid background of the matter, I have heard learned counsel for the appellant in this appeal.

At the time of hearing, apart from addressing this Court on the issues which have already been dealt with as above, learned counsel has submitted that even though it is assumed that there was Civil Court decree and appeal against the same had also been dismissed, it is not the case of the defendants that any execution case was filed for execution of the decree in which possession was delivered to the defendants as the defendants have merely stated that Rs.22,000/-, the decretal amount for the redemption was deposited. The aforesaid limb of argument *prima facie* appears to be attractive, but, on deeper scrutiny, this Court does not find any force in that. It is well settled that a plaintiff has to succeed in the suit on his own. It would be very difficult for him to succeed on the basis of certain defence or *lacuna* which are there in the pleading or the evidence led by a defendant. If there are sufficient materials to establish the case of the plaintiff in such situation such *lacuna* or defect would come in aid of the plaintiff by way of corroboration or to substantiate his case. However, in the case in hand, the plaintiff has admittedly nowhere stated regarding the redemption of the suit but non-filing of any execution case etc. in his plaint. This is not at all his plea. His pleading is otherwise as he has stated he is a mortgagee and it is yet to be redeemed. He has completely suppressed the fact of filing of civil suit for redemption of mortgage and the decree having been passed in such

suit.

In my considered opinion, the plaintiff/appellant cannot be allowed to make out a case beyond its pleadings. Even if his evidence is considered then his statement during cross-examination contradicts his own case as in the cross-examination he has stated that he is tenant of one Gyan Chand in place of being mortgagee. It appears that plaintiff is not sure about himself as to on what basis he is in possession or is actually in possession or not at all. In such a situation, it would be very difficult for a Court of law to pass a decree granting permanent injunction in favour of the plaintiff.

In my considered opinion, no good ground or substantial question of law could be raised by the appellant in this appeal warranting interference of this Court in the concurrent findings recorded by the Courts below.

In the result, this appeal, being devoid of any merit, is dismissed.

May 06, 2019
dharamvir

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No