

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**117****RSA No.883 of 2023 (O&M)****Reserved on : 31.01.2024****Date of Decision: 08.02.2024**

Harjinder Singh

....Appellant

VERSUS

Piara Singh & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ram Kumar Chauhan, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 16.12.2016 passed by the Trial Court and the judgment and decree dated 19.12.2022 passed by the First Appellate Court dismissing the suit filed by the plaintiff-appellant.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction and mandatory injunction averring that defendants No.1 and 2 are owners of the suit property measuring 0-10 marlas and 1 kanal 03 marlas and that on 22.03.2001 defendant No.2, Darshan Singh, for himself and on behalf of defendant No.1, Piara Singh, executed a mortgage deed in favour of defendant No.3, Sudha Sharma, in respect of 0-10 marlas of land. The mortgage deed was signed by defendant No.4, Rakesh Kumar, husband of defendant No.3 as Aagu Murthin. On the same day an agreement was also executed handing over land measuring 1 kanal 13 marlas to defendant No.3, Sudha Sharma. As

per the plaintiff-appellant the parcels of land measuring 0-10 marlas and 1 kanal 03 marlas adjoin each other and the possession of this 33 marlas of land was handed over to defendant No.3 on payment of the mortgage amount of Rs.1 lakh by her. The mortgage was for 10 years and was not to be redeemed prior to the expiry of 10 years and that there is a saw mill and a flour mill existing on the spot with a 20 HP motor installed for running of the saw mill and the flour mill. The plaintiff-appellant averred that he is in possession of two shops adjoining to the vacant site as a tenant under defendants No.1 and 2 @ Rs.400/- per month for each shop for the last 15 years and has been using the said two shops even prior to the above said mortgage and that the mortgagee allowed him to continue in possession of the same. It was pleaded that on 30.07.2001 defendant No.4, Rakesh Kumar, husband of defendant No.3 offered and gave the suit property measuring 33 marlas to the plaintiff-appellant to run the saw mill and the flour mill and to use the site for any other purposes on the condition of payment of electricity charges, maintenance charges and other miscellaneous charges and that the plaintiff-appellant is running a business there under the name and style of Mehmi Saw Mill where he has also stacked wooden logs and other material worth lakhs of rupees. It was further pleaded that the defendants No.1 and 2 are now threatening to dispossess the plaintiff-appellant from the suit property and had got issued a notice from the Punjab State Power Corporation Limited (PSPCL) for disconnection of the electric connection existing there. Hence, the present suit.

3. Defendant No.1 in his written statement raised preliminary objections that the plaintiff-appellant had not come to the court with clean hands and had suppressed the true and material facts from the court. As per

defendant No.1 the plaintiff-appellant was a tenant of two shops only not a tenant on the suit land over which he was a trespasser. The writing dated 30.7.2001 alleged to have been executed by Rakesh Kumar defendant No.4 in favour of the plaintiff-appellant was stated to being illegal, null and void being a result of forgery. Separate written statement was filed by defendants No.3 and 4 (Sudha Sharma and Rakesh Kumar) taking the stand that the plaintiff-appellant had manipulated and forged the writing dated 30.07.2001 which was neither executed by defendant No.4 nor was signed by him as his signatures on this alleged writing are forged and fabricated and that it had been prepared to create false evidence against defendant No.1. It was averred that the mortgage stands redeemed and defendants No.3 and 4 have surrendered possession to defendant No.1 as per condition of the mortgage deed. Defendants No.5 and 6 in their written statement stated that the disputed electric connection was in the name of defendant No.1, Piara Singh, and they were bound by law to act upon the representation of defendant No.1, Piara Singh, and that the disconnection order was passed by the competent authority and the electric connection was disconnected on 30.03.2012.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
2. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for ? OPP

3. Whether the plaintiff has not come to the court with clean hands and has suppressed true and material facts from the court ? OPD
4. Whether the plaintiff is trespasser and has no connection with the property in dispute ? OPD
5. Whether the present suit is not maintainable in the present form ? OPD
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
7. Whether the site plan filed by the plaintiff is incorrect ? OPD
8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD
9. Whether the suit of the plaintiff is hit by the principle of resjudicata ? OPD
10. Whether the connection No.SP/74003 was released in the name of Piara Singh s/o Kartar Singh and the plaintiff has no locus standi to file the suit against defendants No.5 & 6 ? OPD 5 & 6
11. Relief.

5. The Trial Court dismissed the suit vide judgment and decree dated 16.12.2016. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree 19.12.2022. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellant has contended that both the Courts below have erred in dismissing the suit of the plaintiff-

appellant. It is submitted that the possession of the plaintiff-appellant stood established and as such he was entitled to the grant of permanent injunction. As per counsel the impugned judgements and decrees are based upon conjectures and surmises and cannot be sustained.

7. I have heard learned counsel for the plaintiff-appellant.

8. The plaintiff-appellant has claimed his possession on the suit land on the basis of a writing dated 30.7.2001 (Ex.P1) allegedly executed by defendant No.4, Rakesh Kumar. The original of this writing Ex.P1 is not on the record. It is on plain paper with no parentage or address of the parties mentioned. The Trial Court found that *“The said document is Ikrarnama, which is written on simple paper. The said writing is written in his own hand. In the said writing Rakesh Kumar is party No.1 and Harjinder Singh himself is party No.2. He admitted that in the said Ikrarnama parentage of the parties and residential address are not written. No stamp paper or stamp duty is affixed on the said writing and he used to maintain record of his shop. He did not may (make) entry about the writing Ex.P1 in the records. The said Ikrarnama was written by Rakesh Kumar as attorney of Sudha Sharma. He does not know that how much stamp duty is required to be affixed on Ikrarnama”*. The First Appellate Court, while concurring with the findings of the Trial Court, found that *“Thus, it is evident that the plaintiff has not brought on record original writing dated 30.07.2001 Ex.P1 despite the fact that it was lying at his home. Production of photo state copy Ex.P1 of this writing was objected to on the ground of mode of proof by the defendants. However, the plaintiff neither took permission of the court nor proved this document by way of secondary evidence. Thus, this document Ex.P1 is of no avail to the plaintiff due to the reason that neither its original*

has been brought on record nor it has been proved by leading secondary evidence as required under the law. Further, there is no evidence on record from the side of the plaintiff showing that defendant No.4 Rakesh Kumar who allegedly executed this document, was authorized by the defendant No.3 Sudha Sharma mortgagee to execute such document or to hand over possession of the suit property to the plaintiff. Another thing worth mentioning is that defendants No.3 and 4 by filing joint written statement have denied handing over of possession of the suit property to the plaintiff and execution of this writing dated 30.07.2001 while further stating that the plaintiff had manipulated and forged this writing dated 30.07.2001 on behalf of defendant No.4 and it was neither executed by defendant No.4 nor was signed by him. It has been further stated that signatures of defendant No.4 on this alleged writing are forged and fabricated”.

9. The Courts below have reached concurrent findings of fact that the plaintiff-appellant has failed to prove his legal or permissive possession over the suit property at any stage and hence he is not entitled to a decree for permanent injunction and mandatory injunction. Learned counsel for the plaintiff-appellant has been unable to show anything on the record to show his possession over the suit property. The present suit was one for permanent and mandatory injunction only. Learned counsel for the plaintiff-appellant has not been able to convince this Court that the findings recorded by the Trial Court and the First Appellate Court are erroneous in any manner. No other point was argued.

10. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises

in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.02.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO