

Before K.C. Puri, J.

NIRBHAI SINGH,—Appellant

versus

RAJBIR SINGH AND ANOTHER,—Respondents

RSA No. 3523 of 2001

24th January, 2008

Code of Civil Procedure, 1908--Land mortgaged and redemption order passed—Courts below finding plaintiff not in possession of mortgaged land—No interference by High Court in findings of fact recorded by Courts below—No challenge to factum of redemption—Appeal dismissed being without any merit.

Held, that both the Courts below have given definite finding that the land has been redeemed and the detendants have been put in possession of the land redeemed. The plaintiff has alleged tenancy in the previous litigation between the parties also and in RSA No. 4753 of 1999 decided on 27th January, 2003 by the Punjab and Haryana High Court, it has been categorically held that the plaintiff is not in possession of any part of the suit property as a tenant. So far as the land covered by the mortgage deed is concerned, there is a definite finding of the Courts below that the plaintiff is not in possession of that land and that has become finding of fact and cannot be interfered with in the present Regular Second Appeal. The question of law “ whether Exhibits D-2 to D-5 could be ignored from the consideration and if considered what would be the effect of the findings recorded by the Courts below” has not been pressed as the factum of redemption has not been challenged during the course of arguments. So, Regular Second Appeal No. 3523 of 2001 preferred by the plaintiff- appellant is without any merit and the same stands dismissed holding that no substantial question of law has been raised by the appellant.

(Para 20)

Code of Civil Procedure, 1908-O.39 Rls.1 and 2—Land not covered by mortgage deed—Plaintiff a trespasser on land-Findings

of fact recorded by Courts below—No injunction can be granted in favour of a trespasser against a true owner.

Held, that both the Courts have held that the plaintiff was a trespasser on the land which is not covered by the mortgage deed. That being a finding of fact cannot be interfered with in the Regular Second Appeal. No injunction can be granted in favour of a trespasser against a true owner. So, the second question of law “whether a trespasser is entitled to an injunction against a true owner” stand determined in favour of Karambir Singh and Rajbir Singh, defendants/appellants in RSA No.2839 of 2001 and against plaintiff/respondent Nirbhai Singh.

(Paras 19 and 20)

G. S Jaswal Advocate *for the Appellant.*

Arun Jain Advocate *for the respondents.*

JUDGMENT

K.C. PURI, J.

(1) Since common questions of fact and law are involved in Regular Second Appeal Nos. 3523 of 2001 and 2839 of 2001 and both these appeals having been directed against the same judgment and decree dated 14-5-2001 passed by the then Additional District Judge, Ropar, the same are being disposed of by this common judgment. *Vide* the impugned judgment and decree, the two appeals preferred against the judgment and decree dated 26.9.1977 passed by the then Additional Civil Judge (Senior Division), Kharar were dismissed. Facts have, however, been taken from Regular Second Appeal No. 3523 of 2001.

(2) The facts, in brief, may be noted as under ;

(3) Nirbhai Singh, plaintiff (appellant herein) filed a suit for a declaration against the defendants (respondents in this appeal) to the effect that the Power of Attorney allegedly executed by the sons of Mohinder Singh, resident of Malaysia in favour of the defendants is a forged document. The plaintiff also prayed for relief of permanent injunction restraining the defendants from dispossessing him from the

suit property situated in village Allapur, Tehsil Kharar illegally and forcibly on the ground that he is in peaceful possession of the suit property partly as a mortgagee and partly as a tenant. The defendants were very shrewd persons and they have forged a Power of Attorney under the name of Mohinder Singh, resident of Malaysia. The defendants threatened to redeem the suit land on the basis of forged deed. The defendants have no concern with the suit property.

(4) On notice having been issued to the defendants, they filed written statement and contested the claim of the plaintiff. They raised preliminary objections that the plaintiff has no *locus standi* to file the instant suit and that the suit was not maintainable in the present form. They also pleaded that some of the suit land was under mortgage and redemption proceedings were then pending in the Court of SDO (Civil) exercising the powers of Collector. It was denied that the plaintiff was a tenant in the suit land. Entries in the revenue record showing the plaintiff as tenant were incorrect. The suit land except the mortgaged one was in possession of defendants being attorney of owners.

(5) In the replication filed by the plaintiff, the averments made in the plaint were reiterated and those in the written statement were controverted.

(6) From the pleadings of the parties, the following issues were framed by the trial Court;--

- (1) Whether the power of attorney executed by sons of Mohinder Singh is illegal, null and void? OPP
- (2) Whether the plaintiff is in possession of the suit land as alleged ? OPP
- (3) Whether the plaintiff is entitled to the injunction as prayed for?OPP.
- (4) Relief.

(7) After the conclusion of the trial, the learned trial Court decided issue No.1 against the plaintiff. Issue No.2 and 3 were partly decided in favour of the plaintiff and partly against him. Under issue

Nos. 4 and 5, it was held that the suit of the plaintiff was partly maintainable and the plaintiff had partly *locus standi* to seek the injunction against the defendants *qua* part of the suit property which is in possession of the plaintiff along with other persons. It was also held that even a single person can bring a suit for injunction even on behalf of other persons who happened to be in possession along with him over the suit property. These issues were accordingly decided in favour of the plaintiff to this extent. Issue No. 6 was decided against the defendants. As a result of said findings, the learned trial Court dismissed the suit of the plaintiff for a declaration,—*vide* judgement and decree dated 26th September, 1997. The learned trial Court dismissed the suit for permanent injunction as a consequential relief in respect of Khasra Nos. 15/22/2, 23/2, 24/5/2, 5/4 of Khewat No. 20 and 25/1, 2/1 of Khewat No. 20 and Khewat No. 25, Khasra No. 24/5/1, 5/3, 5/6, 5/15, 5/16 and partly decreed the suit pertaining to the remaining suit land as fully detailed in the head note of the plaint situated at villege Allapur, Tehsil Kharar except in due course of law. It was made clear that the said decree would not debar the defendants from recovering the possession of the suit land from the plaintiff through any established legal process.

(8) The plaintiff and the defendants filed two separate appeals which were heard by the then Additional District Judge, Ropar and were dismissed,—*vide* impugned judgment and decree dated 14th May, 2001.

(9) Still feeling aggrieved by the said judgment and decree, two appeals have been preferred in the Court which are being disposed of by this common judgment.

(10) I have heard arguments addressed by the counsel for the parties and have carefully gone through the record of the case.

(11) On 7th August, 2003, the following question of law was formulated for the consideration of this Court:--

“1. Whether Exhibits D-2 to D-5 could be ignored from the consideration and if considered what would be the effect of the findings recorded by the Courts below”

(12) However, after hearing counsel for both the sides, the following additional question of law is formulated in Regular Second Appeal No. 2839 of 2001 titled **Karambir Singh and another versus Nirbhai Singh** :—

1-A. Whether a trespasser is entitled to an injunction against a true owner?

(13) Nirbhai Singh plaintiff in Regular Second Appeal No. 3523 of 2001 has moved an application under Order 41 Rule 27 CPC for permission to place on record copy of judgment in Civil Suit No. 168 of 11th June, 1982 decided on 27th January, 1983 by Sub-Judge 1st Class, Kharar and the copies of the Jamabandies for the years 1962-63 and 1982-83. In the application, it is pleaded that the controversy between the parties is whether the mortgagor is in possession of the property. It is pertinent to mention here that the mortgage relates to the year 1987 and the said land was redeemed,—*vide* order dated 18th September, 1995, Exhibit D-2. On the basis of Exhibit D-2, entries in the roznamcha Exhibit D-8 were recorded. Civil Suit No. 168, dated 11th June, 1982 was filed by Kartar Singh, Bhajan Singh, Dharam Singh, Nirbhai Singh, plaintiff and Piara Singh, sons of Chanan Singh against Ajmer Singh, Mohinder Singh, sons of Hari Singh and Pritam Kaur for permanent injunction. It was held in that suit that Kartar Singh, Bhajan Singh and Nirbhai Singh plaintiff were in possession of the suit land as tenants. In the Jamabandi for the year 1962-63, father of Plaintiff Kartar Singh and others has been recorded in cultivating possession. Similar is the position in the Jamabandi for the year 1982-83. So, the production of these documents is material and permission has been sought under Order 41 Rule 27 CPC.

(14) I have considered the said submission but do not find any force in that submission. The matter regarding possession was finally decided between the parties in Regular Second Appeal No. 4752 of 1999. In that appeal also, Nirbhai Singh appellant moved an application for production of Jamabandies for the years 1962-63 and 1982-83 to prove the fact that he was a tenant in the disputed land. That plea was not accepted and the application under Order 41 Rule 27 CPC was dismissed. In that judgment, there was a categoric finding of the

High Court that the plaintiffs were not the tenants over the suit property and were trespassers as such, they were not entitled to injunction. Their suit for permanent injunction was ultimately dismissed.

(15) So far as judgment dated 27th January, 2003 is concerned, that judgment and the Jamabandies were in the knowledge of appellant Nirbhai Singh. These documents could be produced by exercise of due diligence in the trial Court. Otherwise also, the judgment dated 27th January, 2003 and the Jamabandies for the years 1962-63 and 1982-83 are not required by the Court to pronounce proper judgment as the controversy between the parties has finally been decided between the parties in Regular Second Appeal No. 4752 of 1999 decided on 27th January, 2003 by the Punjab and Haryana High Court.

(16) So, in view of the above discussion, application under Order 41 Rule 27 CPC filed by Nirbhai Singh stands dismissed.

(17) Now reverting to the merits of the case, nothing has been argued by the counsel for Nirbhai Singh, appellant in respect of documents Exhibit D-2 to D-5. Rather, it is an admitted fact that land has been redeemed through documents Exhibits D-2 to D-5. The only contention raised by the counsel for the appellant is that after the redemption of the land, the status of the plaintiff as that of tenant would revive. The plaintiff is in possession of the suit property as a tenant and as such in view of authorities reported as **Jagan Nath Piare Lal versus Mittar Sain and others (1)**, and **Gambangi Appalaswamy Naidu and others versus Behara Venkataramanayya Patro (2)**, plaintiff Nirbhai Singh can only be evicted by the Revenue Court in due process of law.

(18) I have considered the said submissions but do not find any force in the same. Both the Courts below have given definite finding that the land has been redeemed and the defendants have been put in possession of the land redeemed. The plaintiff has alleged tenancy in the previous litigation between the parties also and in the Regular Second Appeal No. 4752 of 1999 decided on 27th January, 2003 by

(1) AIR 1970 Pb. & Hy. 104

(2) AIR 1984 S.C. 1728

the Punjab and Haryana High Court, it has been categorically held that the Plaintiff is not in possession of any part of the suit property as a tenant.

(19) In the present lis, two kinds of land is involved. Firstly, the land which was mortgaged and redemption order regarding the same has been passed and another type of land is that which is not covered by the mortgage deed. The suit of the plaintiff for permanent injunction against the defendants from dispossessing the plaintiff except in due course of law has been decreed in respect of land not covered by mortgage deeds.

(20) So far as the land covered by the mortgage deed is concerned, there is a definite finding of the Courts below that the palintiff is not in possession of that land and that has become finding of fact and cannot be interfered with in the present Regular second appeal. The question of law formulated by the Court regarding Exhibits D2 and D5 has not been pressed by the learned counsel for the palintiff during the course of arguments as the factum of redemption has not bee challenged during the course of argments. So, Regular Second Appeal No. 3523 of 2001 preferred by the plaintiff-appellant is without any meri and the same stands dismissed holding that no substantial question of law has been raised by the appellant.

(21) Now, reverting to Regular Second Appeal No. 2839 of 2001 preferred by Karambir Singh and Rajbir Singh is concerned, that appeal deserves acceptance in view of finding recorded in Regular Second Appeal No. 4752 of 1999. In that judgment, it has been categorically held that so far as the suit land is concerned, Nirbhai Singh plaintiff is only a trespasser and as such no injunction can be granted in favour of that party against true owner. The suit of the palintiff for permanent injunction was dismissed,—*vide* Regular Second Appeal No. 4752 of 1999. That finding is also applicable to the facts of the present case. In the present case also, both the Courts have held that the palintiff was a trespasser on the land which is not covered by the mortgage deed. That being a finding of fact cannot be interfered with in the Regular Second Appeal.

(22) No injunction can be granted in favour of a trespasser against a true owner. So, in view of above discussion, the second question of law formulated above stand determined in favour of Karambir Singh and Rajbir Singh, defendants/appellants in Regular Second Appeal No. 2839 of 2001 and against plaintiff/respondent Nirbhai Singh.

(23) Consequently, Regular Second Appeal No.2839 of 2001 preferred by Karambir Singh and Rajbir Singh stands accepted. The judgments of both the Courts below stand set aside and the suit of the plaintiff for permanent injunction and declaration stand dismissed with costs throughout.

(24) A copy of this judgment be placed on the file of Regular Second Appeal No. 2839 of 2001 titled **Karambir Singh and another Versus Nirbhai Singh**.

(25) Decree sheets be prepared and the files of Courts below be returned after due compliance.

R.N.R.

Before Permod Kohli, J

STATE OF HARYANA & OTHERS .. Appellants

versus

DAL CHAND & OTHERS .. Respondents

C.M. No. 5161-C of 2007

and RSA No. 1787 of 2007

11th March, 2008

Code of Civil Procedure, 1908—O. XXVII Rls. 1 and 2—Limitation Act, 1963-S.5-Delay in filing appeal-Application for condonation of delay-Totally vague, self-contradictory & disclosing no sufficient cause-Appeal and application by a Naib Tehsildar-Naib-Tehsildar has no authority under law and not even a party to litigation-Incompetent to file application and appeal-Application for condonation of delay dismissed with costs of Rs.1 lac-As a consequence of dismissal of application, appeal also dismissed.