
(2013) 07 P&H CK 0415

In the Punjab And Haryana At Chandigarh

Case No : CR No. 4268 of 2011 and COCP No. 804 of 2012

Jarnail Singh

APPELLANT

Vs

Mahesh Kumar and Others
 Smt. Kishni and Another
Vs Shri Vivek Nirmohi and Others

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 07 P&H CK 0415

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : A.K. Walia in CR No. 4268 of 2011 and Mr. L.N. Verma in COCP No. 804 of 2012, for the Appellant; A.K. Walia, Advocate in COCP No. 804 of 2012 and Mr. L.N. Verma, Advocate in CR No. 4268 of 2011, for the Respondent

Judgement

K. Kannan, J.—This order shall dispose of CR No. 4268 of 2011 and COCP No. 804 of 2012 as both the cases address the same issue. The revision is against the order declining a prayer for injunction at an interlocutory stage pending suit. The petitioner who was the plaintiff in the suit has sought for declaration that the order passed by the Collector directing the property to be redeemed under the Redemption of Mortgage (Punjab) Act, 1913 was illegal, null and void and for injunction restraining the respondents from interfering with his possession. The subject matter of suit is described to be an agricultural land of 14 Bighas and 7 biswas and claimed by the plaintiff to be Nazool land that has been enjoyed by the plaintiff as a member of scheduled caste. The contention was that the respondents purported to secure an order of redemption of the property as though it was held under mortgage by the plaintiff and his predecessor by taking advantage of certain false and manipulated entries. The plaintiff's further contention is that the property admittedly was in his possession and that was how the relief of redemption itself was sought and till the suit is considered and disposed of regarding the validity of the order of redemption, his possession must be protected. If the order of the Collector which is impeached in the suit as null and void were to be given effect to, the very purpose of filing the suit will be

defeated.

2. The respondent's contention was that there is a prima facie order of public authority allowing for redemption and the property has also been given possession. The Court cannot therefore grant any injunction. The two courts below accepted the contention of the respondent and held that the respondents were only taking possession of the property as per due process of law and there was nothing on record to show that there was anything illegal or null and void about the order to protect the plaintiff's possession.

3. In revision after status quo was made, respondents joined issues that the petitioner's contention regarding possession and stated that the property has been actually delivered possession by the kanungo in execution of the order of redemption made and injunction cannot longer be sustained. This court had therefore sought for further proof of actual possession and the petitioner now of Assistant Collector in his petition for making correct entries in Girdawari where, subsequent report after inspection, it has been held that the property is still in possession of the plaintiff and that wheat crops have been raised by the plaintiff. The respondent appears to have preferred an appeal against the order and the finding regarding possession has been confirmed by the Collector. The counsel for the respondent claims that the order regarding possession has been stayed by the commissioner in revision filed by him. The respondents on the other hand claim that they have been delivered possession on 11.2.2000.

4. It will not be safe to rely on assertions of possession, as of present, by the parties on the basis of the redemption order obtained. One aspect is clear on the date of institution of the suit on 29.1.2010 the order passed by the Collector on 23.12.2009 granting redemption of the alleged mortgage had not been put in execution. The suit itself is for a declaration that the order is not valid and the order of redemption is not enforceable.

5. The prima facie proof of the plaintiff's contention must be examined only from the plea that the mortgage which the defendants plead for is not supported through any document, except a revenue entry that the property is held by plaintiff as a mortgagee recently for the first time in 2002-03. There is no basis stated for such an entry. The issue would be whether the prima facie satisfaction could be recorded against the plaintiff when there is no document of mortgage in existence. The petitioner states that the property is a Nazool land and the government has assigned the right to the petitioner. Mutation has been ordered as early as on 30.11.1963 in favour of the petitioners. A stray entry in 2002-03 that plaintiff was a mortgagee was no justification for an order of redemption to be given effect through a seemingly perfunctory summary order passed by the collector. Learned counsel for the petitioner relies on the decision of the Supreme Court in *Gulzara Singh Vs. Collector, Ludhiana and Others*, that redemption of Mortgage Act itself will not be applicable to Nazool lands. The revenue entry in 2010 actually refers to the property as Nazool land. Prima facie, even mortgage of such a property was not possible. Considering the fact of the petition for

redemption itself contained an interact admission that the plaintiff was in possession of the property, a claim to dispossession on the basis of the order which is impugned in the suit ought to await further adjudication in suit and if the plaintiff were to be dispossessed, it ought to be taken as resulting in very great prejudice. The circumstance that the plaintiff is a person belonging to a scheduled caste whose possession has to be protected cannot be lost sight of. The courts below were not justified in refusing the relief of injunction and to allow for contesting the order of redemption to take its full course through a full fledged adjudication in the civil court. The orders passed by the Courts below are erroneous and against the principles of grant of interim reliefs at a preliminary stage.

6. Counsel for the respondent refers to a judgment of the Supreme Court in *The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway*, to contend that the court will not exercise its jurisdiction to interfere with the order of the appellate court unless there was a serious error of jurisdiction or material irregularity. That precisely is the finding that is recorded here that the courts below proceeded with material irregularity in failing to appreciate the admitted state of affairs that at the time of suit, plaintiff was admittedly in possession under a prima facie grant from government and revenue entry had been marked in favour of the plaintiff since 1913. The further admitted position is that the defendant himself was trying to seek for an action for redemption that admitted the plaintiff's possession of the property at the time of institution of the suit. The relief of injunction that I have granted is on the admitted possession of plaintiff on the date of suit and without reference to the disputed documents which both parties rely on, by local reports and evidence collected during the pendency of proceedings before this Court. The civil revision is allowed. The contempt filed is dismissed, since I hold that the petitioner is entitled to be protected in his possession and there is no disobedience of the order.