



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

116

RSA-2195-2019 (O&M)
Date of Decision: 17.09.2025

Late Bimla Khera Memorial Samiti

...Appellant

V/s

Manoj Kumar and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. M.S. Randhawa, Advocate, for the appellant.

VIKRAM AGGARWAL, J (ORAL)

This is plaintiff's appeal against the judgment and decree dated 01.12.2018, vide which the judgment and decree dated 13.10.2015 passed by the Court of Civil Judge (Jr. Divn.), Narnaul, decreeing the suit of the plaintiff, was set aside and the suit of the plaintiff for declaration and consequential relief of permanent injunction was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (Late Bimla Khera Memorial Samiti) instituted a suit for declaration that the mortgage deeds dated 20.07.2006 and 19.08.2008 executed by defendant No.1 (Manoj Kumar) in favour of defendant No.2 (Punjab National Bank) for a total consideration of Rs.5 lakhs were null and void. Consequential relief of permanent injunction restraining defendant No.1 from alienating the suit land was also sought.

3.1 Defendant No.1 was owner in possession of land measuring 78 kanals 11 marlas (fully described in the plaint), situated within the revenue estate of Village Hudina, Tehsil Narnaul, District Mohindergarh. Out of this



land, land measuring 20 kanals (described in the plaint) (hereinafter referred to as the “suit land”) was given on lease by defendant No.1 to the plaintiff vide lease deed dated 11.10.2005 for a period of 30 years. Under the circumstances, the plaintiff was in possession of the suit land. As per the said lease deed, the plaintiff was authorized to set up an educational institution on the suit land after raising construction, as also to use the suit land as a sports complex. It had been agreed between the lessor and lessee that the plaintiff was entitled to renew the lease deed after a period of 30 years for an enhanced consideration of 10%.

3.2 It was averred that pursuant to the lease deed having been executed and the plaintiff having come in possession of the suit land, construction had been raised and the plaintiff was running an educational institution.

3.3 It was averred that defendant No.1 executed mortgage deed dated 20.07.2006 for a loan of Rs.1.5 lakh and mortgage deed dated 19.08.2008 for a loan of Rs.3.5 lakhs in favour of defendant No.2. The total land measuring 40 kanals 2 marlas was, therefore, mortgaged including the suit land. Under the circumstances, a charge of Rs.5 lakhs had been created on the suit land. It was averred that defendant No.1 had no right to execute the said mortgage deeds in favour of defendant No.2. Under the circumstances, the suit was instituted.

4. The suit was opposed by defendant No.1. In the written statement, the execution of the lease deed was admitted. It was, however, denied that the suit land had been given for the purpose of construction work. It was also denied that the plaintiff was entitled to renew the lease deed after a



period of 30 years. It was denied that any construction had been raised or that the plaintiff was in possession.

4.2 Defendant No.2 also opposed the suit, stating that being owner, defendant No.1, had every right to execute the mortgage deeds. Defendant No.2 denied about any knowledge of the lease deed. It was averred that as per the revenue record, defendant No.1 was owner in possession of the suit land measuring 78 kanals 11 marlas.

5. From the pleadings of the parties, following issues were framed.

1. *Whether plaintiff is entitled for decree of declaration as prayed for on the ground mentioned in the plaint?OPP*
2. *If issue No.1 is to be proved whether plaintiff is entitled to consequential relief of permanent injunction ?OPP*
3. *Whether suit of plaintiff is not maintainable?OPD*
4. *Whether plaintiff has no cause of action and locus standi to file the suit?OPD*
5. *Whether present suit is bad on account of non-joinder and mis-joinder of necessary parties?OPD*
6. *Whether plaintiff has not affixed proper Court fees?OPD*
7. *Whether plaintiff has filed false and frivolous suit?OPD*
8. *Relief.”*

6. Parties led their respective evidence. The trial Court decreed the suit for declaration. Aggrieved by the same, an appeal was preferred by defendant No.1, which was allowed by the first appellate Court, thereby dismissing the suit, leading to filing of the instant appeal by the plaintiff.

7. I have heard learned counsel for the appellant.

8. Learned counsel for the appellant submits that the trial Court had rightly decreed the suit but the first appellate Court erroneously set aside the well reasoned judgment and decree passed by the trial Court. Reference has been made to the oral and documentary evidence led on the record and it has



been submitted that the instant appeal deserves to be allowed and the suit deserves to be decreed.

9. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

10. Concededly, defendant No.1 was owner in possession of land measuring 78 kanals 11 marlas, out of which the suit land had been leased out to the plaintiff vide lease deed dated 11.10.2005 (Ex.PW-1/A) for a period of 30 years. Mortgage deeds dated 20.07.2006 (Ex.PW-4/A) and dated 19.08.2008 (Ex.PW-4/B) were executed by defendant No.1 in favour of defendant No.2 against a loan of Rs.1.5 lakhs and Rs.3.5 lakhs respectively.

10.1 The lease deed was, therefore, only for 20 kanals of land and mortgage deeds were for 40 kanals of land. As already noticed, defendant No.1 was owner in possession of land measuring 78 kanals 11 marlas, which is in excess of the land leased out and land mortgaged. Still further, there was no restriction in the lease deed that defendant No.1 could not create any charge on the leased land or would not mortgage it. The plaintiff, in any case, was only a lessee and was entitled to protect his possession in terms of the various clauses of the lease deed. He could not possibly have any objection to any mortgage being executed by the owner of the land. Still further, mortgage deeds (Ex.PW-4/A and Ex.PW-4/B) were simple mortgages without possession, meaning thereby that no right in respect of possession was given to defendant No.2.

10.2 It was, therefore, rightly found by the first appellate Court that no cloud had been cast over the rights of the plaintiff.



10.3 The plaintiff had tried to make out a case that defendants No.1 and 2 were intending to auction the suit land. To prove this fact, no evidence worth its name was produced. Under the circumstances, the appeal was rightly allowed by the first appellate Court and the suit was rightly dismissed.

11. I do not find any illegality in the said decision warranting interference.

12. That being so, the instant appeal is found to be devoid of merit and is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

September 17, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No