

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 5055 of 2015 (O&M)

Date of decision : September 28, 2015

Ved Parkash

... Appellant

vs.

Sarvesh Kumar Katyal & O`

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Adarsh Jain, Advocate
for the appellant.

Surinder Gupta, J

Heard.

This appeal is against the concurrent judgments of the courts below whereby the suit filed by the plaintiffs (respondents in this appeal) seeking the possession of the disputed shop by way of redemption of mortgage was decreed.

The case of the plaintiffs, in brief, is that the shop in dispute was mortgaged by the defendant (appellant herein) for a sum of ₹10,000/- vide mortgage deed dated 11th September, 1980, which was duly registered with the Sub Registrar, Ballabgarh. The mortgage was with possession and no period was fixed for seeking redemption. The plaintiffs asked the defendant several times to deliver possession and accept the mortgage money, but of no avail, hence this suit.

The defendant-appellant did not deny the execution of the mortgage deed, but termed the same as a sham document. It was alleged that the mortgage deed was got executed by the father of plaintiffs with a view to circumvent the provisions of the Haryana Urban (Control of Rent

and Eviction) Act 1973. The shop in question was in fact taken on rent from the father of plaintiffs. The market value of the shop was about ₹3 lakhs, as such, there was no question of its being mortgaged for a petty amount of ₹10,000/-. The defendant had been paying the agreed rent @ ₹500/- per month, which was increased from time to time. The father of plaintiffs was a very well to do person and the plaintiffs possess house in posh sector of Faridabad and maintaining a number of cars and other facilities. Being a person of good means, they could not be expected to keep mortgage for a small amount of ₹10,000/- for such a long period.

Both the courts below discarded both the pleas of appellant that he was a tenant in the shop in dispute and that the mortgage deed dated 11th September, 1980 was a *sham* document.

Learned counsel for the appellant has argued that father of plaintiffs was a well to do person. He was having a *chakki* and his sons i.e. plaintiffs were well settled in life. The prices of shop was also not less than ₹3 lakhs in the year 1980 and it was not expected that the same will be mortgaged for a petty amount of ₹10,000/-. The court of Civil Judge (Junior Division), Faridabad has wrongly observed while referring to statement of PW-4 Sarvesh Kumar Katyal that the amount of ₹10,000/- was required by the father of the plaintiff for the marriage of his daughters. PW-4 Sarvesh Kumar Katyal, has nowhere stated about the requirement of money by his father, rather, he was categorical that he was not aware as to why his father required ₹10,000/- and how he spent this amount. All these facts reveal that this mortgage was a *sham* transaction and both the courts have not appreciated this submission of the appellant in proper perspective.

The execution of the mortgage deed dated 11th September, 1980 is not in dispute. The defendant-appellant has come up with the plea that he had been paying rent of the disputed shop and had also examined two witnesses, namely, Gopi Chand and Mangal Singh on this point, but their statements were not relied upon by the courts below in the absence of any documentary evidence showing the payment of rent. This argument of learned counsel for the appellant cannot be given any weight, in the absence of any evidence, that the shop in dispute was worth ₹3 lakhs in the year 1980. The family of plaintiffs may be well off at the time of filing of suit but this does not mean that they had enjoyed the same status in the year 1980 i.e. 30 years ago when amount of ₹10,000/- was very valuable. The appellant had never raised the issue of his tenancy at any point of time for a long period of 3 decades and now after lapse of more than 30 years, it was too late for him to allege that he was a tenant in the demised premises. Chan Parkash Katyal was the owner of the disputed shop and had mortgaged the same. The plaintiffs may not be aware of the requirement of their father at the time of creation of the mortgage. The Court of Civil Judge (Junior Division) Faridabad has wrongly made reference to the statement of Sarvesh Kumar Katyal PW4 while observing that the amount of ₹10,000/- was required for the marriage of daughter of Chan Parkash Katyal. Perusal of the testimony of Sarvesh Kumar Katyal produced on record as Annexure P1 show that no such statement was made by him. Though the above observation is not borne out of the statement of Sarvesh Kumar Katyal, but still it is not going to effect the merits of the case. The onus was heavily on the appellant to prove that he was a tenant but has failed to discharge the

On perusal of the paper book and the judgment of the courts below, I find no legal or factual infirmity therein calling for any interference.

No question of law what to talk of substantial question of law requiring determination arises in this appeal which has no merit and is dismissed.

(Surinder Gupta)
Judge

September 28, 2015
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