

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

110

Regular Second Appeal No.5710 of 2014 (O&M)
Date of Decision: October 30, 2015

Harbans Singh and another

...Appellants

Versus

Sanjeev Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Parminder Singh, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Bathinda, dated 16.12.2011, by which the suit filed by the respondent No.1-plaintiff for possession of shop No.4974 situated in Afim Wali Gali, Bathinda, by way of redemption of mortgage on payment of ₹30,000/-, stands decreed, against which appeal preferred by the appellants-defendants stands dismissed by the Additional District Judge (Fast Track Court), Bathinda, on 25.07.2014.

2. It is the contention of learned counsel for the appellants-defendants that the Courts below have not appreciated the pleadings and the evidence brought on record, which would clearly establish that there was no real mortgage entered into between the parties, rather it was a security, which was depicted in the form of a mortgage. It was merely a tenancy, where ₹30,000/- which were paid to the respondent No.1-plaintiff being security and the interest thereon was to be deducted in the monthly tenancy amount to be paid. He contends that the findings, thus, recorded by the Courts below as regards the ownership of Kewal Krishan and the validity of

the mortgage, thus, cannot be sustained.

3. I have considered the submissions made by the counsel for the appellants and with his assistance, have gone through the impugned judgments but cannot accept his submissions. There is cogent and documentary evidence clearly establishing the ownership of Kewal Krishan in the light of the fact that a compromise has been entered into between the legal heirs of the original owner namely Raj Kumar. The said documents have been brought on record and in fact, it was a civil suit which was filed and the judgment rendered by the Court on the basis of the compromise has been brought on record as Exhibit PX/1. The said judgment, the statements of the parties and the compromise deed have been duly exhibited before the trial Court, the ownership, thus, of Kewal Krishan is fully established.

4. As regards the mortgage deed, the execution of the same has been duly proved to be a registered mortgage deed. No evidence has been brought on record, which would indicate that there was tenancy of the appellants-defendants. No writing with regard to the shop in question indicating the tenancy has been brought on record nor has there been convincing and cogent evidence indicating such a relationship of landlord and tenant between the parties, which would persuade this Court to accept the contention of the counsel for the appellants-defendants.

5. Both the Courts below have returned concurrent findings in detail after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.13547-C of 2014, stands disposed of as infructuous.

October 30, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**