

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

RSA No.200 of 2011 (O&M)

Date of decision : 17.05.2016

Amrik Singh

...Appellant

Versus

Sharanjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Rajinder Sharma, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

CM No.11560-C of 2014

For the reasons stated in the application which is duly supported by an affidavit, LRs of deceased-Sukhwant Singh-respondent No.2, as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

The application stands allowed.

Main Case

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby suit seeking possession from the respondent-defendants on the basis of the title i.e. sale deed dated 07.07.1992, has been dismissed by both the

Courts below.

Mr. Ashwani Talwar, learned counsel appearing on behalf of appellant submits that prior to the purchase of the land, property was mortgaged vide registered mortgage deed dated 08.07.1966. The said mortgage was on 02.07.1992 redeemed and thereafter the property was purchased. Had the property be in possession of the tenant as reflected in the sale deed, Natha Singh handed over the possession to Satwant Singh since deceased. After redemption, the respondent-defendant instituted the suit for permanent injunction and admitted the factum of sale whereas Court below ought not to have returned the findings against the plaintiff qua ownership, by holding that the original owner of the property was Lakha Singh father-in-law of the Joginder Kaur and Hardit Singh, Baldev Singh, Roshan Singh, Tarlochan Singh were sons and the sale deed is not on their behalf. He further submits that once title of the property been admitted by the tenant, there was no occasion for the trial Court to ponder upon such aspects. Even otherwise, there was no issue with regard to the title of the plaintiff, but only with regard to the maintainability and possession. He further submits that neither the mortgage deed or the sale deed reflects the possession of the tenancy or possession of Satwant Singh in the disputed premises. The photograph shows that premises is lying closed, except one receipt, that too executed by Natha Singh, the mortgagee and other rent receipts or documentary evidence have not been placed or proved on record to show the relationship between landlord and tenant existed with the erstwhile owners. All these factors have not been noticed by the Courts below particularly Ex.P5 and thus urges this Court for formulation of the following substantial questions of law:-

1. Whether the Courts below have erred in law in holding that the tenancy of the defendant created during the period of mortgage of the property in dispute with Natha Singh could not be proved?
2. Whether on the basis of the ownership of the plaintiff of the property in dispute and the factum of the defendant having been inducted as a tenant during the period of mortgage, the plaintiff-appellant is entitled to decree of possession over the suit property?
3. Whether the findings of the courts below are perverse and are not borne out from the evidence brought on record and thus are based on total wrong appreciation of the evidence and are thus liable to be set aside?

Mr. Rajinder Sharma, learned counsel appearing on behalf of respondents submits that concurrent findings of fact cannot be interfered with until and unless the said substantial questions of law arises for determination. He has drawn the attention of this Court to the mortgage Ex.P2 to show that there is clear cut recital with the sharing of the rent and interest thus an irresistible conclusion is liable to be drawn that Satwant Singh, was inducted as tenant by erstwhile owner and in case appellant-plaintiff did not wanted the possession could have sought ejectment owing to prevailing rent law goes but not in the manner and mode as adopted. Both the Courts below examined the evidence and non-suited the appellant-plaintiff and thus urges this Court for affirming of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that both the Courts below have abdicated in not referring to Ex.P5 i.e. suit instituted by Satwant Singh who unequivocally

admitted the ownership of the appellant by virtue of the sale deed dated 07.07.1992. The best possible admission could not have been further stretched by the Courts below as to whether other LRs being co-owners had consented to the sale deed or not. It is settled proposition of law that Act done by one of the LR without objection from the other LRs is binding upon them. The sale deed dated 07.07.1992 does not reflect the status of the defendant as tenant nor the mortgage except the passing reference of sharing of the rent. It is normal language which is being used in the mortgage deed. On the other hand, defendant has failed to produce on record through any direct or corroborative evidence that his tenancy was with the erstwhile owner except one receipt allegedly executed by Natha Singh who was never given any right to execute the same. Had it been so, there would have been clear cut recital in the mortgage deed. On perusal of the photographs Ex.P9, shop is lying closed. Perhaps the defendant is looking forward for some premium to be offered by plaintiff by tiring in the rigamoral of the litigation.

For the foregoing reasons, judgment and decree of both the Courts below are not sustainable and are hereby set aside.

Defendant is granted two months time to vacate the premises.

Question of law as noticed above are answered in favour of appellant-plaintiff and against respondents-defendants.

Accordingly, suit is decreed.

Decree sheet be prepared.

Resultantly, the appeal is also allowed.

17.05.2016

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(AMIT RAWAL)
JUDGE