

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. Nos. 13107-C of 2015 & 11706-C of 2012 &
RSA No. 4236 of 2012

Date of decision: February 15, 2016

Prem Chand

...APPELLANT

Versus

Ram Lal

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K.Shukla, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 13107-C of 2015

Prayer in this application is for permission to place on record the mortgage deed dated 23.09.1992 as Annexure A-1 as well as exemption from filing the certified copy of the same.

Prayer granted. Mortgage deed dated 23.09.1992 is taken on record as Annexure A-1 and filing of certified copy of the same is dispensed with subject to just exceptions.

Application stands disposed of.

RSA No. 4236 of 2012

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Fatehgarh Sahib dated 20.08.2011, whereby the suit for possession by way of redemption of the mortgage property vide mortgage deed 23.09.1992 on an amount of ₹ 12,000/- has

been decreed, appeal against which preferred by the appellant-defendant stands dismissed by the Additional District Judge, Fatehgarh Sahib on 11.04.2012.

2. It is the contention of the learned counsel for the appellant that not only the document i.e. the registered mortgage deed dated 23.09.1992 has to be seen but the contents thereof have to be appreciated by the Courts because it is not the nomenclature of the document but the intention of the parties, which determines the nature of the said document. He contends that although the deed has been termed as a mortgage deed but in fact, it was a rent deed as it is apparent from the same as it has been specifically stated therein that the said property mark 'A' could not be sublet to any other person by the appellant-defendant. He contends that even the marginal witness Satpal son of Chaman Lal, in his statement before the Court, had not specified that it was a mortgage deed but had only stated that it was relating to some transaction. He, thus, contends that the judgments and decree, as passed by the Courts below holding that the document was a mortgage deed and not a rent deed, thus, cannot sustain.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments but find myself not in a position to accept what has been stated by the counsel for the appellant with reference to the document i.e. registered mortgage deed dated 23.09.1992 Ex. P-2.

4. The registered mortgage deed dated 23.09.1992 has been placed on record and a perusal thereof would clearly show that it is indeed a mortgage deed as it has specifically been mentioned therein that the mortgagor can get the shop vacated by paying the entire mortgage money

whenever she wants to do the same and the mortgagee will return the vacant possession. Merely because there is a mention of line before that “the mortgagee will not sublet the shop mark 'A' to any other person” would not mean that it was a rent deed. Even if the principle, on which the counsel has asserted that the contents of a document have to be seen indicating the intention, the intention of the parties is clear that it is a mortgage deed and not a rent deed. The assertion of the counsel, thus, is devoid of any merit.

5. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

6. In view of the above, finding no merit in the appeal, the same stands dismissed.

C.M. No. 11706-C of 2012

In the light of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

February 15, 2016*pj***(AUGUSTINE GEORGE MASIH)
JUDGE**