

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

RSA No.4836 of 2016 (O&M)

Date of Decision.20.10.2016

Raj Kumar (since deceased) through LRs

.....Appellants

Vs

Iqbal Masih

.....Respondent

Present: Mr. Vinay Puri, Advocate for
Mr. D.K. Bhatti, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit of the respondent-plaintiff for redemption of the shop shown by red colour in the site plan situated in the abadi of Shah Salempur, Mashmula Mehatpur, Tehsil Nakodar, District Jalandhar, has been decreed by both the Courts below.

Mr. Puri, learned counsel appearing for the appellant submits that the mortgage deed dated 15.01.1987 for a sum of ₹2000/- was only a camouflage as the possession of the appellant was of a tenant. The respondent-plaintiff was a person of means and it was hard to believe that such an affluent person mortgaged the shop for a meager amount of ₹2000/-. Moreover, the appellant-defendant produced on record Ex.D1, the diary maintained by him wherein the Shamsdin was used to sign after receiving rent as token of acknowledgment and after his death, the same was signed by Iqbal Masih but the Courts below rejected the same on the ground that the said fact was not pleaded in the written statement and therefore, was beyond pleadings, thus, urges this Court for setting aside the

judgments and decrees under challenge by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that the mortgage deed is a registered document and therefore, it cannot be said to be a camouflage. The mortgage deed has been proved on record through the evidence of son of one of its witnesses namely PW3 Surinder Kumar, who identified the signatures of his father Sant Ram on the mortgage deed in question. The Scribe, PW4, Krishan Kant also deposed on the same lines that Shamshdin executed a mortgage deed in favour of Raj Kumar for a sum of ₹2000/- in their favour.

As regards the alleged diary, Ex.D1, containing the receipt of rent, the same cannot be treated an evidence admissible in law, as any diary or receipt of rent was never pleaded in the written statement and therefore, production of the same for the first time during evidence cannot be permitted. Moreover, there is no explanation as to how and under what circumstances Shamshdin signed in Urdu in the alleged diary when he used to sign in English language as has been shown/proved in mortgage deed.

For the reasons aforementioned, I do not intend to differ with the findings rendered by the Courts below as the same are based upon the correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 20, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No