IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5288 of 2015 (O&M)
Date of Decision: 11.01.2016

Dr. Naresh Kumar

......Appellant

Vs

Girdhari Lal and another

.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. B.S. Khehar, Advocate
for the appellant.

Mr. Johan Kumar, Advocate
for the caveator.

****

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

RAJ MOHAN SINGH, J

[1]. Defendant No.2 is in second appeal against the judgment and decree dated 03.08.2015 passed by Additional District Judge, Faridabad, whereby judgment and decree dated 30.01.2015 passed by Civil Judge (Junior Division), Faridabad was upheld.

[2]. Plaintiff Girdhari Lal filed suit for possession by way of redemption of property marked as 'ABCDEF' as shown in red colour in the site plan on the ground that he mortgaged part of the shop marked by letters 'ABCDEF' with defendant No.1 for

consideration of Rs.5,000/- vide registered mortgage deed dated 13.02.1979. He received a sum of Rs.1,000/- in advance and remaining amount of Rs.4,000/- was received before the Sub-Registrar, Ballabgarh. Possession was delivered to the mortgagee/defendant No.1, who occupied the same.

[3]. Plaintiff further alleged that as per the mortgage deed, it was agreed between the mortgagor and mortgagee that the mortgage can be redeemed at any time. It was decided between them that the rent obtained from the property and the interest of the mortgage amount shall be the same and, therefore, mortgage can be redeemed on payment of mortgage amount only.

[4]. Plaintiff further alleged that defendant No.1 created tenancy in favour of defendant No.2 without his consent and knowledge. Defendant No.2 has been running Jindal Nursing Home in the said premises. The portion marked as 'CDEG' in the site plan was occupied by one Gulshan Kumar and he has vacated the shop long ago and now the portion is in possession of the daughter-in-law of the plaintiff. Red portion marked as 'AFHI' is in possession of the plaintiff himself where he has been living. It has recited in the mortgage deed that plaintiff shall have right to pass through the door marked as 'F' in the site plan.

[5]. Plaintiff also alleged that as per house tax assessment, he is shown to be the owner of the property whereas defendant No.1 is shown to be mortgagee and defendant No.2 is a tenant under defendant No.1. Plaintiff requested defendant No.1 to accept the mortgage amount to get the property redeemed, however on refusal the suit came to be filed.

[6]. Plaintiff sought preliminary decree of redemption on payment of Rs.5,000/- and decree for possession of the suit property with direction to the defendant No.1 to deliver the original documents of the mortgage deed to the plaintiff.

[7]. Defendant No.1 filed the written statement admitting the claim of the plaintiff, however he raised only plea of enhancement of Rs.5,000 to Rs.10,000/- as redemption amount due to the improvements made by him in the property.

[8]. Defendant No.2/appellant contested the suit on all counts viz. *locus standi*, maintainability, jurisdiction, estoppel and collusion between plaintiff and defendant No.1. Defendant No.2 denied the allegations in the plaint and pleaded collusion in the written statement.

[9]. Defendant No.2 pleaded that defendant No.1 is the son of real nephew of plaintiff and mortgage deed was a fictitious and *sham* transaction procured by the plaintiff and

defendant No.1 to circumvent the provisions of Haryana Urban (Control of Rent & Eviction) Act 1973. Defendant No.2 claimed that defendant No.1 was never put in possession at the time of alleged mortgage. The market value of the property was Rs.1 lac and no reasonable person could have mortgaged the property for a paltry amount of Rs.5,000/-. Defendant No.2 also claimed himself to be the statutory tenant under plaintiff and not under defendant No.1.

[10]. Defendant No.2 further claimed that the plaintiff received Rs.2,000/- as security from him prior to inception of tenancy, but did not issue any receipt. Since defendant No.2 was in need of the premises for running his Nursing Home, therefore, he did not ask for the receipt. Right of ingress and egress of the plaintiff was also denied.

[11]. Both the parties went to the trial on the following issues:-

> *"1. Whether the plaintiff is entitled to a preliminary decree for redemption of the suit property on payment of Rs.5,000/- for such amount as found to be payable by the plaintiff? OPP*
>
> *2. Whether the plaintiff is entitled to a decree of possession of the suit property? OPP*
>
> *3. Whether the plaintiff has no locus standi to file the present suit? OPD*
>
> *4. Whether the suit of the plaintiff is not*

maintainable in the present form? OPD

5. *Whether this court has no jurisdiction to entertain and try the present suit? OPD*

6. *Whether the plaintiff has estopped from his acts, conduct and acquiescence from filing the present suit? OPD*

7. *Whether the suit of the plaintiff is collusive between the plaintiff and defendant no.1? OPD*

8. *Relief."*

[12]. Both the parties led their respective evidence to prove their case on the aforesaid issues.

[13]. Trial Court decreed the suit vide judgment and decree dated 30.01.2015, thereby ordering preliminary decree of possession by way of redemption in favour of plaintiff and defendants were directed to hand over the suit land within a period of two months to the plaintiff and plaintiff was directed to pay an amount of Rs.5,000/- to the defendant No.1 within a period of one month.

[14]. Defendant No.2 remained unsuccessful before the lower Appellate Court, which dismissed the appeal vide judgment and decree dated 03.08.2015.

[15]. Appellant/defendant No.2 has filed the present appeal by formulating the following substantial questions of law in para no.18 of the ground of appeal:-

"i) Whether the alleged mortgage deed, being in favour of the minor without any guardian could be taken to be a valid legal document?

ii) Whether the appellant is tenant of mortgagor/respondent no.1 in lieu of the mortgage deed being illegal and void ab-initio in law?

iii) Whether the rent deed executed in favour of respondent No.2 could be taken to be a valid document being executed by a minor without a guardian?

iv) Whether the rent receipts as placed on record by respondent no.1 could have any bearing in the absence of any rent deed, being illegal and void ab-initio?

v) Whether the appellant is tenant of respondent no.1 as prima facie both the deeds are illegal and void ab-intio in law?

vi) Whether the appellant could be dispossessed, in the absence of any finding given by the Ld. Court below with regard to the claim of respondent No.2, regarding Rs.10,000/- as the amount due to be recovered from respondent No.1?"

[16]. I have heard learned counsel for the parties.

[17]. Before embarking upon the merits of this case, it is necessary to have a glance over mortgage deed dated 13.02.1979 (Ex.R-1) and the rent deed dated 30.06.1979 (Ex.R-2).

[18]. Perusal of mortgage deed dated 13.02.1979 shows that the document was executed by Girdhari Lal for a sum of Rs.5,000/- with Satender Kumar son of Vidya Ratan son of Ishwar Dayal in respect of suit land. The document was signed by Girdhari Lal, mortgagor which was attested by Omkar as witness No.1 and Ishwar Dayal as witness No.2. Baldev Raj Juneja deed writer scribed the document.

[19]. It is necessary to note that Satender Kumar was not shown as minor in this document, nor any guardian was shown to have acted upon his behalf. At the time of registration before the Sub-Registrar, Girdhari Lal signed as mortgagor and Ishwar Dayal signed on behalf of mortgagee.

[20]. Rent deed was executed on 23.06.1979 which was allegedly signed by Naresh Kumar and was witnessed by two witnesses.

[21]. Learned counsel for the appellant has submitted that the appellant was inducted as tenant by the plaintiff and mortgage deed is only a *sham* transaction just to circumvent the provisions of Rent Act. Defendant No.1 was never put in possession and the value of the property was around Rs.1 lac at the time of mortgage and no sane person could have mortgaged the property for an amount of Rs.5,000/-. Defendant No.2/appellant was a statutory tenant under plaintiff.

[22]. Learned counsel for the appellant has argued that the mortgage deed has not been proved in accordance with law. The mortgagee was minor at the time of alleged execution of mortgage deed and no guardian was shown to have acted on his behalf, rather mortgage deed was signed by Ishawar Dayal in his individual capacity and, therefore, in order to determine the real nature of transaction, whether mortgage deed executed was only a *sham* transaction, was an issue required to be framed.

[23]. The defendant No.2/appellant has specifically claimed that he was inducted by the plaintiff himself and the mortgage deed was merely a cover up under the transaction being *sham* in nature. Therefore, issues regarding mortgage deed and rent note were required to be framed by the trial Court. Moreover value of the property was one of the important test which was to be considered in order to decide the nature of transaction. Admittedly, defendant No.2/appellant is operating his clinic in the property in question since 1979. House tax assessment Ex.P-1 of the year 1989-90 shows the appellant to be tenant, Girdhari Lal to be mortgagor and Satender Kumar as mortgagee. Whether these entries are sufficient to infer any relationship of tenant and landlord between defendants No.1 and 2 has to be segregated from material on record. In Ex.P-3,

house assessment entry, Girdhari Lal has been shown to be owner of the property and no other person has been shown in this document. The document Ex.R-2 rent deed though contains admission on the part of the defendant No.2 that he was inducted as tenant by Satender Kumar defendant No.1. The recital of rent note shows that a condition was incorporated that original owner Girdhari Lal will have right of ingress and egress through the property.

[24]. Learned counsel for the appellant has argued that how mortgagor can incorporate such a condition on behalf of owner when owner was not party to the rent note? The documents Ex.P-7 to Ex.P-27 i.e. receipts issued by mortgagee and allegedly signed by defendant No.2 have to be appreciated whether these are proved to be EMI of loan to defendant No.2 or otherwise? The property as per Ex.P-23 i.e. Income Tax Return of defendant No.1 for the year 1982-83 showed income from the house property as mortgage property. In cheques dated 07.10.2008, 04.09.2008 and 09.12.2008 as shown in the statement of account of Oriental Bank of Commerce, Bank of defendant No.1 Ex.P-22, entry of Rs.350/- was shown whereas these entries did not co-relate to the entry of the year 1982-83 and of the year 1993-94 Ex.P-24 wherein an amount of Rs.4,200/- as income from the mortgage property was shown in

Income Tax Return. For the later year of 2001-02 and 2006-07 the income was shown to be Rs.4,200/- and Rs.3,850/- from the mortgage shop. No sane person would mortgage the property for Rs.5,000/- and remain mum for about 30 years. According to learned counsel for the appellant the only inference was that the rent was being received by the plaintiff himself and mortgage deed was a *sham* transaction.

[25]. Learned counsel for the appellant further argued that the suit was filed in February 2009. As per Ex.PW-8/2 i.e. statement of account of the appellant regarding withdrawal of Rs.350/- on 07.10.2008 and 08.10.2008 and thereafter on various dates showed that on 04.09.2009 Rs.350/- and another sum of Rs.350/- was withdrawn by cheque No.652450 and 662027. This evidence established beyond doubt that the amount of Rs.350/- was being regularly deposited in the account of defendant No.1 after withdrawing the same from account of the appellant. According to the stand of the appellant these were the payments towards EMI in respect of loan transaction.

[26]. Only a deed writer has been examined as PW-3. The mortgage deed has not been proved in terms of Section 68 of the Evidence Act. No witness to the mortgage deed has been examined. If the witnesses to the mortgage deed have already

died, then provision in terms of Section 69 of the Evidence Act could have been resorted to. The evidence of expert has not been collected by the Courts below with reference to any issue. The testimonies of expert from both the sides were at variance, nor the parties were put to issues in the context of expert evidence.

[27]. Learned counsel for the appellant pointed out that as per Ex.P-5, the plaintiff was contributing Rs.3,000/- in his GPF, whereas mortgage of the property was only for a sum of Rs.5,000/-. The plaintiff could not explain as to why he waited for 30 years before filing the suit. The transaction of mortgage was bogus and *sham* transaction which was the result of collusion between plaintiff and Ishwar Dayal and Ishwar Dayal is proved to have signed the mortgage deed on behalf of Satender Kumar, but he was not shown as guardian of Satender Kumar in the body of mortgage deed. The mortgage deed being a *sham* and bogus transaction has been proved by the fact that defendant No.1 was receiving rent of Rs.4200/- per annum from the mortgage property and he obtained the property for a paltry sum of Rs.5,000/- in mortgage. In fact defendant No.2/appellant never entered into any loan agreement with defendant No.1, rather he was direct tenant of plaintiff. This was the stand taken by the appellant/defendant No.2 in the written statement.

[28]. A collusion is apparent on the record inasmuch as that the defendant No.1 himself appeared as witness of the plaintiff. This fact itself was sufficient to infer that there was apparent collusion between plaintiff and defendant No.1. At the time of execution of alleged mortgage deed, age of the defendant No.1 was only 7-8 years. Nobody acted on his behalf as mortgagee for the mortgage deed. No evidence has come forth on record whether defendant No.1 had ever possessed the property. The entry in the Ex.P-1 house tax assessment of the year 1989-90 only depicted Girdhari Lal as mortgagor, defendant No.1 as mortgagee and defendant No.2 as tenant. There is no evidence whether defendant No.2 was inducted as tenant by the mortgagee or by the plaintiff? Entry in Ex.P-3 fortified the aforesaid plea of the appellant that he was not tenant of defendant No.1, in this entry only Girdhari Lal was shown as owner of the property in question.

[29]. In view of aforesaid anomalous situation it was appropriate before the trial Court that the issues regarding mortgage deed, rent deed and whether mortgage deed was only a *sham* transaction should have been decided by framing proper issues.

[30]. Ishwar Dayal has already expired and one of the attesting witness Omkar was alive, but he was not examined by

the plaintiff. The house assessment of the year 1984-85 was in the name of Ishwar Dayal as owner. This fact itself created dent in the case of the plaintiff inasmuch as that when Ishwar Dayal was owner of the property in the year 1984-85, how defendant No.1 could be presumed to be mortgagee under the plaintiff when he was not the owner of the property. The change effected in the house assessment entries without any order of the competent authority further made the stand of the plaintiff doubtful. The rent note did not contain any signature of the landlord. The expert opinion viz-a-viz. the signature of the defendant No.2 has the explanatory note which was required to be established by way of allowing the parties to lead evidence after framing of issue regarding tenancy. PW-5 Satender Kumar defendant No.1 has admitted that he was not present at the time of execution of the rent note. Who had signed on behalf of defendant No.2 was not properly explained on record.

[31]. Learned counsel for the appellant further argued that the entire controversy revolves around existence of mortgage deed and rent deed, but still no issue was framed on that aspect, nor any issue was framed on the plea of mortgage being *sham* transaction. Learned counsel argued that the findings recorded by the Courts below are without framing of any issue. A civil suit is required to be commenced on framing of issues.

Issues are framed so that parties to the litigation are not taken by surprise. Issues guide the parties in the matter of adducing evidence. It is only an exception where Court can proceed without framing of issues where parties to the trial fully know the rival case and lead all the evidence not only in support of their contentions, but in refutations thereof by the other side. Only in such situation, issues would not be fatal and it would not be permissible for the party to submit that there has been a mis-trial, but in the instant case the stand of the defendant No.2 was of direct tenant under the plaintiff, therefore, it was proper for the trial Court to frame relevant issue on rent deed.

[32]. Since the legality and validity of mortgage deed and rent deed were the prime issues before the Court, therefore, these should have been answered properly by allowing both the parties to lead evidence. No evidence has come on record in respect of mortgage deed except the statement of deed writer. Even then mortgage deed is not required to be signed by the mortgagor in terms of Section 59 of the Transfer of Property Act (for short 'the Act'), but execution of mortgage deed has to be proved under Section 68 of the Evidence Act. Even, if, the acceptance on behalf of defendant No.1 in respect of mortgage deed has come forth on record, still it has to be proved on record whether mortgage deed was a *sham* transaction and was

the result of collusion between plaintiff and defendant No.1.

[33]. The prime question poised before the Courts below was whether the mortgage deed in favour of defendant No.1 was bogus and *sham* transaction and was executed only to circumvent the provision of Haryana Urban (Control of Rent & Eviction) Act, 1973 and the document was never intended to be acted upon. Such issue requires proper adjudication by the Court after putting the parties to proper issues. *Mala fide* on the part of plaintiff and defendant No.1 vitiates the entire innocuous looking transaction. The mortgage deed was never acted upon. There is no evidence on record from the year 1979 onwards till the years 1989-90 showing defendant No.1 to be the mortgagee. The evidence led by the plaintiff remained conspicuous from the years 1979-1989, rather the entries in favour of Ishwar Dayal in the year 1984-85 made the entire case of the plaintiff to be doubtful and the plaintiff was required to stand on his own legs.

[34]. Once Satender Kumar defendant No.1 was minor in the absence of his guardian, the mortgage could not have been presumed, rather he was not competent to participate in the mortgage. The very recital in the mortgage deed showing Satender Kumar to be not minor made the mortgage deed to be a paper transaction. Since mortgage deed and the lease deed

have the common nexus, therefore, execution of both the transactions should have been proved on record with reference to evidence and for that trial Court should have framed proper issues in case of usufructuary mortgage, the possession of the properties handed over by the mortgagor to the mortgagee. The evidence of delivery of possession or defendant No.1 being in possession at any point of time remained lacking throughout from the year 1979 onwards. The possession of defendant No.2 whether was in the capacity of sub-lettee or tenant directly inducted by the plaintiff was a question which was not answered with reference to evidence on record. The property was disproportionately high as compared to the mortgaged amount and a specific plea was taken by the defendant No.2 in the written statement, therefore, on this aspect also the trial Court was obligated to frame a proper issue and was required to answer the controversy thereafter. Learned counsel relied upon ***Kalyan Singh Chouhan vs. C.P. Joshi, 2011 AIR (SC) 1127*** in the aforesaid context.

[35]. Learned counsel for the appellant submitted that on the one hand plaintiff claimed himself to be a very poor person in terms of composition of family and vocations of the members thereof, but at the same time kept on waiting for 30 years and allowed defendant No.1 to receive rent lavishly as against

Rs.5,000/- as mortgage money. This fact itself created dent in the case plaintiff's case which should have been adjudicated upon with reference to stand of the defendant No.2. Out of his total salary the plaintiff contributed Rs.3,060/- towards GPF and that made the case of the plaintiff all the more suspicious as no sane person would mortgage his property for Rs.5,000/- and allowed the mortgagee to earn Rs.4,200/- per annum particularly when he was contributing more than Rs.3,000/- towards GPF out of his paltry amount of pay. Plaintiff himself admitted that the value of the property at the time of mortgage was Rs.12,000/-. From this fact also the plea of plaintiff being mortgagor against an amount of Rs.5,000/- was not a plea to be digested and only inference was that it was a *sham* transaction because plaintiff was earning Rs.9,386/- in the year 1979 and he mortgaged the property for Rs.5,000/- only and was contributing more than Rs.3,000/- towards GPF and the mortgagee was earning Rs.4,200/- per annum. The entire situation, if assessed with relation to the evidence, the mortgaged value of the property in the year 1979 that made the everything worth rejection.

[36]. In order to prove the rent deed, the witnesses have been examined by the plaintiff. The averments of the rent note have not been proved. The signatures on the rent note

have been disputed by the defendant No.2, therefore, it was appropriate that both the parties should have been subjected to proper issues and should have been allowed to lead evidence to prove their respective cases. The evidence led on the subject matter was not in consonance with Order 14 Rule 1 CPC when the plea was specifically taken in the written statement, the framing of issue was *sine qua non* for returning findings on tenancy.

[37]. One of the witness to the rent note namely Ravi Gupta has been examined as PW-6. In his cross-examination the witness has admitted that Satender Kumar, Naresh Kumar, Mahender Kumar Bansal and Ishwar Dayal were present at the time of execution of rent note. If these were present at the time of execution of rent note, then why the signatures of Satender Kumar were not taken on the rent note? The material contradiction in the testimonies of PW-5 and PW-6 have to be tested in the light of over all evidence on record.

[38]. Learned counsel for the respondents on the other hand contended that once mortgage deed has not been denied by the defendant No.1, execution is proved and requirement of Section 68 of the Evidence Act stands complied with. Moreover in terms of Section 59 of the Act, mortgagee is not required to sign the document and there is no denial by the mortgagee of

the mortgage, therefore, on both counts execution of the mortgage is proved on record.

[39]. Learned counsel further contends that even, if, defendant No.1 was minor at the time of execution of mortgage deed, he was competent to enter into the transaction and mortgage deed was lawfully executed. The mortgage deed has been proved by the mortgagor Girdhari Lal and the scribe. Since, it was a registered document, therefore, execution of such document cannot be doubted.

[40]. Thirdly, learned counsel contended that the defendant No.2/appellant has not deposed anywhere in his testimony that how much rent he was paying to the plaintiff.

[41]. Learned counsel at last contended that the tenant inducted by the mortgagee has to go, on redemption of mortgage and relied upon ***Parsini Devi (deceased) through her LRs and another vs. Des Raj and others, 2014(3) RCR (Civil) 200*** and also ***Thakar Singh (D) by LRs and another vs. Mula Singh (D) through LRs and others, 2014(2) RCR (Rent) 371***.

[42]. The second issue being a legal issue has to be considered in the light of facts on record. Whether defendant No.2 was inducted as tenant by defendant No.2 is the prime factor for applicability of legal position in this case. The legal

position as observed by the Courts below on the strength of ***Parsini Devi (deceased) through her LRs and another*** (supra) and ***Thakur Singh (D) by LRs and another*** (supra) is required to be appreciated in the light of usufructuary mortgage, if created by the mortgagor in favour of mortgagee and then mortgagee inducted tenant.

[43]. In ***Prabhu vs. Ram Dev, AIR 1966 SC 1721***, the concept of usufructuary mortgage in agricultural leases was decided by the Hon'ble Apex Court by holding that the person inducted into agricultural land as tenant by a usufructuary mortgagee is entitled to protection under the tenancy laws and he cannot be ejected by mortgagor on the ground that the mortgage of land had been redeemed. While interpreting Section 76(a) of Act, words 'if at were his own' were interpreted to the effect that these words will make the mortgagee unless prohibited from doing so the second self of the mortgagor, when he as prudent owner leases out agricultural land. The aforesaid decision rendered by Constitutional Bench of the Hon'ble Apex Court was followed in ***Atam Parkash vs. State of Haryana, 1986(2) SCC 249*** wherein it was held that an agricultural tenant inducted in terms of Section 76(c) of the Act, the usufructuary mortgagee has a right of pre-emption over the sale made by the mortgagor.

[44]. In ***Ram Chand vs. Randhir Singh, 1994 PLJ 543*** the aforesaid proposition was fully endorsed. This Court in ***Dharamvir vs. Risal & others, 1996 PLJ 638*** while distinguishing ***Jadavji Purshottam vs. Dhami Navnitbhai Amaratlal & Ors., AIR 1987 SC 2146*** followed ***Ram Chand*** (supra) and held that tenancy inducted by the usufructuary mortgagee cannot be affected in execution of decree for redemption unless the eviction order is passed against the tenant under Section 9 of the Punjab Security Land Tenure Act.

[45]. The aforesaid proposition of law whether applicable in the present context or not is wholly dependent upon the fact whether tenancy was created by the mortgagee or not? Therefore without dialating upon the aforesaid position of law viz-a-viz. the tenancy created by the mortgagee would be protected and is terminable under the relevant statute or not, the prime position as emerging from the facts of this case is to ascertain whether defendant No.2 was inducted as tenant by the defendant No.1 or not? Since both the Courts have not adverted to any such relevant issue to decide by calling upon the parties to lead evidence on such issues, therefore, proper issues were required to be framed by the trial Court. Similarly execution of mortgage deed, if any was intended to circumvent the tenancy law or was a *sham* transaction was also required to

be tested by framing proper issue and by calling the parties to lead evidence in that context, therefore, this Court is of the view that following additional issues arise in the present case for determination at the hands of the trial Court after calling upon both the parties to lead evidence:-

1.A Whether defendant No.1 being usufructuary mortgagee inducted defendant No.2 as tenant? OPP

1.B If issue No.1.A is proved then whether such tenancy in sum and substance would be a tenancy created by the mortgagor himself during subsistence of mortgage? OPD

1.C Whether defendant No.2 inducted on the land as tenant by the mortgagee is not ejectable on the ground that mortgage has been redeemed? OPD

1.D. Whether the creation of mortgage deed was a *sham* transaction and was intended to circumvent the provisions of Haryana Urban (Control of Rent & Eviction) Act 1973? OPD

[46]. In the facts and circumstances of the present case, it would be just and expedient to obligate the trial Court to decide the aforesaid issues with reference to evidence, likely to be led

by the parties which would ultimately facilitate the Court to arrive at just conclusion of the case.

[47]. Since the issues are touching the basic controversy between the parties, therefore, findings recorded by the Courts below on other issues are likely to be affected and, therefore, while remanding the case to the trial Court under Order 41 Rule 23-A CPC, I am of the view that the findings recorded on the other issues are necessary to be made ineffective and trial Court can be obligated to decide the other issues as well by co-relating the impact of additional issues on the issues already framed by the trial Court.

[48]. Further, this Court does not conclusively opine that legal position arising out of the aforesaid cited precedents viz-a-viz. the status of the defendant No.2 being inducted by the defendant No.1 or by the plaintiff and also whether defendant No.2 can protect his tenancy rights on determination of mortgage? The trial Court would also look into the aforesaid legal positions and decide the case in accordance with law.

[49]. Nothing expressed hereinabove in the light of different judgments of the Hon'ble Apex Court cited as above, would be construed to be an opinion of this Court on the issues. Since the basic question of tenancy whether created by defendant No.1 or the plaintiff has to be decided by the trial

Court on the basis of evidence and whether lease was a *sham* transaction in order to avoid Rent Act is also to be decided on merits by the trial Court, therefore, leaving all these questions open before the trial Court, this case is to be remanded back to the trial Court for decision afresh on merits.

[50]. With these observations this case is remanded to the trial Court for decision afresh on merits. The trial Court shall proceed to decide the case by adverting to the additional issues, preferably within a period of six months from the date of receipt of certified copy of order along with record of this case. The records of the trial Court be sent back immediately.

[51]. Parties are directed to be appear before the trial Court on 05.02.2016.

January 11, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**