

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

**RSA No.895 of 2016 (O&M)
Date of decision:25.02.2016**

Balkar Singh ... Appellant
Vs.

Iqbal Masih ... Respondent

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. Tribhawan Singla, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant is aggrieved of the judgments and decrees rendered by both the Courts below, whereby, suit for possession by way of redemption of the registered mortgage deed dated 14.05.1990 in respect of the shop shown in red colour in the site plan, has been decreed.

Mr. Tribhawan Singla, learned counsel appearing on behalf of the appellant-defendant submits that he was inducted as tenant prior to the institution of the suit. Thereafter, he filed a suit for permanent injunction, whereby, he categorically pleaded his status as that of tenant. The financial position of the plaintiff was not that he could mortgage the property for a paltry amount of ₹2,000/-. The witnesses of the plaintiff have not been consistent to the averments

made in the suit. The original mortgagor has died and the suit has been filed through his LRs. Both the Courts below have misread and misdirected in decreeing the suit. In fact, there was relationship of landlord and tenant, who, had been paying the rent at the rate of ₹500/- per month. Thus, urges this Court to formulate the substantial question of law.

I have heard learned counsel for the appellant-defendant and appraised the paper book and of the view that there is no substance in the aforementioned appeal, for, mortgage deed, aforementioned, is registered one, which is proved through the testimony of witnesses and envisaged a receipt of ₹2,000/-. Mere exchange of money in the presence of Registrar, would be meaningless, once the mortgage deed itself contains the element of receipt of mortgage money. The appellant-defendant has failed to prove the relationship of landlord and tenant. I have gone through the suit for mandatory injunction and the written statement filed by the respondent-plaintiff, wherein, status of the appellant-defendant as tenant was seriously contested/disputed. For the sake of brevity, para No.1 of the preliminary objection (Ex.P8) of the written statement and para No.2 of the merits read thus:-

“1 That the plaintiff is not coming to the Court with clean hands and has suppressed the material facts from this Hon'ble Court. The plaintiff is a mortgagee of the shop in dispute since 14.05.1990. The mortgage deed was

executed for the shop in dispute between Shamashdin S/O Bhola and the plaintiff. The plaintiff signed the said mortgage deed in the presence of the witnesses. The plaintiff is in the possession of the shop in dispute as mortgagee and not as a tenant. As such the suit of the plaintiff is liable to be dismissed.”

2. That para No.2 of the plaint is wrong and denied to the extent that the shop in dispute has been taken on rent in the year 1989-90 from Shamashdin S/O Bhola father of the defendant at a rate of rent Rs.500/- per month.”

On perusal of the same, there is no force in the plea of Mr. Singla. The factum of tenancy was not emphatically denied. Even otherwise, the appellant-defendant has failed to prove the signatures by examining any handwriting expert.

In view of the aforementioned observations, I do not intend to formulate the substantial question of law and do not intend to differ with the findings rendered by both the Courts below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

There is no merit in the appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 25, 2016
savita