

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

**Regular Second Appeal No.4742 of 2014 (O&M)
Date of Decision: March 31, 2016.**

Shiv Kumar

.....APPELLANT(s).

VERSUS

Malkiat Kaur and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Brijender Kaushik, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal filed by appellant-defendant Shiv Kumar against the judgment and decree passed by learned Civil Judge (Junior Division), Kurukshetra, whereby the suit filed by plaintiffs seeking redemption of the disputed shop was decreed and the appellant-defendant was directed to hand over possession of the disputed shop to the plaintiffs. He was also directed to pay mesne profits for use and occupation of the said shop @ ₹800/- per month from the date of filing of the present suit, till the date of delivery of possession. The first appeal filed by the appellant-defendant was also dismissed by learned Additional District Judge, Kurukshetra.

Learned counsel for the appellant submits that the possession of the disputed shop has already been taken by the plaintiffs, as such, he confines the relief claimed in this appeal, to challenge the grant of mesne

profits @ ₹800/- per month from the date of filing of the suit till the date of handing over possession of shop. The case of the plaintiffs was that the shop was under usufructuary mortgage with appellant, as such, appellant was not liable to pay any amount towards mesne profits. Secondly, the plea raised by the appellant-defendant that he is in possession of the shop as tenant on rent @ ₹800/- per month and the mortgage deed was merely a sham transaction, was discarded by both the Courts below.

The plaintiffs filed suit seeking redemption of mortgage of disputed shop. The appellant-defendant contested the claim of the plaintiffs with plea that he is tenant in the shop but failed to prove the same. It is evident that the appellant had not denied the execution of the mortgage deed but has contested the plea of plaintiff on the ground that it was a sham transaction. He has enjoyed the possession of the disputed shop for a period of more than five years after filing of the suit, claiming himself to be a tenant on rent @ ₹800/- per month. Even if, his plea that he is a tenant, has been discarded by the Courts below, still for the user of the shop after filing of the suit, he is liable to pay the mesne profits which the Court below awarded, relying upon his averment about rent fixed @ ₹800/- per month.

The argument by learned counsel for the appellant-defendant that appellant is not liable to pay the mesne profits despite the fact that he remained in possession of the shop during pendency of the suit being mortgagee, carries no weight. Mortgage rights of appellant did not survive on termination of mortgage and filing of the suit seeking redemption. The appellant could surrender possession of the shop immediately after receiving notice of the suit but he preferred to contest the suit, as such, he is liable to

pay for user of the shop.

No other plea has been raised by counsel for the appellant.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

March 31, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE