

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

**(1) RSA No.3578 of 2010 (O&M)
Date of Order: 10th October, 2017**

Sat Pal

..Appellant

Versus

Baldev Singh and others

..Respondents

(2) CR No.5692 of 2010 (O&M)

Sat Pal

...Appellant

Versus

Avtar Krishan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K.Chhibbar, Sr. Advocate, with
Mr. Vaibhav Sahni, Advocate, and
Mr. Lalit Thakur, Advocate,
for the appellant.

Mr. Ashok Singla, Advocate, and
Mr. Aakash Singla, Advocate,
for the respondent(s).

Mr. Ravish Bansal, Advocate,
for respondent no.3 (in RSA No.3578-2010)
for respondent no.1 (in CR-5692-2010)

ANIL KSHETARPAL, J.

By this common judgment, I shall be disposing of RSA No.
No.3578 and CR No.5692 of 2010, as both the proceedings are between the
same parties with regard to the same property.

Detailed facts have been noticed by the Courts below.
However, to complete the narrative, some necessary facts are being noticed.

There are two plaintiffs in the civil suit. Nihal Chand Saini and
Ram Parkash Saini, brother. Both of them had mortgaged two shops dated
02.03.1966 with possession to defendant no.1 and husband of defendant

no.2 and father of defendant nos.3 to 5 for a sum of Rs.7000/- At present we are only concerned with the part of the mortgaged property, which has been executed by Nihal Chand Saini with respect to shop no.1 which is in possession of defendants no.6 and 7. Defendant no.6 Satpal is appellant in Regular Second Appeal as well as petitioner in Civil Revision.

Plaintiffs filed a suit for possession by way of redemption of the mortgage. The mortgagee is not disputed by the mortgagees. Defendant no.6-appellant, claimed that he was tenant under the original owner Nihal Chand Saini.

Both the Courts below after examining the evidence in detail have recorded a finding that the plaintiffs are entitled to redeem the mortgage and consequently entitled to possession. Defendant no.6-appellant has failed to prove that he was ever inducted as tenant by Nihal Chand Saini. It has been held that he was a tenant inducted by the mortgagee Avtar Kishan in the civil revision. Avtar Kishan filed an eviction petition against Satpal and Vinod Kumar claiming that the tenants are liable to be evicted as Satpal has sub-let the premises. In the eviction proceedings Satpal again took a stand that he is a tenant of the original owner i.e. Nihal Chand Saini and therefore, he cannot be evicted.

The Rent Controller as well as the appellate authority after independently appreciating the evidence available on the file have recorded a finding of fact that Satpal has sub-let the premises to Vinod Kumar without written permission of the landlord and, therefore, liable for eviction.

Let's deal with the civil revision first of all.

Learned counsel for the petitioner has argued that the landlord

i.e. Avtar Kishan-mortgagee did not have any right to seek eviction as he was inducted by Nihal Chand Saini, the original owner. He has further submitted that Vinod Kumar is only his employee and, therefore, a finding that Satpal had sub-let the premises is erroneous. Both the Courts have concurrently found on appreciation of evidence that Satpal-appellant has failed to prove his stand that he was a tenant of original owner i.e. Nihal Chand Saini. It has been held that Satpal failed to produce receipt of payment of rent to Nihal Chand Saini, whereas it is the case of the petitioner-tenant. Nihal Chand Saini used to receive the rent against proper receipt. Still further the Courts have found that the petitioner has been paying rent to Avtar Krishan, the mortgagee.

Both the Courts below have further noticed that in fact it is sub-tenant, who is in possession. Vinod Kumar, sub-tenant, when appeared in the witness box during the proceedings before the Rent Controller, stated that Satpal is working as a Accountant in Venus Hotel. Apart therefrom the landlord has also examined another Vinod Kumar son of Chuni Lal. He has specifically stated that Satpal has shifted to Shashtri Nagar and is doing the business of Kiryana. It is the case of Vinod Kumar, sub-tenant that he is an employee of Satpal. No evidence has been produced to prove that in fact Vinod Kumar is an employee of Satpal.

In these circumstances, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Rent Controller and the Appellate Authority. Therefore, the revision petition is dismissed.

Let's now deal with the Regular Second Appeal.

In this case, Satpal only has filed the Regular Second Appeal

and is contesting decree of possession on the ground that he was a tenant under Nihal Chand Saini, plaintiff no.1 and, therefore, he cannot be evicted.

Both the Courts after examining the evidence available on the file, have concurrently found that the appellant Satpal has failed to prove that he was tenant under the original owner i.e. Nihal Chand Saini. In any case, the revision petition filed by the Satpal against the order of eviction has also been dismissed and uphold his eviction from the premises in dispute.

Still further Satpal has failed to prove on file any receipt issued by Nihal Chand Saini. Although, it is the case of Satpal, Nihal Chand Saini used to receive rent under a receipt in writing

Further Satpal has failed to produce any reliable evidence to prove that he was in possession of the shop no.1 before execution and registration of mortgage dated 02.03.1966. It is specifically recorded in the mortgage deed dated 02.03.1966 that mortgage is with possession and possession has been handed over to the mortgagee. In 1966, there was no dispute between the parties. If Satpal was in possession as a tenant in shop no.1 in the mortgage deed, there would have been reference of Satpal being sitting tenant and in possession.

In these circumstances, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal as well as the civil revision are dismissed.

10th October, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No