IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5700 of 2015 (O&M)
Date of Order: 14.12.2017

Ashok Kumar **..Appellant**

Versus

Raj Rani and others **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.S.Gurna, Advocate,
for the appellant.

Mr. R.S.Malhotra, Advocate
for the respondents.

ANIL KSHETARPAL, J (Oral)

C.M.No.13961-C of 2015

Prayer in this application is for condonation of delay of 56 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 56 days in re-filing the appeal is condoned.

Application is allowed.

RSA No.5700 of 2015

Defendant no.2-appellant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

In the considered opinion of this Court, following substantial questions of law arise for consideration:-

(i) *Whether the judgments passed by the Courts below are result of misreading of material evidence available on the file?*

(ii) Whether a mortgage created by the owner to circumvent protection available to the tenants

under the rent laws is to be ignored by the Court when it is established on the file that the mortgage was created only for oblique purpose?

Plaintiffs filed a suit for possession by way of redemption of the mortgage of shop no.5 situated on the Gurdwara Road, at Rajpura. It was claimed that mother of the plaintiffs had mortgaged the shop with possession to defendant no.1 for a sum of Rs.1,000/- on 26.05.1976. It was further claimed that defendant no.1 had further transferred possession to defendant no.2. Hence defendant no.2 was also impleaded as party.

In defence, defendant no.1 pleaded that the shop was in possession of the defendant no.2, prior to the mortgage. However, defendant no.1 admitted the execution of the mortgage but denied that he has delivered possession of the shop to defendant no.2.

Defendant no.2-appellant claimed that he was a tenant under late Smt. Veeran Bai, predecessor-in-interest of the plaintiffs @ Rs.100/- per month from September, 1975. It was further pleaded that in fact late Smt. Veeran Bai in collusion with defendant no.1 had created mortgage, just to circumvent the protection granted to the tenant under the rent laws. Defendant no.2, in order to prove, his possession before the mortgage deed dated 26.05.1976, produced on file Ex.D1, a certificate of registration issued by the Department of Excise and Taxation under the Punjab General Sales Tax Act, 1948. This certificate is dated 27.04.1976 and it clearly records that the certificate is valid from 06.12.1975. The certificate has been issued in the name of defendant no.2 with address as Gurdwara Road, Rajpura Town. Courts have ignored this document on the ground that the shop number has not been given. It is not the case of the plaintiffs or defendant no.1 that defendant no.2 was in possession of any other shop in the same locality before taking over this shop.

Still further when one of the plaintiff appeared in the witness box, namely Shanta Bajaj, she in one sentence stated that defendant no.2 is in possession of the shop since 1976. However, later on improved her statement and stated that possession was given to defendant no.2 by defendant no.1-Ram Gopal. In view of wholly unreliable evidence led by the plaintiffs, the suit filed by the plaintiffs could not be decreed.

Further a shop in a town was mortgaged for a sum of Rs.1000/- in 1976. Obviously the mortgage was created only to circumvent the protection granted to the tenant under the Rent Act. It is the case of defendant no.2 that he is in possession before the mortgage deed and he was tenant under the predecessor in interest of the plaintiffs.

Defendant no.1, the alleged mortgagee denies that he ever came in possession. It is his case that the shop was in possession of defendant no.2-appellant prior to the mortgage. The mortgagee amount of Rs.1000/- is too low an amount for a shop in the city even in the year 1976. The mortgage was obviously created for oblique purpose.

In view of the discussion made above, the questions of law framed earlier are answered in favour of the appellant. The judgments passed by the courts below are set aside. The suit filed by the plaintiffs is dismissed and the mortgage is held to be invalid document to circumvent the rent protection.

The regular second appeal is allowed.

December 14, 2017 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No