

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

(112)

**RSA-6070-2015 (O&M)
Decided on: July 06, 2017.**

Vijay Kumar

.... Appellant

Versus

Naresh Kumar @ Naresh Kumar Gupta

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Amit Dhawan, Advocate, for the appellant.

M.M.S. BEDI, J (ORAL)

The application for condonation of delay of 81 days in filing the appeal is, in the interest of justice, allowed.

This is defendant's second appeal against the judgment and decree of the Courts below, decreeing the suit of the plaintiff-respondent for redemption of the shop which is subject matter of registered mortgage deed dated 12.11.1996.

Learned counsel for the appellant has vehemently contended that there has been a discrepancy in the description of the subject matter of the property in dispute. He has argued that earlier the plaintiff-respondent had filed an ejectment petition under Section 13-B of the East Punjab Urban Rent Restriction Act claiming that the appellant-defendant was a tenant. He had withdrawn the earlier ejectment application after filing of the written statement by the appellant.

I have heard learned counsel for the appellant and carefully gone through the record.

Perusal of the judgments passed by the Courts below indicate that the defendant-appellant had not raised any objection regarding the

boundaries of the disputed property in the ejectment application filed by the plaintiff-respondent and had taken up a plea that there was no relationship of landlord and tenant. The presumption of truth is attached to the execution of a registered document i.e. mortgage deed dated 12.11.1996 regarding the property which is in possession of the defendant. The defendant is apparently shifting his defence and is taking contradictory pleas in order to evade the eviction.

The defendant has taken up the plea of estoppel and pleaded that there is no relationship of mortgager and mortgagee between the parties and that the plaintiff-respondent had never mortgaged the disputed property with the defendant. He has taken up the plea to be a tenant. The ejectment petition had been resisted by the appellant denying any such relationship and the suit for redemption is being resisted on the ground that there is relationship of landlord and tenant and not that of a mortgager and mortgagee. Besides this, on appreciation of evidence, the Courts below have given a concurrent finding to the effect that the disputed property had been mortgaged by the plaintiff-respondent in favour of the defendant-appellant by way of mortgage deed dated 12.11.1996 and that the plaintiff was entitled for redemption of the same on payment of mortgage amount.

No sufficient ground is made out for interfering in the concurrent findings of fact arrived at by the Courts below.

The appeal is dismissed.

(M.M.S. BEDI)
JUDGE

July 06, 2017
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No