IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

113 **RSA-2822-2017(O&M)**

Date of Decision:04.07.2017

Mohinder Kumar .....Appellant

Versus

Bhan Singh .....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

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

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RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for possession by way of redemption of mortgage deed filed by the plaintiff-respondent was decreed.

Brief facts of the case, as noticed by the learned trial court in para 2 and 3 of its impugned judgment, are that the plaintiff was the owner of the suit property. He mortgaged the said suit property with possession in favour of the defendant vide mortgage deed No.417 dated 11.05.1999 for a sum of ₹20,000/-. The possession had been delivered to the defendant. The defendant was in possession of the suit property as mortgagee. It was settled between the parties that the plaintiff may get the shop in dispute redeemed by payment of ₹20,000/- on one term and the possession will be delivered back to the mortgager. The mortgage deed was a registered document. Plaintiff requested the defendant to redeem the shop in dispute after receiving ₹20,000/- from the plaintiff but on 15.03.2010 the defendant refused to receive the mortgaged amount and to redeem the suit property. Therefore, the present suit had been filed by the plaintiff for possession by way of redemption of mortgage deed.

The defendant in his written statement had denied all the averments of the plaint and had submitted that the plaintiff had not come to the court with clean hands and had suppressed true and material facts from the court. The defendant took the shop in dispute on rent from the plaintiff on 11.05.1999 at a monthly rent of ₹4500/-. It was agreed that the rate of rent will increase after every two years at 10%. At the time of giving the shop on rent the plaintiff stated that he will execute the mortgage deed in respect of the shop in dispute. Though the same was given on rent to the defendant @ ₹4500/- PM. The said mortgage deed was executed as security amount to the plaintiff. Even otherwise it was unbelievable that the shop was mortgaged with possession for meager mortgage money of ₹20,000/- especially when shop can easily fetch the rent of ₹4500/- P.M. The alleged mortgage deed was a sham transaction and defendant was forced by the circumstances to execute the same. The defendant was in possession of the shop in dispute as tenant. He was regularly making the payment of rent to the plaintiff. He had paid rent @ ₹4500/- P.M. from 11.05.1999 to 11.05.2001, ₹4950/- from 11.05.2001 to 11.05.2003, ₹5450/- from 11.05.2003 to 11.05.2005, ₹5940/- from 11.05.2005 to 11.05.2007, ₹6600/- from 11.05.2007 to 11.05.2009 and was paying rent from 11.05.2009 onwards ₹7660/-. He had paid the rent up to 31.03.2010. The defendant had always accepted the rate of rent demanded by the plaintiff. The plaintiff wants to get vacated the shop by hook or by crook. No relation of mortgagor and mortgagee exists between the parties. Rather there was a relationship of landlord and tenant between the plaintiff and defendant. Therefore, the present suit was not maintainable. The defendant had offered the rent of ₹7660/- to the plaintiff even after 01.04.2010 but the plaintiff himself refused to accept the same. The defendant was doing the business of readymade garments from 11.05.1999 and doing hard labour. The defendant had started paying income tax returns in the year 2007 and since then he had regularly shown the payment of rent in his income-tax return. The plaintiff never issued the payments of receipts on rent to the defendant as this is a common practice amongst all the landlords for not issuing the receipts to take undue benefits of this fact in the court of law. The defendant prayed for dismissal of the suit of the plaintiff.

After filing the written statement by the defendant, plaintiff filed his replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

> *"1. Whether plaintiff mortgage the disputed shop vide mortgage deed No.417 dated 11.05.1999?OPP*
>
> *2. Whether the plaintiff is entitled to possession of the disputed shop?OPP*
>
> *3. Whether the defendant is tenant of the plaintiff and paying the rent?OPD*
>
> *4. Relief."*

In order to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has duly proved his case. Accordingly, suit of the plaintiff was decreed by the learned trial court vide its impugned judgment and decree dated 22.01.2014. Feeling aggrieved, defendant filed his first appeal which came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 20.03.2017. Hence, this regular second appeal, at the hands of the defendant.

Heard learned counsel for the appellant.

Absolute ownership of plaintiff-respondent over the suit property had never been in dispute. Mortgage deed No.417 dated 11.05.1999 for a sum of ₹20,000/- is also a matter of record and this material document has been duly proved on record by the plaintiff. Pursuant to this mortgage deed, appellant was in possession of the suit property as mortgagee. Under these undisputed facts and circumstances of the case, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below and the impugned judgments and decrees deserve to be upheld.

Placing reliance on a judgment of this Court in **Banarsi Dass Versus Gian Chand, 2004(4) R.C.R.(Civil) 549**, learned counsel for the appellant raised only one argument that the mortgage deed in question was based on mis-representation. When the defendant alleged that this document was forged and fabricated one, plaintiff produced PW3-Navdeep Gupta, hand-writing and finger print expert. At this stage, learned counsel for the appellant has sought to raise another argument that the allegation of forgery and fabrication was qua the receipts. Be that as it may, plaintiff has duly proved his case by falsifying the stand taken by the defendant-appellant.

The appellant never disputed his signatures on the mortgage deed which is the most material document in the case in hand. It is also not his pleaded and argued case that he could not understand the true import of language used in the mortgage deed. Due execution of mortgage deed was also a matter of record. Under these peculiar facts and circumstances of the case in hand, plea raised on behalf of the defendant-appellant seems to be only an afterthought, besides being without any substance.

So far as the judgment relied upon by the learned counsel for the appellant in **Banarsi Dass's case(supra)** is concerned, there is no dispute about the observations made therein. However, on a close perusal of the cited judgment, the same has not been found to be of any help to the appellant, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

A close perusal of the impugned judgments rendered by both the learned Courts below will make it crystal clear that the judgments are based on due appreciation of facts and duly supported by sound reasons. Learned Additional District Judge, before arriving at his judicious conclusion, re-considered the facts of the case as well as evidence available on record, in the correct perspective. Relevant observations made by the learned first appellate court in para 14 of its impugned judgment, which deserve to be noticed here, read as under:-

> *"Top of it and most importantly in the pleadings written statement, defendant has taken a categorical stand that no receipts were being issued by the plaintiff as it is normal practice of the landlord not to issue the receipts. Having taken this stance, seeking protection of receipts during the trial was not within domain of defendant and virtually makes him unbelievable litigant and is fatal to his case. It shall not be out of place that defendant even moved an application under order 6 rule 17 CPC but that application was dismissed. Once that application was dismissed and even the revision petition is dismissed by Hon'ble Punjab and Haryana High Court in its order dated 11.9.2012, this court is of the opinion that considering the value of receipts in favour of defendant in any manner shall virtually defeat the orders passed by Hon'ble High Court. Hon'ble High Court was very categorical in its observation while rejecting the possibility of receipts at later stage by observing that contradictory plea is one aspect but a self confessed false plea is altogether a different issue. It was observed that no details were mentioned by defendant as to how and in what circumstance its receipts for 11 years were lost and how and what circumstances, some of them were found. So these receipts cannot be allowed to be introduced. Because of these observations, this court is also of the opinion that these receipts are of no help to the defendant and rather proved fatal to demolish his case by making him to be a litigant unworthy of trust."*

In fact, the defendant-appellant has been found changing his stand from time to time as per his suitability. So far as the correctness of mortgage deed is concerned, he did not raise any kind of protest at any time after 1999 till the filing of the suit by the plaintiff and for no good reasons. Had there been any substance in the above-said solitary contention raised on behalf of the appellant, it did not appeal to reason as to why he would kept mum for such an inordinate period. He accepted the mortgage deed as it is, continued in possession of the suit property as mortgagee and derived benefits therefrom.

However, when the suit for possession by way of redemption of mortgage deed came to be filed by the plaintiff, the appellant-defendant tried to take a complete somersault pointing out that the mortgage deed was based on mis-representation. Thus, neither the law nor equity has been found in favour of the appellant and the suit of the plaintiff has been rightly decreed by both the learned Courts below, which deserve to be upheld. The impugned judgments rendered by both the learned Courts below have been found based on true facts.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Both the impugned judgments and decrees have been found based on cogent findings recorded by the learned Courts below and the same deserve to be upheld, for this reason also. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

July 04, 2017 **(RAMESHWAR SINGH MALIK)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No