

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

RSA No.3404 of 2017 (O&M)

Date of decision : 10.08.2017

Rajinder Kumar

...Appellant

Versus

Kanwar Vijay Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Singh, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

The defendant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff-respondent had filed a suit for possession by way of redemption of registered mortgage deed dated 26.08.1988. The plaintiff further pleaded that the registered notice was served upon defendant to accept the mortgage amount and hand over the actual physical possession of the shop. The defendant in reply pleaded that the mortgage was in fact sham transaction and he was tenant in the shop on a monthly rent of ₹100/- per month.

The learned trial Court after appreciating the evidence available on the file came to a conclusion that defendant-appellant has failed to prove his tenancy. The learned trial Court further found that there is a registered mortgage deed.

The appeal filed by the defendant was also ordered to be dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellant has submitted that the ownership of the land/shop is in question. The plaintiff was required to prove his ownership before maintaining the present suit. He further submits that the Gram Panchayat has claimed the ownership of the land/shop in question and writ petition in that regard is pending in this Court.

I have considered the submission of the learned counsel.

The dispute in present case is only with respect to redemption of the mortgage. It has been found concurrently by the Courts below that the plaintiff mortgaged the shop in question to the defendant-appellant vide mortgage deed dated 26.08.1988. The Court has further found that the plaintiff had sent registered notice to the defendant to accept the mortgage amount and hand over the actual physical possession. Since the defendant failed to comply with the same, hence, the suit was filed. Mortgage deed has been proved on the file.

Dispute, if any, with regard to the ownership would be entirely alien to the present controversy. In the present case, the question is whether the plaintiff is entitled to redeem the mortgage or not.

I do not find any good ground to interfere with the concurrent findings of facts arrived at by the Courts below.

The Regular Second Appeal is dismissed.

10.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No