

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5089 of 2017(O&M)

Date of Decision: 09.11.2017

Suresh Kumar

.....Appellant

Vs.

Neeraj Chopra and Anr.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Peeush Gagneja, Advocate,
for the appellant.

RITU BAHRI, J. (ORAL)

The appellant has come up in appeal against the orders of the trial Court dated 01.09.2015 and learned appellate Court dated 08.08.2017 whereby, suit of the plaintiff for possession and damages has been decreed and defendants have been directed to receive Rs.60,000/- from the plaintiff and handed over the possession of the shop in question within one month.

Brief facts of the case are that the plaintiff was owner of the suit property, when she purchased it from her mother Smt.Krishna Chopra for a sum of Rs.5,43,000/- vide registered sale deed dated 19.10.2011 bearing wasika No.4793 and mutation No.17546 which were sanctioned in the revenue records. It was submitted that the defendants took the above shop on mortgage for a sum of Rs.60,000/- vide written agreement of mortgage deed 21.04.2003 executed in between the previous owner and defendant No.1 in presence of witnesses, containing particulars and conditions/recitals as depicted in para No.3 of the plaint. The defendant No.1 had inducted

mortgage who was therefore bound by the terms and conditions of the mortgage and was liable to vacate the said shop upon redemption of the mortgage in question for putting the mortgagor/plaintiff in actual possession thereof. The mother of the plaintiff Krishna Chopra inducted the defendant no.1 as mortgagee in the shop in question and plaintiff now being owner of the shop in question for all intents and purposes and had a legal right to redeem the mortgage and to obtain the physical possession of the shop in dispute from the defendants. The plaintiff's mother has always been ready and willing to perform her part of contract and she actually came to the Court complex on 21.04.2006 along with Rs.60,000/- to be paid to the defendants and get the shop redeemed by getting a writing on the agreement itself and to obtain keys of vacant shop and to get possession but the defendants intentionally did not turn up and avoided to receive the payment. The defendants had repeatedly been requested to receive a sum of Rs.60,000/- and to hand over vacant, actual and physical possession of the shop in question by putting the plaintiff in possession of the shop in dispute but to no effect. Hence, the present suit was filed by the plaintiff.

The learned trial Court after framing the issues the going through the evidence as held that the sho No.48 fully described in head note of the plaint was earlier the ownership of Krishan Chopra i.e. mother of the plaintiff and on 21.04.2003 Krishna Chopra had mortgaged the suit property to the defendant No.1 and after receiving Rs.60,000/- from defendant No.1 for a period of three years i.e. upto 21.04.2006. It was also admitted fact that both the defendants were running depot in the suit property after getting possession of the same under the name and style of M/s Mohri Ram Kharaiti

sale of kerosene oil on subsidized rate to the public. Now the plaintiff was contending that she had purchased the shop in question from the earlier owner i.e. from her real mother through registered sale deed dated 19.10.2011, the certified copy of the said sale deed had been placed on record by the plaintiff as Exh.P1. Qua these facts, there was no dispute between the parties but defendants raised a dispute that in a civil suit filed by the defendants for permanent injunction against the earlier owner Krishna Chopra restraining her from dispossessing the present defendants from the suit property illegally and forcibly, the said Krishan Chopra entered into an agreement for extension of the mortgage after agreeing to receive further amount of Rs.30,000/- Krishna Chopra had already received Rs.20,000/- but now she had backed out from her agreement for extension of the mortgage by selling the property to her daughter. The defendant admitted that they had filed civil suit against Krishna Chopra for permanent injunction which was dismissed as withdrawn by the defendant No.1 when Krishna Chopra made a statement on 20.12.2011 that she will recover the possession from defendant Suresh Kumar in accordance with law. The defendants even failed to lead any evidence with regard to payment of Rs.800/-which had been made as a rent to earlier owner Krishna Chopra and no such document had been placed on record by him and this fact was admitted by him in cross-examination that he was having no document to show that he had ever made payment of Rs.20,000/- on 19.04.2006 or Rs.800/- per month thereafter.

Hence, all the above said averments of the defendants have not been proved on record and when on the one hand defendant admitted the factum of taking the possession of the shop in question through mortgage

it was substantiated with the tenancy right, the suit of the plaintiff has been rightly decreed for redemption after paying Rs.60,000/- to the defendants.

The learned appellate Court has been rightly dismissed the suit of the defendants by upholding and affirming the judgment of the trial Court.

In view of the above, the orders passed by the Courts below do not require any interference as the defendants have failed to lead any evidence with regard to payment of Rent or extension of mortgage. He also failed to lead any evidence with regard to relationship of landlord and tenant and it became doubtful.

There is no substantial question of law arises out.

Dismissed.

(RITU BAHRI)
JUDGE

09.11.2017
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No