

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

**RSA No.6031 of 2014 (O&M)
Date of Order: 10.05.2018**

**MANINDER PAL SINGH (WRONGLY MENTIONS
AS MAHINDER PAL SINGH).**

..Appellant

Versus

SAROJ BALA AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prateek Gupta, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

Plaintiff no.5-appellant is in the regular second appeal against the judgments passed by the learned first appellate court.

Dispute in the present case is whether defendant-respondent is a tenant in the shop or her possession is as a mortgagee, therefore mortgage is liable to be redeemed and possession be ordered to be delivered to the plaintiffs.

Learned trial court decreed the suit whereas the learned first appellate court has reversed the finding on the ground that the mortgage deed is proved to have been executed with a view to circumvent the protection available under the Rent Act. The court has noticed the following facts while recording such finding:-

- (i) The value of the shop was around 6-7 lacs, whereas it was mortgaged only for Rs.5,000/-. As per the case of the defendants, she was inducted as tenant in the year

1992 @ Rs.1000/- per month;

- (ii) It is the case of the plaintiffs no.1 to 4 themselves that there mother had given on mortgage 4-5 shops and thereafter got evicted tenants by redeeming the mortgage;
- (iii) in the present case, receipts of the payment of rent subsequent to the date when the property was mortgaged have been proved.

It does not appeal to judicial conscious that in an industrial town of Yamuna Nagar in the year 1994, someone would mortgage a shop at Rs.5,000/- particularly when the value of the shop is 6 to 7 lacs. In the year 1994, it was very difficult for the landlords to get eviction of the tenants particularly tenants in the commercial buildings and thus it was normal practice that the landlord would create a mortgage deed to circumvent the provisions of rent act. This issue has been examined by this court in the judgment reported as *Radhey Sham and others v. Kaushalaya Devi of Kot Kapura, 1984 Haryana Rent Reporter, 368.*

In view thereof, this court does not find any good ground to interfere with the findings recorded by the learned first appellate court.

The regular second appeal is dismissed.

Needless to say that any observation made by the first appellate court on the legality of the sale deed executed in favour of plaintiff no.5 would not be binding and it is not put any cloud on the title of the appellant in subsequent proceedings.

May 10, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No