

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

RSA No.4391 of 2017 (O&M)

Date of Decision: February 28, 2018

Dharampal

---Appellant

Versus

Sumitter Kaur and another

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Bhupesh Dogra, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

This is a regular second appeal against the judgment of the Courts below whereby the suit of the appellant has been dismissed.

The appellant filed a suit for mandatory injunction seeking direction to the respondents to restore the possession of the shop to him being a tenant in the said shop, who had been illegally dispossessed him from the shop.

It was the case of the plaintiff-appellant that he had taken the shop in dispute on rent from one Piara resident of Ghoman, Tehsil Batala. The tenancy was oral on a monthly rent of Rs.400/-. After the death of Piara Singh, he became a tenant under Rattan Kaur wife of Piara Singh on the same terms and conditions. He was running a barber shop in the shop in dispute. Rattan Kaur had tried to forcibly dispossess him. Hence, he had filed a suit for permanent injunction on 25.03.2000 against her titled “Dharampal Vs. Rattan Kaur”. Rattan Kaur had also undertaken before the

Court that she would not dispossess the plaintiff-appellant from the shop in

dispute and the suit was disposed of vide order dated 25.03.2000 on the basis of the statement. Some time thereafter Rattan Kaur died and respondent No.1 being her daughter became the owner of the shop in dispute and the appellant her tenant on the same terms and conditions. It was averred that the appellant could not regularly concentrate on his business because of some personal problems and taking advantage of his absence, the defendants broke open the lock of the shop on 05.09.2010 and illegally and forcibly dispossessed the plaintiff-appellant.

The case of the respondents was that during the life time of Rattan Kaur, the plaintiff-appellant was not in a position to pay the rent and he had surrendered possession of shop to her. Thereafter, Rattan Kaur had mortgaged with possession the shop in favour of respondent No.2 vide agreement to mortgage dated 08.01.2004 for Rs.10,000/- and since then respondent No.2 has been in possession of the shop in dispute. Respondent No.1 had also installed a electricity connection in her name much before 05.09.2010.

After going through the evidence produced by the parties, Ld. Trial Court concluded that the plaintiff-appellant had failed to prove his tenancy over the shop in dispute. He had failed to place on record any single rent receipt to prove the relationship of landlord and tenant between respondent No.1 and him. Further relying on his own admission that he was not able to concentrate on his business, the Ld. Courts concluded that his tenancy was proved only until 1991. On the other hand, the agreement of mortgage with possession in favour of respondent No.2 dated 8.1.2004 was duly proved. On the finding that the plaintiff had left the suit property in

the year 1991, and filed the suit 19 years thereafter, the Ld. Trial Court also

held the suit to be barred by limitation. Accordingly, the suit was dismissed.

The Ld. Lower Appellate Court affirmed the findings of the Trial Court.

Ld. Counsel for the appellant contended that the Courts below have erred in holding that the plaintiff had vacated the suit premises in the year 1991. He argued that this finding is plainly wrong in view of the fact that in the Civil Suit for permanent injunction filed by the plaintiff against Rattan Kaur mother of the defendant No.1 the Court had vide order dated 25.03.2000 restrained her from dispossessing the plaintiff. He further argued that the mortgage deed was not a registered deed and cannot be relied upon.

Both these arguments are of no avail to the appellant.

The order of the Civil Court only establishes the the plaintiff was in possession of the suit property as on 25.03.2000. So to that extent the Courts below have wrongly held that the appellant had vacated possession in 1991. But that would not lead to a different result. For there is nothing to establish that the appellant continued in possession even thereafter till his alleged dispossession on 5.9.2010. He could produce no document or any receipt to indicate that he had paid rent defendant No.1. Nor did he lead any evidence to show that he continued to run the barber shop till he was forcibly dispossessed by the respondents. Nor was there any evidence to indicate forcible dispossession. Further, though Ld. Counsel for the appellant may be right in his contention that the mortgage deed being unregistered could not create a legal and valid mortgage, but it can certainly be used for collateral purposes to indicate possession of defendant No.2.

testified that while mortgaging the property with possession in favour of defendant No.2 vide mortgage deed dated 8.1.2004 Rattan Kaur had delivered possession to him.

Thus, there is no ground to interfere with the decision of the Courts below.

No substantial question of law arises for consideration in this appeal.

There is no merit in the appeal and the same is dismissed.

February 28, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No