

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

RSA No.5091 of 2017 (O&M)

Date of Decision: January 17, 2018

Joginder Singh

...Appellant

Versus

Patel Kumar

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Paramjit Singh Jammu, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

The defendant is in regular second appeal against the concurrent findings of the courts below.

The plaintiff – respondent had filed a suit for redemption of mortgage of shop measuring 10' x 20' being a portion of total building bearing house tax unit No.301 situated at Gali Jat Dharamshala Wali, Lohiya Basti, Begu Road, Sirsa and for delivery of vacant possession of the same to the plaintiff. The case set up by the plaintiff was that he and his brother Krishan Kumar were owners in possession of the suit property on the basis of civil court judgment and decree dated 22.12.1990 passed in civil suit No.1871 of 1990 titled as 'Krishan Kumar etc. vs. Smt.Chiriya Devi'. Both of them had mortgaged the suit property to the defendant for a sum of Rs.10,000/- vide registered mortgage deed No.609 dated 26.5.1993. On 27.9.2001, plaintiff Patel Kumar purchased half share of the suit property from his brother Krishan Kumar vide registered sale-deed and became

absolute owner of the entire suit property and, thus, was entitled to get the same redeemed. On refusal of the defendant to vacate the shop in question after receiving the mortgage money, the suit was filed.

The stand of the defendant in the written statement was that he has been in possession of the suit property since 1.1.1990 as a tenant inducted by the original owner, namely Chirya Devi. It was his case that the mortgage deed had been fraudulently prepared by the plaintiff.

In order to prove the execution of the mortgage deed, the plaintiff examined PW1 Kumba Ram HRC, DC Office Sirsa, who brought the original record pertaining to the mortgage deed. PW2 Satish Kumar Deed Writer testified that the mortgage deed had been drafted by his brother Joginder Mohan, whose signatures he identified. He further stated that Joginder Mohan had died on 15.3.2012. Plaintiff Patel Kumar appeared as PW3 and deposed that the mortgage deed was executed between the parties and signed by him, his brother Krishan Kumar, defendant Joginder Singh in the presence of other witnesses. PW6 Vijay Kumar son of Hem Raj, attesting witness of the mortgage deed, proved the signatures of defendant Joginder Singh by categorically stating that Joginder Singh was personally known to him. No suggestion was put to him that he did not know Vijay Kumar personally or that what he was stating was incorrect. Defendant, on the other hand, merely stated that the mortgage deed was not signed by him and produced another witness DW2 Bhajan Lal, who also supported him.

Learned courts below relying on the evidence, held that the mortgage deed had been duly proved. Further, it being a registered document, it carried a presumption of its correctness. The plaintiff having

successfully proved that the mortgage deed was signed by defendant Joginder Singh, the onus shifted to him to rebut the evidence, but he did not lead any cogent evidence in that regard either by disproving his signatures by getting the signatures on the mortgage deed compared with his own signatures or any other manner.

A concurrent finding of fact has been recorded by the Courts below in respect of execution of the mortgage deed. No fault can be found therewith. There is no law point worth consideration involved in the present appeal. The appeal is thus dismissed.

Since the appeal has been dismissed on merits, therefore, there is no necessity of deciding the application for condonation of delay in refiling the appeal. All other civil misc. applications are also disposed of accordingly.

January 17, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No