

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA-510-2017 (O&M)

Date of decision: September 13, 2018

Ashwani Kumar

...Appellant

Versus

Gopal Krishan

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

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

Mr. B.R. Gupta, Advocate for the respondent.

Rajan Gupta, J.

Present appeal has been preferred to impugn finding of Additional District Judge, Sangrur on the ground that same are perverse and based on misappreciation of evidence.

Plaintiff/respondent Gopal Krishan filed a suit for possession by way of redemption of shop and property No.B-ii-371/Municipal Council shop No.5, situated at Railway Road, Sunam, which was mortgaged with possession by the plaintiff with the defendant on 23.4.2004. It was alleged that plaintiff is owner of the shop in question as detailed in the plaint. He was in need of money and thus, mortgaged his shop with the defendant alongwith possession, vide registered mortgage deed dated 23.4.2004 and since then defendant is in possession of the shop as mortgagee. Plaintiff offered the amount to the defendant to get the shop in question redeemed and to hand over its vacant possession to him, but defendant did not accede to his request. Suit was resisted by the defendant. In his written statement, defendant pleaded that he was in

possession of the shop in dispute as a tenant @ Rs.500/- per month w.e.f. 01.05.1998 and had been running his business in the said shop. He had sale tax licence as well as there were telephone and electricity connection in the said shop in the name of plaintiff, however, defendant had been paying the bills thereof. It was further pleaded that on request of the plaintiff, defendant advanced Rs.50,000/- to him as loan by way of cheque and as security, mortgage deed was executed by the plaintiff in favour of defendant. After hearing both the parties and perusing oral as well as documentary evidence, the trial court partly decreed the suit to the effect that plaintiff was entitled to redeem the shop No.5, measuring 10'x29'-9" as well as store and that plaintiff would not be entitled to claim possession of the said property. It observed that plaintiff has been able to prove the registered mortgage deed Ex.P-1 as well as the relationship of landlord and tenant between the parties. It further observed that terms of mortgage do not extinguish the tenancy rights. Aggrieved, plaintiff preferred appeal. Vide judgment/decreed dated 24.10.2016, Additional District Judge, Sangrur accepted the appeal and decreed the suit by way of redemption of shop in question. It directed the defendant to hand over vacant possession of the shop in question to the plaintiff within two months on depositing mortgage money by the plaintiff, within one month from the date of order. It observed that even if defendant was sitting in the suit property as tenant at the time of mortgage, even then on the basis of mortgage-deed Ex.P-1, relationship of mortgagor and mortgagee came into existence and on redemption of mortgage, there is no question of

revival of tenancy. Thus, plaintiff is entitled to redeem his property and to take possession thereof by way of redemption of the shop in question.

I find no infirmity with the findings arrived at by the first appellate court. Learned counsel for the appellant has relied upon judgment reported as *E.P. Paulose Vs. Devasi, 2016 (2) R.C.R. (Civil) 627*. However, same is not applicable to the facts of the present case as in the said case it has been held that if from a document of mortgage, one could infer that there is implied or express surrender of leasehold rights, then, after the execution of mortgage deed, leasehold right does not survive. In the instant case, as per mortgage-deed (Ex.P-1), delivery of possession by the plaintiff to the defendant stands proved. Intention of the parties was not to revive any relationship of landlord and tenant. I am of the considered view that plaintiff (respondent herein) is entitled to redeem his property and the first appellate court has rightly decreed the suit, directing the defendant to hand over vacant possession of the shop in question to the plaintiff. Only plea raised before this court is that judgment of the lower appellate court is based on misappreciation of evidence as well as law. I find no substance in this plea. A perusal of findings of the lower appellate court reveals that same suffer from no infirmity. No other substantial question of law has been urged.

Dismissed.

(RAJAN GUPTA)
JUDGE

September 13, 2018
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No