

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

**RSA-1928-2006 (O&M)
Date of Order: 05.02.2019**

SS JAIN SABHA,BUDHLADA

..Appellant

Versus

OM PARKASH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Mohan Gupta, Advocate,
for the appellant.

Mr. I.D.Singla, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment of the trial court resulting in dismissal of its suit for possession by way of redemption of mortgage.

Dispute in the present case is with respect to a shop which is occupied by the defendant-respondent. The plaintiff-Society which runs and controls Jain Kanya Pathshala is alleged to have mortgaged the shop measuring 10'x20' on 16.08.1983 to the defendant.

Defendant contested the suit and pleaded that he is in fact a tenant under Jain Kanya Pathshala. During the evidence, defendant produced one receipt issued by Jain Kanya Pathshala signed by the Secretary of the Jain Kanya Pathshala proving payment of rent for a period of one year i.e. from 01.04.1993 to 31.03.1994 amounting to Rs.4500/-.

The Secretary of the plaintiff-Society Sh. Padam Kumar Jain

when appeared in evidence has admitted his signatures that he was Secretary of the Sabha and still is a member.

Learned first appellate court on appreciation of the evidence have found that the mortgage deed was executed so as to circumvent the protection available to the tenant from East Punjab Urban Rent Restriction Act, 1949. The reasons given by the learned first appellate court are cogent and elaborate. The aforesaid receipt was sought to be explained by re-examining the witness as PW4 who has stated that this receipt pertains to another shop which was on the back side. However, this is not the case set up by the plaintiff in the pleadings. The effort made to explain the receipt is afterthought. Even if assuming that the aforesaid receipt was with respect to another shop which was situated on the back side, the rent of the shop which is on the front would be much more. Such mortgage of the shop in an urban area in the State of Punjab for a sum of Rs.5000/- in the year 1983 is unrealistically low. As per receipt for approximately 1 year rent, the property was mortgaged with possession.

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

The regular second appeal is dismissed.

February 05, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No