

RSA No.4503 of 2019 (O&M)

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

RSA No.4503 of 2019 (O&M)
Date of Decision: 22.10.2019

Atam Parkash

...Appellant

Versus

Gurjeet Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. C.B. Goel, Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

Through this Regular Second Appeal, defendant had laid challenge to judgment and decree of the appellate Court dated 06.07.2019, dismissing his appeal as well as cross-objections of respondent-plaintiff, thereby affirming judgment and decree of the trial Court dated 18.12.2015, whereby suit of the respondent-plaintiff for possession was decreed.

Briefly, respondent-plaintiff filed a suit for possession by way of redemption of mortgage against the appellant qua shop measuring 20'x69' situated in City Sirsa, detailed in the judgment of the trial Court, pleading that it was mortgaged with possession to the appellant vide registered mortgaged deed dated 23.11.2000 in a sum of ₹50,000/-.

Upon notice, appellant contested the suit.

Trial Court, after holding trial, decreed the suit vide judgment and decree dated 18.12.2015 in toto, simultaneously fixing mesne profits @

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₹10,000/- per month.

Being aggrieved, appellant-defendant approached the First Appellate Court, but remained unsuccessful, as his appeal too was dismissed vide judgment and decree dated 06.07.2019.

Learned counsel for the appellant *inter alia* contends that both the Courts below failed to appreciate that alleged mortgage deed was a sham transaction. In fact, appellant was inducted as a tenant by the respondent at ₹4,000/- per month. Appellant in his written statement has categorically claimed himself to be tenant over the shop in question owned by respondent-plaintiff. In the replication, respondent-plaintiff did not deny above tenancy claimed by the appellant. In support of his contentions, learned counsel placed reliance on ***Radhey Sham v. Kaushalya Devi*, 1984 CurLJ 326 (P&H)**, ***Narain Dass v. Mulkh Raj Gulati*, 2003(4) R.C.R. (Civil) 239 (P&H)** and ***Banarsi Dass v. Gian Chand*, 2004(4) R.C.R. (Civil) 549 (P&H)**.

Having given thoughtful consideration to the submissions, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

Admittedly, prior to present suit by the respondent-plaintiff, the appellant had filed a suit for injunction to restrain the respondent-plaintiff from interfering into his peaceful possession or dis-connecting the electricity connection in his name. In the said suit, appellant specifically claimed himself to be a mortgagee over the shop in question. Therefore, now the appellant, in the suit of the respondent-plaintiff could not have been permitted to allege himself as a tenant, contrary to his claim of mortgagee in

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his own suit against the respondent-plaintiff.

Admittedly, mortgage deed is a registered document duly signed by the appellant. It is well-settled proposition of law that if a person puts his signature on a particular document, it would be presumed that he signed the same after understanding and admitting its contents.

More so, in the said suit filed by the appellant, a written compromise was executed, wherein also appellant himself showed as mortgagee of the shop in question. Therefore, appellant from any angle cannot be permitted to allege that mortgage deed executed in between the parties was a sham transaction.

Both the Courts below have recorded concurrent findings against the appellant after appreciation of evidence.

Facts and circumstances of the authority referred to above by learned counsel for the appellant are not identical to the facts of the present case. Therefore, no benefit of the same can be given to the appellant.

No question of law much less substantial has been raised in this appeal. Therefore, same is held not maintainable.

Dismissed.

October 22, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No