

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

RSA-4287-2019 (O&M)

Date of decision : 18.9.2019

Sham Lal @ Sohan Lal

..... Appellant.

Versus

Avtar Singh and another

..... Respondents.

CORAM : HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Arnav Sood, Advocate for the appellant.

Mr. Dhawal Bhandari, Advocate for respondent No. 1.

RITU BAHRI, J (ORAL)

Learned counsel for the appellant-defendant No. 2 has come up in appeal against the judgment of the trial Court dated 1.3.2017 passed by learned Additional Civil Judge (Senior Division) Balachaur, SBS Nagar as well as the judgment of the lower Appellate Court dated 2.7.2019, passed by learned Additional District Judge, Shaheed Bhagat Singh Nagar whereby the suit of the plaintiff-respondent No. 1 has been decreed for possession of the suit property. Keeping in view mortgage deed Ex. P-1, possession of the suit property was handed over to plaintiff-Avtar Singh son of Udho Ram. However, after 2011, possession of the shop was given to defendant No. 2-Sham Lal @ Sohan Lal (appellant herein) by defendant No. 1-Avtar Ram son of Kishan Chand. Before the trial Court following issues were framed: -

- “1. Whether plaintiff is entitled for the relief of possession by way of redemption of suit land as prayed for ? OPP.
2. Whether suit is not maintainable in the present form? OPD.
- 2(A) Whether there exists relationship of landlord and tenant between the plaintiff and defendant no. 2? OPD (Addl. issue framed on 19.8.2016 by the Court).
3. Relief.”

Present appellant-defendant No. 2 who was claiming relationship of tenant with plaintiff was required to lead evidence on issue No. 2(A) as to whether there exists relationship of landlord and tenant between the plaintiff and defendant No. 2. The appellant-defendant No. 2 did not lead any evidence before the trial Court on this issue in the form of any rent receipts, house tax receipts issued by MC, Balachaur so as to show that defendant No. 2 was in the possession of the shop as a tenant. The trial Court on issue No. 2(A) has returned a finding against appellant-defendant No. 2 and appellant-defendant No. 2 has admitted that plaintiff was owner of the shop and he has identified the photographs of his brother. In the absence of any rent deed between plaintiff and defendant No. 2 i.e., the present appellant, the trial Court returned a finding that present appellant-defendant No. 2 was in possession of the shop in violation of the terms of the mortgage deed (Ex. P-1). The trial Court decreed the suit of the plaintiff and the appellant-defendant No. 2 went in appeal before the lower Appellate Court. This finding has been affirmed on issue No. 2(A) by observing in *paragraph 15* that defendant No. 2 has been in possession of the property in dispute since January 2012 but he has not produced any rent receipts or house tax receipts which have been issued in his favour by MC, Balachaur. The findings on issue No. 2(A) has been affirmed but technically in the judgment passed by the lower Appellate Court, it has not been stated that appellant-defendant No. 2 is not a tenant.

There is no ground to interfere in the judgment passed by the lower Appellate Court dated 2.7.2019.

Appeal stands dismissed.

(RITU BAHRI)
JUDGE

18.9.2019
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