

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

RSA-3705-2016 (O&M)
Date of decision : 29.01.2020

Veeran Rani and others

...Appellants

Versus

Surinder Kumar Bajaj and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kulwant Singh, Advocate
for the appellants.

Mr. C.M. Munjal, Advocate
for respondent Nos.1, 2, 9, 10 and 13.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below decreeing the suit for possession by way of redemption of the mortgage with respect to shop measuring 21' x 8' bearing Municipal Committee No.B-7/144, in Main Bazar, Faridkot.

It has come in evidence that the predecessor-in-interest of the defendants, Janak Raj had agreed to take the shop in question vide agreement dated 02.02.1991 on mortgage. Thereafter, owners/plaintiffs had filed a suit for specific performance of the agreement dated 02.02.1991 which was decreed on 14.10.1995. Pursuant to the decree, the mortgage deed was executed by the plaintiffs through the Court. The mortgage deed

was registered on 26.08.2009. The defendants had contested the suit on the ground that they were the tenants under the Punjab Wakf Board.

Both the Courts, on appreciation of evidence, have found that the defendants have failed to prove their defence.

Learned counsel appearing on behalf of the appellants has submitted that since none of the attesting witness has been examined, therefore, the mortgage deed has not been proved. Hence, he submitted that the Court erred in ordering redemption thereof. He further submitted that the defendants are the tenants under the Punjab Wakf Board since 1986 on regular payment of rent. Hence, he submitted that the plaintiffs have no right, title or interest in the property.

This Court has considered the submissions. However, find no substance therein.

As per proviso to Section 68 of the Indian Evidence Act, 1872, it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provision of Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied. As noticed above, in the present case, pursuant to the decree, the Court official was appointed and had executed the mortgage deed on behalf of the defendants. In absence of denial of Court official about the execution and registration of the aforesaid mortgage deed, denial of the defendants is of no significance. Still further, circumstances in the present case prove that there was a judgment and decree passed directing execution and registration of the mortgage deed. In these circumstances, there is no substance in the first

argument of the learned counsel for the appellants.

Next argument of learned counsel is also without any substance particularly when the predecessor of the defendants never objected to the maintainability of the previous suit which resulted in decree in favour of the plaintiffs. Now, the defendants cannot be permitted to turn around and take altogether stand contrary to the defence pleaded in the previous case.

Hence, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

29.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No