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

RSA-1433-2021 (O&M)

Date of decision: 26.11.2021

Pawan Kumar

....Appellant

Versus

M/s Rajiv Traders, Khamanon, Tehsil Khamanon, District Fatehgarh
Sahib and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Swaich, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The defendant no.1 assails the correctness of the concurrent findings of facts arrived at by the courts below while decreeing the suit for possession by way of redemption of the mortgage of the suit property. Both the courts have also decreed the damages alongwith mesne profits for use and occupation of the premises.

Some facts are required to be noticed. Smt. Jaswant Kaur had mortgaged the shop in question in favour of the defendants (appellants) on 08.06.1999 for a sum of Rs.1,00,000/-. Thereafter, she sold the property to the plaintiffs vide sale deed dated 08.09.2009. The plaintiffs after having become the owner of the said property filed the present suit on 05.11.2011. The defendants contested the suit by claiming that plaintiff no.2 is not the proprietor of plaintiff no.1-Firm.

The trial court, on appreciation of evidence, held that the plaintiff is

entitled to pray for redemption of the mortgage and since the defendant has continued in possession, therefore, he is liable to pay damages for use and occupation of the shop at the rate of Rs.8,000/- per month.

The First Appeal filed by the defendant was dismissed after re-appreciating the evidence.

Learned counsel representing the appellant contends that the First Appellate Court has erred in failing to examine the correctness of the amount of mesne profits for use and occupation of the premises. He contends that in the grounds of appeal, the appellant had specifically challenged the findings of the trial court on this aspect, however, the First Appellate Court has overlooked the same.

On a court question, learned counsel representing the appellant has admitted that from the reading of the judgment passed by the First Appellate Court, it is evident that the appellant did not address any argument on this aspect.

Learned District Judge has noticed the arguments of learned counsel representing the appellant in para 7 of his judgment, which is reproduced as under:-

“7. Learned counsel for the appellant submitted that the learned trial court did not take into consideration the evidence on record and thus judgment and decree passed by the learned trial court is liable to be set aside. He further submitted that the suit for redemption was filed without depositing the amount and thus the suit is liable to be dismissed on this ground alone. He submitted that sale by Jaswant Kaur in favour of plaintiff has not been proved and the alleged sale deed dated 8.9.2009 is false and fabricated. Thus, the plaintiffs had no right to get the suit property redeemed. Moreover, Jaswant Kaur and all other co-sharers in the property were not impleaded as party and only Jaswant Kaur was not

competent to execute sale deed in view of contents of mortgage deed dated 8.6.1999. The plaintiffs never issued any notice and thus the suit for redemption was liable to be dismissed. Thus, keeping in view above the present appeal is liable to be allowed. In support of his contentions he relied upon judgments reported as **Sh. Sahib Singh and others Versus Sh. Gurdev Singh and others 2019 (3) RCR (Civil) 398 (P&H), Raghunandan Rai versus Raghunandan Pande and others AIR 1921.”**

It is evident from a careful reading of the aforesaid para 7 that learned counsel representing the appellant did not assail the finding of the learned trial court on the quantum of mense profits.

In the grounds of appeal, the appellant is entitled to take all possible objections. However, the appellant is required to draw the attention of the First Appellate Court to those particular points while addressing the arguments. Once the appellant has failed to object to the decree for grant of damages on account of mense profits for use and occupation of the premises before the First Appellate Court, this Court in the Regular Second Appeal cannot permit the appellant to take up this point.

Learned counsel for the appellant further contends that the trial court has erred in decreeing the grant of mense profits from the date on which the plaintiff served notice on the defendants to accept the amount of mortgage money and return the possession. Again, this argument has never been taken up before the First Appellate Court. In any case, once the mortgagor has issued a notice calling upon the mortgagee to accept the mortgage money and return the possession, then the mortgagee is liable to pay the mense profits for the use and

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occupation of the premises from the date of notice, itself.

Hence, no ground to interfere. Dismissed.

All the pending miscellaneous applications, if any, are also
disposed of.

26.11.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE