

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

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**RSA No.208 of 2020 (O&M)
Decided on : 16.07.2021**

Deepak Sablok (deceased) represented by Gulshan Rani, mother of Deepak Sablok through attorney Dinesh Kumar

... Appellant

Versus

Kamla and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Sarju Puri, Advocate
for the appellant.

(The proceedings are being conducted through video conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

The present regular second appeal by the defendant's legal representative is directed against the concurrent findings of the Courts below at Shaheed Bhagat Singh Nagar dated 27.10.2016 and 15.07.2019, whereby the suit of the plaintiffs-respondents was decreed for possession by way of redemption for the land measuring 3 marlas on which two shops were constructed details of the revenue record of which are given in the head note of the plaint and the appeal was dismissed.

2. The preliminary decree was passed by the Trial Court on 27.10.2016 by coming to the conclusion that the mortgage deed dated 11.08.2004 (Ex.P5) on the basis of which the suit was filed had not been specifically denied and, therefore, the provisions of Section 68 of Indian Evidence Act, 1872 (for short 'Evidence Act') would be of no help as such since it was a registered document. The Trial Court came to the conclusion

that since a plea had been taken that the defendant-appellant was in possession as a tenant prior to the execution of the mortgage deed would so far amount to admission on the part of the defendant regarding the said document. It was also noticed that none of the legal representatives of Deepak Sablok had appeared in the witness box to substantiate the plea taken and only DW-1 Dinesh Kumar had stepped into witness box, who was neither the power of attorney and therefore, it was held that plaintiff is able to prove the mortgage deed. The plea that the defendant was a tenant as such and his rights are to be protected under the East Punjab Urban Restriction Act, 1949 (for short 'Rent Act') was thus rejected on the ground that party who asserts any fact the burden to prove the said fact would be upon that party.

3. It was also noticed that no such recital of tenancy of the shops in dispute were mentioned in the mortgage deed and in the absence of any cogent evidence proved on record by the defendant that the shop in dispute prior to the execution of the mortgage deed was in his possession, the defence as such was not accepted. It was also noticed that the mortgager Darshan Lal and the mortgagee Deepak Sablok were closely related to each other being relatives and possession of the shop was handed over to Deepak Sablok. Mere placing on record the electricity bills prior to the execution of the mortgage deed did not prove that he was in possession of the property prior to execution of the mortgage deed as a tenant. Darshan Lal having expired, mutation of his estate had been entered in favour of plaintiff being his Class-1 legal heirs

and the plea that plaintiffs were not legal heirs was accordingly rebutted while deciding the predominant issues No.1, 2 and 4, which were subject matter inter se the parties.

4. While deciding issue No.3 whether the suit property did not comprise in Khasra No.787/2 (0-3), onus of which was upon the defendant, it was held that no counter site plan had been brought on record by the defendant. DW-1 Dinesh Kumar during his cross-examination had given the same dimensions of the suit property in dispute and there was no dispute regarding the identity of the shops and the burden being upon the defendant, the issue was decided in favour of the plaintiffs.

5. In appeal, the District Judge, Shaheed Bhagat Singh Nagar rejected the case of the appellant-defendant on 15.07.2019 leading to the filing of the present appeal.

6. Counsel for the appellant has vehemently argued that the mortgage deed (Ex.P5) was not proved on record by the plaintiffs and neither any witness had been examined. It was submitted that electricity bills which are brought on record, were prior to the registration of mortgage deed on 11.08.2004, which showed that the appellant was already a tenant. Reliance was placed upon the cross-examination of PW-1 wherein he had stated that the original mortgager was a tenant prior to the mortgagee to draw emphasis that there was an admission on the part of the witnesses. Lastly, it was submitted that provisions of Order 38 Rule 7 & 8 CPC have not been adhered to by the Trial Court while

drawing up the decree.

7. A perusal of the paper-book would go on to show that the case of the plaintiffs was based on the ground that Darshan Lal had been carrying on business under the name & style 'Darshan Di Hatti' in the shop in question and he had purchased the same from one Udham Singh on 14.12.1994 (Ex.P3) and which fact finds mention in the sale deed itself. He mortgaged the property to Deepak Sablok on 11.08.2004 for a sum of Rs.1,00,000/- vide the registered deed. It had been settled inter se the parties that he could get the shops redeemed after payment of Rs.1,00,000/-. There was no mention in the same regarding the fact that Darshan Lal was a tenant in the shop in question. It has come on record that the said mortgagee was a nephew of Darshan Lal, who had to go to USA and required the money in question. Darshan Lal expired on 10.03.2009 and his legal heirs served the legal notice dated 06.11.2010 (Ex.P6) upon the mortgagee asking him to deliver back the possession and to accept a sum of Rs.1,00,000/-. Resultantly, the suit was filed on 22.03.2011. It was the case of the plaintiffs that no reply was received to the legal notice, whereas it is the case of the defendant that he had not received the said registered legal notice.

8. The defence as such of the defendant was the admission qua the ownership of Darshan Lal the right of being a tenant and the denial of the plaintiffs being the legal heirs. The plea taken was that he was running the business in the property in dispute and was in need of money and he had borrowed Rs.1,00,000/-. The amount had been advanced on

the ground that it would not affect his tenancy rights and there was no stipulation in the mortgage deed that on redemption he would lose the status of a tenant and, thus, he sought protection under the Rent Act. Thus, there was no specific denial regarding the execution of the registered mortgage deed.

9. Issue No.4 which was framed regarding the onus as such of tenancy in the property was upon the appellant, but he failed to prove it and bring sufficient evidence on record. Rather as noticed above none of his legal heirs even chose to appear in the witness box to substantiate the stand of tenancy. Accordingly, observations in the case of '**Man Kaur (Dead) by L.Rs Vs. Hartar Singh Sangha**', (2010) 10 SCC 512, can be adverted to, in the facts and circumstances, where inference is to be drawn against a party who does not appear in the witness-box and offer himself for cross-examination.

10. The plaintiffs in order to prove the mortgage deed produced PW-2 Amar Chand, Deed Writer who had produced the register wherein the said entry had been made at Serial No.853 of the said deed, which was further registered with the Sub-Registrar at Serial No.960. He proved copy of the register containing entry of the mortgage deed as Ex.PW2/1. The mortgage deed was also proved by examining the Registry Clerk from the office of Sub-Registrar, PW-3 Shingara Ram and, therefore, the argument which has been raised that Ex.P5 was not proved is without any basis.

11. The Apex Court in the case of '**State of Haryana Vs. Ram**

Singh', 2001 AIR (SC) 2532 has held that certified copy of registered agreement to sell is admissible in evidence and it is not necessary for the parties to the document to be examined to prove the same. It was further held that it would be contrary to Section 77 read with Sections 74 (2) and 76 of the Evidence Act.

12. Similar observations have also come in the case of '**Jaswant Singh Vs. Gurdev Singh and others' 2012 (10) SCC 425**, wherein a compromise which was the basis of the decree had been produced and question arose whether it was admissible or not. It was held that once it had become part and parcel of the decree passed by the Court of Sub Judge, it would be a public document in terms of Section 74 of the Evidence Act and certified copy prepared of the same was admissible in evidence and under Section 77 & 78 of the Evidence Act and it could be proved without calling a witness. The said observations reproduced below are directly applicable in the present case and, therefore, the argument raised by the learned counsel would not cut much ice on this issue, which read as under:-

“9) Now the other question which remains to be decided is whether the compromise Ex. D3 is admissible in evidence or not? The compromise dated 27.11.1972 has become the basis of the decree dated 08.12.1972 passed by the Sub-Judge, Hoshiarpur. The perusal of Ex. D4 i.e., judgment and decree were passed as per the terms and conditions of compromise placed on file. As rightly observed by the courts below, the compromise has merged into a decree and has become part and parcel of it. To put it clear, the compromise had become a part of the decree which was

passed by the court of Sub-Judge Ist Class, Hoshiarpur. Hence, it is a public document in terms of [Section 74](#) of the Indian Evidence Act, 1872 (in short 'the Act') and certified copy of the public document prepared under [Section 76](#) of the Act is admissible in evidence under [Section 77](#) of the said Act. A certified copy of a public document is admissible in evidence without being proved by calling witness. Inasmuch as the decree was passed and drafted in the light of the compromise entered into between the parties, viz., the plaintiff and the defendants, the certified copy of such document which was produced before the Court, there is presumption as to the genuineness of such certified copy under [Section 78](#) of the Act. We have already noted that the appellant-Jaswant Singh has not challenged the genuineness of certified copy in any manner. Although the record of the Court has been proved to be burnt in a fire in Judicial Record Room, Hoshiarpur on 16.06.1998, but the certified copy of the compromise (Ex.D3), which is the part of the decree was obtained from the record room on 24.08.1988 and the Decree Ex.D4 was got issued on 12.09.1984. In those circumstances, there is no reason to doubt the authenticity of compromise (Ex.D3). Even otherwise, as rightly observed by the courts below, the appellant-Jaswant Singh had not filed any other substitute of the document Ex.D3, on the basis of which the decree (Ex.D4) had been said to be passed. As stated earlier, in view of the fact that the decree dated 08.12.1972 clearly says that the suit is partly decreed in favour of the plaintiff as per the terms of the compromise placed on file, there can be no other way to interpret the decree except in terms and conditions of the compromise (Ex.D3).”

13. The facts would go on to show that the mortgager had taken the amount on account of the fact that he was migrating to USA and,

therefore, merely because electricity bills prior in point of time before the sale as such had been produced, which was in favour of original owner Udham Singh would not prove the fact that Deepak Sablok was a tenant in the property in question, specially since nothing had been brought on record by his legal heirs, who did not even step into witness box to substantiate the said fact, as noticed above. The alternative plea of tenancy taken was not proved on record in the form of any rent deed or any receipt of rent deposited from August, 2004 till filing of the suit on 22.03.2011.

14. The tenancy is a contractual agreement and even if oral, the same had to be proved by showing that some rent was being deposited to Deepak Sablok or to his legal heir, which the appellant had failed to prove. It is also to be noticed that the mortgage amount was deposited on 14.08.2012 (Ex. P9) after the filing of the suit and, therefore, as per the terms of the mortgage deed a sum of Rs.1,00,000/- was payable.

15. Provisions of Order 38 Rule 7 & 8 CPC would thus not come into play, since nothing was specified in the mortgage deed as such as to the interest, which was payable as such to the mortgagee or the expenses which were incurred made in respect of the mortgage, since it was settled inter se that he was running the shop in question, which had been duly mortgaged.

16. It has been held by the Full Bench of this Court in '**Ram Kishan and others Vs. Sheo Ram and others'** 2008 (1) CCC 414 that once a mortgage always a mortgage, which was upheld by the Apex

Court in the case of '**Singh Ram (dead) through legal representative Vs. Sheo Ram and others**' 2014 (9) SCC 185. Therefore it would not lie in the mouth of the appellant as such now to contend that Deepak Sablok was a tenant and was protected under the Rent Act even if the mortgage had been redeemed, having failed to prove his status as a tenant.

17. In such circumstances, this Court is of the opinion that the well reasoned judgments of the Courts below do not suffer from any legal infirmity, which would warrant interference in a regular second appeal. Keeping in view the fact that there is no substantial question of law involved, the present appeal is dismissed in limine. All pending civil miscellaneous applications also stand disposed of.

July 16, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No