

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 113

Regular Second Appeal No.2532 of 2022 (O & M)

Date of Decision: *November 29, 2022*

Rachhpal Singh

..... APPELLANT(S)

VERSUS

Naveen Chander

..... RESPONDENT(S)

...

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

...

PRESENT: - Mr. Sushil Saini, Advocate, for the appellant.

. . .

Tribhuvan Dahiya, J (Oral)

This is a regular second appeal against the concurrent findings recorded by both the Courts below.

The suit was filed by the respondent-plaintiff for possession of the disputed shop by way of redemption of mortgage. The shop in question was mortgaged by the plaintiff's mother through registered mortgage deed dated 21.01.1994. As per terms of the deed, the shop could be redeemed at any time on payment of ₹ 2000 to the appellant-defendant.

Both the Courts below have concurrently held that execution of the mortgage deed, dated 21.01.1994 (Ex.P3), duly stands established on record. Based on the settled legal proposition, once a mortgagee always a mortgagee, plaintiff's suit has been decreed.

Learned counsel for the appellant contends that the defendant, infact, was a tenant in the shop in dispute, and not a mortgagee. Therefore the judgments of the Courts below are not sustainable.

A perusal of the findings recorded by the Courts establish that the defendant has not been able to prove his tenancy over the shop in dispute as no documentary evidence could be led by him to prove this fact. None of the essential ingredients of tenancy could be established on record by him, for instance, existence of the lease and payment of rent. In such a situation, he was rightly not considered as a tenant.

Learned counsel for the appellant further submitted that there was an insurance note, Exh.D1, on record which established that defendant was in possession as tenant even prior to execution of the mortgage deed in question. However, the said insurance note is merely a photocopy. It has not been proved on record, and has rightly not been looked into. Besides, there is sufficient documentary as well as oral evidence on record to establish that the defendant is a mortgagee.

In view of the aforesaid, there is no error of law in the concurrent findings recorded by the Courts below.

Dismissed.

Since the main appeal stands decided, all pending applications, if any, are disposed of as having been rendered infructuous.

(Tribhuvan Dahiya)
Judge

November 29, 2022

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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No