

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHRSA-4196 of 2015(O&M)
Date of Order:05.01.2024

Ram Kumar

.Appellant

Versus

Mohan Lal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vipul Aggarwal, Advocate
for the appellant.Mr. Sandeep Jasuja, Advocate
for the respondent.ANIL KSHETARPAL, J

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. In this regular second appeal, the findings of fact arrived at by the First Appellate Court are assailed by the defendant.

3. The plaintiff filed a suit for possession of a shop by redemption of a registered mortgage deed dated 19.12.1996, and also a supplementary mortgage deed dated 10.05.2000. While contesting the suit, the appellant (defendant) claimed that he is in possession of the property as tenant. Though, the trial court dismissed the suit, however, on re-appreciation of the evidence, the First Appellate Court has found that the appellant has failed to lead any material evidence to prove that there existed a landlord-tenant

relationship and the mortgage deed was executed only to camouflage the existence of landlord-tenant relationship in order to avoid applicability of the provisions of the East Punjab Urban Rent Restriction Act, 1949.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the appellant while referring to the findings of the trial Court submits that the First Appellate Court has wrongly reversed the trial court's judgment and decree. He submits that the terms of the mortgage deed are akin to a rent deed and therefore, the First Appellate Court has erred in accepting the appeal.

6. On the other hand, the learned counsel representing the respondent submits that the appellant (defendant) has failed to lead any reliable evidence to prove that there was relationship of the landlord and the tenants between the parties. He submits that neither any rent note nor the receipts proving the monthly payment of rent has been produced. He further submits that the appellant has not produced any other cogent evidence to prove the relationship of the landlord and the tenant.

7. This court has considered the submissions of the learned counsel representing the parties.

8. On appreciation of the evidence, the First Appellate Court has taken a plausible view while accepting the appeal. In absence of substantive error or perversity in the judgment passed by the First Appellate Court, this court while exercising jurisdiction under Section 41 of the Punjab Courts Act, 1918, is not expected to interfere.

9. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

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

January 05, 2024

(ANIL KSHETARPAL)

nt

JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO