

...

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

R.S.A. No. 56 of 2007 (O&M)
Date of Decision : January 19,2007

Shri Ramesh Chand

... Appellant

Versus

Smt. Pushpa and others

.. Respondents

CORAM : Hon`ble Mr. Justice Pritam Pal.

Present : Shri Arun Jain, Advocate,
for the appellant.

PRITAM PAL, J. (Oral)

This Regular Second Appeal is directed against the judgments and decrees dated 31.8.2002 passed by learned Additional Civil Judge (Senior Division), Faridabad and dated 12.12.2006 passed by learned Additional District Judge (Adhoc)-cum-Presiding Officer, Fast Track Court No.III, Faridabad, respectively, whereby, suit of plaintiff-Tulsidass (since deceased) (hereafter referred to as “the plaintiff”) for possession by way of ejectment, was decreed. The appeal filed by the appellant-defendant (hereinafter referred to as “the appellant”) was also dismissed.

Both the courts below have given a concurrent finding to the effect that the construction of the shop in question was completed on 2.10.1985 and the suit for possession was instituted on 29.9.1995, i.e.,

...

within 10 years of the completion of construction and as such, the building is exempted from the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973. The aforesaid finding is not perverse or unreasonable in the given facts and circumstances of this case.

Learned counsel for the appellant has raised a point that in the mortgage deed, alleged to have been executed at the instance of the plaintiff, the shop in question was shown to have been constructed earlier to the aforesaid date i.e. 2.10.1985. A perusal of the file shows that this plea was not taken in the written statement, filed by the appellant. Not only that, in the cross-examination, the plaintiff was also not confronted with the aforesaid recital made in the mortgage deed, if any. However, there is cogent and convincing evidence on the file, which shows that in fact, the construction of the shop in question was completed on or before 2.10.1985. Thus, if there is any such mention in the mortgage-deed, which has not been duly proved on the file, that is insignificant. It is also to add here that earlier, the appellant had also approached this Court by way of filing a revision petition for taking-up the aforesaid plea of mortgage-deed in his written statement, but that too was dismissed.

Taking an over-all view of the facts and circumstances, as stated above, I find no perversity in the findings arrived at by the courts below. I also find that no substantial question of law is involved in this appeal. Hence, the same is hereby dismissed *in limine*.

At this stage, learned counsel for the appellant has requested for grant of some time to vacate the shop in question, where the appellant is still running his business. The request of the learned counsel for the

...

appellant seems to be genuine. Accordingly, one month's time is given to the appellant for handing-over the vacant possession of the shop in question, to the respondents, provided he clears all the arrears of rent, if any, within one week from today.

January 19, 2007.
som

[PRITAM PAL]
JUDGE