

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

Regular Second Appeal No.925 of 2013 (O&M)

Date of decision: 9.7.2015

Leela Ram Mishtri

... Appellant

Versus

Adarsh Gaushala

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.J.P.Sharma, Advocate,
for the appellant.

Mr.Nipun Vashist, Advocate, for
Mr.N.S.Shekhawat, Advocate,
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

Leela Ram Mishtri is in second appeal as defendant in his original position in the suit. The suit for possession of property brought by Adarsh Gaushala comprised in Khasra # 337 situated at village Satnali, Tehsil and District Mohindergarh [Haryana]. The suit was instituted on 1st May, 2006 based on title to recover the disputed property from the possession of the defendant. The plaintiff Adarsh Gaushala claiming ownership over the property acting through its authorized President Mala Ram Goel instituted the suit by a resolution.

2. Adarsh Gaushala rented out the suit property in favour of Mishtri on 1st August, 1977 at ₹ 500/- rent per annum for a period of 6 years. The period of 6 years expired many times over and the defendant continued as tenant holding over. By 2006, the plaintiff felt that the rent was on the lower side and wished to augment its income with higher rent for which it served a legal notice on the defendant on 3rd April, 2006 calling upon him to quit by handing over the peaceful vacant possession of the disputed property in favour of the plaintiff. When the defendant refused, the suit was filed.

3. On notice issued, the defendant took several technical objections with respect to maintainability, cause of action, estoppel, court fee, locus standi etc. and on merits, though it was admitted that the disputed property is a part of khasra # 337 but he denied title of the plaintiff nor was Goel authorized to bring the suit on behalf of the plaintiff. The defendant averred that there was a written lease between the parties and the period could be extended from time to time by exercising option. Against the option so exercisable, the periods were extended indefinitely. The defendant asserted that Adarsh Gaushala had no right to terminate the lease. It is the case of neither side that the statutory rent laws were or are applicable to the property in dispute and, therefore, recovery of possession would amount to eviction from the premises.

4. No replication was filed and on the basis of the pleadings of the parties, the following issues were framed : -

1. Whether the plaintiff is entitled to recover the possession of the suit property as alleged in the plaint? OPP.

2. Whether the defendant is in possession of the property as a trespasser if so its effect? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the plaintiff has not filed proper court fees, if so its effect? OPD
6. Whether the defendant is a lessee of the suit property? OPD
7. Relief.

5. In order to discharge their respective burdens and onus, both the parties led their oral as well as documentary evidence in support of their case. The plaintiff led no rebuttal evidence and felt satisfied with its evidence recorded.

6. Issues # 1, 2 and 6 were taken up together by the learned trial court since they were inter-linked and the learned trial court was right in thinking that deciding them separately would be at the cost of continuity and coherence, to which, I would add at the cost of repetition of facts.

7. The lease deed executed in 1977 was exhibited as PW2/B. Indisputably, no stamp duty was affixed on the lease deed which was a hand written document and was not registered. Therefore, the defendant argued that the suit for possession was not maintainable as possession cannot be delivered in the absence of lease deed. The writing Ex.P1 is not a lease

within the meaning of Section 106 of the Transfer of Property Act and, therefore, the tenancy is not open to closure by service of notice of terminating lease and for mesne profits.

8. Learned trial court answered this defence by resorting to Section 116 of the Indian Evidence Act, 1872 which postulates that no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

9. Therefore, the defendant was estopped from denying title and its contention that Adarsh Gaushala was not the owner of suit property was not tenable. Besides, it is not disputed that the defendant paid rent to Adarsh Gaushala. From the reading of the trial court judgment, it appears that the writing Ex.P1 as understood by the trial Judge was in the nature of a mortgage deed with Adarsh Gaushala being the mortgagor and the defendant mortgagee on payment of rent. The learned trial Court held that it may be true that Adarsh Gaushala had neither placed on file documents of title nor pleaded how it was competent to execute the lease deed in favour of the defendant but the defendant could not deny title of landlord since he paid rent and was bound by the writing Ex.P1 and, therefore, could not go behind recovery of possession but at least the plaintiff-Gaushala placed on record the Jamabandis pertaining to the year 1984-95 to 1999-2000 where

its name is recorded in the column of possession against the disputed property. It is, therefore, not a stranger to the suit property. If there was relationship of mortgagor and mortgagee or that mortgagor could seek possession of mortgaged property after the expiry of the period of lease leaving defendant in the status of a tenant-at-will then it follows that after the expiry of the agreed period, the property tenure was exceeded without a fresh contract or lease without any duration or by exchange of payment. Thus, the period beyond expiry of lease was exceeded without parties signing another contract or lease deed. All that can be said is that the defendant had the tacit permission of the landlord to stay on the property post expiration of the lease agreement and would consequently become a licensee or a trespasser open to eviction in terms of the Easement Act, 1882 and by a simple notice to quit served on him which nevertheless was not required by law to be issued under Section 106 of the Transfer of Property Act, 1882 even when the initial lease was from year to year. It is well settled legal proposition that the suit itself is a notice to quit. Resultantly, issues # 1 and 2 were answered in favour of the Gaushala while issue # 6 against the defendant since onus was on him i.e. whether he was a lessee of the suit property. He had ceased to be one.

10. Issues # 3 to 5 were not pressed and are deemed to be given up not to be allowed to be raised again in first or second appeal. In the main, relief was granted to the plaintiff who was held entitled to recover possession of the suit property with defendant directed to hand over possession within 60 days from the date when the learned Additional Civil Judge, Senior Division, Mohindergarh passed judgment and decree on 18th

November, 2010, failing which, the plaintiff was at liberty to seek possession through court process. While parting with the judgment, the learned trial court wisely placed a rider on the rights of the plaintiff that the adjudication did not declare it owner of the suit property. That question is at large in rem but read against the defendant since he was a tenant-at-will with no written contract to support lawful and continued protected possession by contract.

11. Aggrieved by the decree, Leela Ram Mishtri carried an appeal to the learned District Judge, Narnaul which remained unsuccessful with the dismissal of the appeal. Learned District Judge applied the provisions of Section 111(a) of the Transfer of Property Act, 1882 to apply the legal position that a lease of immovable property would determine by efflux of time which is agreed to be limited by its signatories. The period of 6 years had long run out. The legal position on the expiry of the period of lease would be this; where a lease was for year to year and the period came to an end, then a tenancy no longer would remain year to year but become month to month, day to day and hour to hour, with the tenant holding over and failing to surrender possession.

12. Though the learned trial Court has not noticed this significant fact but it has been noticed by the learned District Judge on reading of para. 2 and 3 of the written statement. In para. 2, Leela Ram Mishtri admitted taking on lease an area of land measuring 24' x 80' feet at the agreed rate. However, averments in para. 3 reveal that the defendant claimed that he had become owner of the same by way of adverse possession. It was in this manner that the title was denied by the defendant from whom he took the

land on lease which the court of first appeal correctly thought would amount to forfeiture of the rights under writing dated 19th July, 1977 by denying the relationship of landlord and tenant, a defence which was self destructive and inconsistent with the pleas in defence which law permits. This aspect was not touched upon by the learned trial Court and has been thoughtfully culled out by the learned lower appellate court and I agree that it was the correct position duly noticed in the judgment in appeal.

13. Another aspect which was not articulated by the learned trial court has found full expression in the judgment in appeal where the learned District Judge considered the contention of the defendant that he had raised construction and, therefore, the plaintiff cannot recover possession and correctly negated the submission when it found from the writing dated 19th July, 1977 Ex.P1 a recital that whatever work on the land was to be done, Leela Ram Mishtri would himself carry out and there would be no responsibility of Gaushala with respect to it.

14. It was, therefore, rightly concluded that the construction was at the risk, cost and responsibility of the defendant and it would not lie in the defendant's mouth that because he raised construction or improved the quality of land, the plaintiff was not entitled to recover possession and still be bound to pay court fee on the value of the construction raised by the plaintiff on the plot in question, failing which the suit was not maintainable. The suit being not maintainable on this score was also correctly rejected. When the lease deed fixed rent of ₹ 500/- per year, then as per the provisions of Section 7 of the Court Fee Act, the value of the suit for purposes of jurisdiction for relief of possession would be yearly rent of the

demised premises. Thus, proper court fee was affixed on the plaint. Resultantly, the learned District Judge, Narnaul dismissed the appeal on 29th January, 2013.

15. After hearing the learned counsel for the parties, I do not find any life in this appeal for the reasons recorded above and the reasoning in the findings on the issues by the courts below. The judgments of both the courts below are not open to interference. No question of law and much less a substantial one is involved in this appeal for which reason intervention is not warranted. Learned counsel for the defendant has not raised any new plea or ground in the present second appeal which was not urged in the courts below and duly noticed and adjudicated upon the rights of the parties. This appeal is dismissed and the findings are affirmed. Parties will bear their own costs.

(RAJIV NARAIN RAINA)
JUDGE

July 9, 2015

Paritosh Kumar