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

**RSA No.3839 of 2011 (O&M)
Date of decision : 25.02.2016**

Baljit Singh & another

...Appellants

Versus

Dera Baba Thandi Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate
for the appellants.

Mr. Dhirinder Chopra, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

CM-2298-C-2014

Prayer in this application filed under Order 22 Rules 4 read with Section 151 CPC is for impleading the legal representatives of respondent Nos.1 and 2.

For the reasons stated in the application, the application is allowed and the legal representatives of respondent Nos.1 and 2 are permitted to be brought on record for the purpose of prosecuting the appeal.

CM stands disposed of.

RSA No.3839 of 2011

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the claim of the respondents-plaintiffs seeking possession in respect of the suit property, has been decreed.

Mr. Munish Gupta, learned counsel appearing on behalf of the appellants-defendants submits that on 16.07.1986, the agreement to lease was entered into between the parties. The nature of the land is agriculture being a Dera and thereafter lease deed dated 30.05.1989 (Ex.D-3) was executed. After execution of the lease deed in the year 2012, suit for possession by the Dera was filed on the ground that the motive behind the execution of the lease deed and its reflection in revenue record was result of fraud and misrepresentation and in case, the lease has been entered into, the same is inadmissible in law for want of registration. Assuming for argument sake that the lease deed is not registered, but question arises whether it could be looked into for collateral purpose or not and whether, the status of the appellant-defendant will be that of lessee or not, in the absence of notice under Section 106 of the Transfer of Property Act, 1882, (hereinafter called 'the 1882 Act') and rightly so, the trial Court dismissed the suit. However, the lower Appellate Court reversed the findings and decreed the suit by holding that the lease could not be lead to an evidence for want of registration, and therefore, the possession of the plaintiff has to be treated as illegal, thus, he urges to this Court to formulate the following the substantial questions of law for determination:-

1. As to whether the suit for possession in the absence of the termination of tenancy as per Section 106 of the Transfer

Property Act, 1882, is maintainable or not?

2. Whether the unregistered lease deed dated 30.05.1989 can be looked into for collateral purpose or not?
3. Whether the respondents-plaintiffs estopped to challenge the lease deed being signatory and the execution of the same.

In support of his contentions, he relies upon the the judgment of Hon'ble Supreme Court in **"Rajendra Pratap Singh V/s Rameshwar Prasad" 1999 (2) Civil Court Cases 216 (SC) & "Shibani Basu V/s Sandip Ray" 2011(1) Apex Court Judgments 370 (SC)** and the judgments of this Court in **"Ude Singh and others V/s Ram Chander" 2009 (1) Civil Court Cases 433 (P&H), "Ajmer Singh and others V/s Dera Baba Lal Dass through Mahant Bant Dass and others" 2008(4) RCR (Civil) 307** and **"Hans Raj and others V/s Banta Ram and others" 2007(4) Civil Court Cases 693 (P&H).**

Mr. Dhirinder Chopra, learned counsel appearing on behalf of the respondents-plaintiffs, submits that a specific stand has been taken in the plaint that the possession of the respondents-plaintiffs is illegal as the lease deed could not be looked into for want of registration. A lessor cannot be prevented to seek the possession of the property even otherwise, Mohitmin, as per settled law, cannot be lease out the property as it was against the interest of Dera, in support of his contentions, he relies upon the the judgment of Hon'ble Supreme Court in **"Rajendra Pratap Singh V/s Rameshwar Prasad" AIR 1999 SC 37** and the judgments of this Court in **"Raghubir Singh V/s Smadh Baba Santokh Gir", 2000(1) RCR (Civil) 330, "Harji and another V/s Smadh Baba Vijay Ram Chela Mangal Dass", 2003 (2) RCR (Civil) 666, "Sheo Dayal V/s Om Parkash", 1992 (1) RRR 349** and **"M/s V.K. Sood Engineers and Contractors Pvt. Ltd., Chandigarh V/s Manpal Singh", 2002 (2) RCR (Rent) 496.** He

further submits that there is no illegality and perversity in the judgment and decree rendered by the lower Appellate Court and prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal, for the reason that the appellants-defendants have not taken the objections viz-a-viz the service of notice under Section 106 of the 1882 Act, even otherwise, for collateral purpose, lease can be looked into for the purpose of the possession. Since, the terms and conditions of the lease deed binding parties cannot be taken into consideration, the status and the possession of the respondents-plaintiffs in such situation is deemed to be of trespasser, much less, illegal and rightly so, the possession as been sought in accordance with law through the intervention of the Court by invoking the jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure. There is no dispute to the ratio decidendi culled out in the judgment of Ude Singh's case (supra), viz-a-viz the estoppel, but the fact remains that the lease deed is unregistered. The appellants-defendants cannot be clothed the status of a tenant and permitted to take the plea of non-service of legal notice under Section 106 of the 1882 Act. No doubt there is no bar with regard to the alienation of the property belonging to the Dera Baba Thandi, much less, for legal necessity, but the case set up in the plaint is not of that nature. Whereas on the contrary, I am in agreement with the ratio decidendi culled out by this Court, viz-a-viz leasing out of the property belonging to the Dera and in Harji's case (supra) wherein, this Court while relying upon the judgment held that Mohitmin cannot lease out the property for 99 years. The lease was created for a period of 99 years against

the consideration of ₹ 50,000/- only. In the agreement to lease, it was mentioned that the lease shall be registered by 15.05.1989, however, at the time of the execution of the lease deed dated 30.05.1989 (Ex.D-3), no effort has been made at the behest of the appellants-defendants for the registration of the same. I am in agreement of the finding rendered by the lower Appellate Court to the fact that the unregistered lease deed cannot be looked into. The respondents-plaintiffs are seeking the possession in accordance with law and therefore, there can be no illegality or infirmity in such action.

In view of what has been noticed above, I do not find any illegality and perversity in the findings rendered by the lower Appellate Court, much less, no substantial question of law arises for determination. The judgment and decree rendered by the lower Appellate Court is hereby upheld.

Resultantly, the appeal is dismissed.

25.02.2016
yogesh

(AMIT RAWAL)
JUDGE