

**Regular Second Appeal No.4638 of 2011 (O&M)** { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

R.S.A.No.4638 of 2011 (O&M)

Date of Decision: August 5<sup>th</sup>, 2016

Smt.Risali

...Appellant

Versus

Ram Chander (since deceased) through L.Rs

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.Arun Singal, Advocate,  
for the appellant.

Mr.Sandeep Verma, Advocate,  
for Mr.Sukhdeep Parmar, Advocate,  
for the L.Rs of the respondent.

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**AMIT RAWAL, J. (Oral)**

Appellant-defendant is aggrieved of the findings rendered by the Lower Appellate Court, whereby the suit for possession in respect of land measuring 7 kanals 14 marlas, has been decreed.

Mr.Arun Singal, learned counsel for the appellant-defendant submits that the appellant-defendant had taken the aforementioned land on lease by way of two registered lease deeds dated 20.5.2004 (Ex.D1

and Ex.D2) for a period of 99 years, i.e., from 2.5.2004 to 1.5.2103 and,

therefore, the suit for possession was not maintainable by accepting the erroneous plea of the plaintiff that the lease was only for a period of one year. There was no notice of determination of the lease. Even the provisions of Section 107 of the Transfer of Property Act, 1882 are not applicable to the category of lease in Punjab in view of the Full Bench judgment of this Court in **Gurdarshan Singh S/o Dalip Singh and another Versus Bishan Singh s/o Uttam Singh**, AIR 1963 Punjab 49 reiterated by the Single Bench of this Court in **Smt.Nihal Kaur Versus Mehar Singh and others**, 1973 P.L.J. 234.

He further submits that the Lower Appellate Court has non-suited the appellant-defendant on the ground that she had not signed the lease deed, whereas Sube Singh had signed on her behalf. He has also drawn the attention of this Court to the record and lease deeds Ex.D1 and Ex.D2, thus, urges this Court for setting-aside of the judgment and decree of the Lower Appellate Court and formulation of the following substantial question of law:-

- 1) Whether the judgment and decree of the Lower Appellate Court tantamounts to illegality and perversity as there is misreading of the documentary evidence on record?

Mr.Sandeep Verma, Advocate for Mr.Sukhdeep Parmar,

learned counsel for the L.Rs of the respondent submits that the findings

rendered by the Lower Appellate Court cannot be interfered with where the lessee is not signatory of the lease deeds. The contents of the lease deeds could not be taken into consideration, therefore, the lease was treated for a period of one year and the status of the appellant-defendant was holding over and, therefore, rightly so, the claim for possession had been granted. There is no illegality and perversity in the impugned judgment and decree of the Lower Appellate Court.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the Lower Appellate Court has committed illegality and perversity in not examining documents Ex.D1 and Ex.D2. On going through Ex.D1 and Ex.D2, I am of the view that the lease granted is for 99 years, i.e., from 2.5.2004 to 1.5.2103. The law with regard to applicability of Section 107 of the Transfer of Property Act is no longer *res integra* in view of the findings rendered by the Full Bench in **Gurdarshan Singh's case (supra)**. The findings of the Court below with regard to the fact that the appellant-defendant had not signed the lease is neither here and there as Sube Singh on behalf of the appellant-defendant had signed the same. The respondent-plaintiff cannot deviate from the written time and manifest a different plea other than what the written time conveys.

For the foregoing reasons, I am of the view that the

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judgment and decree of the Lower Appellate Court does suffer from illegality and perversity and accordingly hereby set-aside, resultantly the suit is dismissed. The question of law as noticed above is answered in favour of the appellant-defendant.

Appeal stands allowed.

**August 5<sup>th</sup>, 2016**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable:**

**Yes/No**