

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

1. RSA No.3241 of 2014 (O&M)
Date of decision : 21.01.2016

Chander Parkash Soni

...Appellant

Versus

Dr. R.S. Grewal & ors.

...Respondents

2. RSA No.3720 of 2014 (O&M)
Date of decision : 21.01.2016

Sushil Kumar Tiwari

...Appellant

Versus

Dr. R.S. Grewal & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. Narinder Kumar Vadehra, Advocate for appellant.
(In both appeals)

Mr. Puneet Bali, Sr. Advocate with
Mr. Vibhav Jain, Advocate & Mr. Arun Gupta,
Ms. Kanika Grewal, Advocate for respondents.
(In both appeals)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.3241 of 2014 titled as Chander Parkash Soni Vs. R.S. Grewal & ors. and RSA No.3720 of 2014 titled as Sushil Kumar Tiwari Vs. R.S. Grewal and ors. filed at the instance of defendants who are aggrieved of the findings rendered by both the Courts below, whereby suit for possession of the suit property in their occupation, as tenants, have been decreed.

Mr. Vikas Bahl, learned Senior Advocate assisted by Mr. Narinder Kumar Vadehra, learned counsel appearing on behalf of appellant submits that suit for possession ex facie was not maintainable, for, the defendants were put into possession of the shops as tenants by Smt. Shivdev Kaur d/o Hira Singh. In order to appreciate the aforementioned contention, it would be apt to give brief facts which has resulted into passing of the impugned judgment and decrees of both the Courts below.

The respondent-plaintiff instituted two civil suits against the appellants-defendants claiming possession of shops of single storey as shown in the site plan attached as per the description given in the complaints, on the premise that Dr. Hira Singh Grewal was owner of the residential house as shown in red, yellow and green colour in the plan along with some shops constructed on College Road, bearing Municipal No.B-XX-69(old) 515 (new), College Road, Civil Lines, Ludhiana. Behind the Kothi No.B-XX-69 towards its Southern side, there is agricultural land situated in Mahal Bagat Ludhiana. It has been further pleaded in the suit that Shiv Dev Kaur was

allowed to live in the main kothi and to enjoy the rent in accordance with the terms of the Will dated 16.09.1944, in essence, the right of possession of the property aforementioned was deferred till her death. After the death of Hira Singh, the property owned by him was mutated in the name of Dr. Shiv Dev Singh Grewal father of the plaintiff who died on 14.08.1968 and thereafter in the name of mother of the plaintiff No.1, plaintiff No.1 and Dr. J.S. Grewal the brother of plaintiff No.1 in equal share. The suit further spells out, that Income Tax Officer, District-II-7, Ludhiana attached the said house i.e. B-69, (Old) and adjacent land measuring 3 bigha-19 bigha, 16 biswansi as some tax/wealth tax was due from Dr. Shiv Dev Kaur d/o Hira Singh Grewal. The aforementioned attachment was done on the basis of the recovery certificate bearing No.TRO 105 to 112 forwarded by Income Tax Officer II(7) resulting into passing of an order dated 20.01.1986. The attachment order of the Income Tax Officer was challenged in a Civil Suit bearing No.89 of 17.03.1986. The same was decreed and the matter reached up to this Court and RSA bearing No.2635 of 1996 was filed which was disposed of vide order dated 22.05.1997, wherein, it was held that Income Tax/Wealth Tax due from Shiv Dev Kaur Grewal can be recovered by the Income Tax Department from the rental income derived by or accruing to her from the main kothi and the shops during her lifetime only. Shiv Dev Kaur died on 15.02.1998 and as per the pleadings, her limited right to live in the house and utilisation of the rent, extinguished. It is in these circumstances, the plaintiff sought the possession of the house as well as that of the shops let out by her to the present defendants. It has been further pleaded that Shiv Dev Kaur as per the contents of the Will, ibid had no right

to let out the property & in any case any tenancy created by her, i.e. was not bound to the plaintiffs. The appellant-defendant contested the suit by taking plea, that Dr. Hira Singh was not the owner of the property in dispute. Since, they are tenants, much less, suit was not maintainable as their status is of tenants and possession can only sought by resorting to the provision of East Punjab Urban Rent Restriction Act, 1949 and not in the manner and mode adopted i.e. **"SUIT FOR POSSESSION"**. Though execution of the Will was also denied and it was stated that litigation is between Shiv Dev Kaur and her brother, Dr. Shiv Dev Singh Grewal.

It was further stated that status of the appellant-defendants is of tenant, & will remain as tenant and shall not extinguish on the demise of Dr. Shiv Dev Kaur-landlord. Since, parties were at variance, the learned trial Court framed issue & in order to lead the evidence, the plaintiff stepped into the witness-box as PW1 and tendered the documents as Ex.P1 to Ex.P16, whereas defendants stepped into the witness-box and also examined witness, much less, documentary evidence i.e. original bills Ex.D1 to D10, the orders of the Income Tax Officer dated 17.10.2000 Ex.D11 and 07.10.1997 Ex.D12.

Both the Courts below on the basis of the oral and documentary evidence, decreed the suits & found that Will executed by Hira Singh giving limited right to Shiv Dev Kaur Grewal, has been upheld by Hon'ble Supreme Court and it was held that her limited right did not convert to absolute ownership and on her demise, the property would revert back to Dr. Shiv Dev Singh. The reference to order dated 28.09.2011 passed in Regular Second Appeal bearing No.850 of 2008 was also made wherein

identical situation, the suit for possession against other tenants was filed & this Court while relying upon the pleadings of the parties, much less, oral and documentary evidence, and the fact that as the tenant, therein, had also taken the plea of adverse possession, found that suit for possession was maintainable as Shiv Dev Kaur was only limited owner of the property and tenancy rights created by her during her lifetime came to an end being limited owner. The appeal filed by the appellant was also dismissed and it is in these circumstances, the aforementioned Regular Second Appeal has been filed before this Court.

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Narinder Kumar Vadehra, appearing on behalf of appellant has raised multifold arguments which are enumerated hereinbelow:-

1. That as per the definition of the tenant in 1949 Act, tenant means any person by whom or on whose account rent is payable for a building or rented land and includes a tenants continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, and referred to the definition of 2(i), which reads thus:-

“(i) “tenant” means any person by whom or on whose account rent is payable for a building or rented land and includes a tenants continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for shops has

been farmed out or leased by a municipal, town or notified area committees;”

& submits that as per the ratio decidendi culled out by the Hon'ble Supreme Court in *G. Ponniah Thevar Vs. Nalleyam Perumal Pillai and ors.*, 1977 AIR, Supreme Court 244, the provision of the Act becomes enforceable and the right of the tenant would be protected even after the death of the Estate Holder, in essence, tenancy right created by life Estate holder could be extended beyond his life.

2. As per the judgment of Constitution Bench of Hon'ble Supreme Court in *Smt. Gian Devi Anand Vs. Jeevan Kumar*, reported in AIR 1985 SC 796 on account of death of statutory tenant of the premises, the heirs of the deceased statutory tenant inherit tenancy and business unless, there are contrary provision in the Act.

3. Since, appellants were inducted as tenants by Dr. Shiv Dev Kaur Grewal, even on termination of the tenancy on account of her death, the status of appellant cannot be converted into trespassers, but would be of tenant, in essence, person continues to remain in possession, even after termination of the tenancy and in support of such contention, relies upon judgment of this Court rendered in *Manmohan Nath and another Vs. Smt. Kesra Devi and ors.* 1980 PLR 215. Even if, Dr. Shiv Dev Kaur had given life interest in the property as mentioned in the Will aforementioned, she has been held to be full fledged owner. Life interest in the property would also accrue to right to enjoy the property during her lifetime which includes the right to let out the portion of the property and to seek the eviction of the tenant from rented portion of the property.

4. The respondent-plaintiffs failed to prove any documents on record to show that Dr. Hira Singh was owner of the property.

5. The contents of the Will describes various property and the property in dispute has not been mentioned in the Will, in essence, it has been mentioned as Kothi and land attached to it, in essence, there is no mention of the shops. Be that as it may, once it has been held by Hon'ble Supreme Court that Dr. Shiv Dev Kaur had limited interest as per the terms and conditions of the Will and not as absolute owner, on her demise, the defendants cannot be dispossessed at the instance of the plaintiff by resorting to the remedy of filing the suit for possession.

6. The status of the appellant being tenant has been acknowledged by the Income Tax Authority, as the rent which was being paid to Shiv Dev Kaur, had been paid to the Income Tax Authority vide Ex.D11, Ex.D14 and Ex.D15.

7. The judgment rendered by this Court in RSA No.850 of 2008 decided on 28.09.2011 titled as Kanwal Thapar and ors. Vs. Dr. R.S. Grewal & others, is not applicable to the facts and circumstances of the case as in those cases, the tenant had also to set up a plea of adverse possession and this Court had taken into consideration the ratio decidendi culled out in the judgment cited as *Harbans Lal and others Vs. Devinder Kumar and others 2010(1) RCR (Civil), 626*, which is not applicable to the case as in that case the beneficiary, who had limited interest did not let out premises, but “Her Son” had let out the premises to the tenant. Even otherwise, the tenant, therein, had set up a plea of adverse possession meaning thereby admitted the ownership of Dr. Shiv Dev Singh Grewal. The tenant cannot take up the

plea of adverse possession and rightly so, the case was dismissed. However, the judgment rendered by Hon'ble Supreme Court in G. Ponniah Thevar's case (Supra) was not referred to & as is evident from judgment rendered in RSA No.850 of 2008 then it would be a judgment in personam and not in rem and shall not have binding effect upon the facts and circumstances of the case, much less, on appellant-defendants and thus prays that following substantial question of law arises for determination by this Court:-

1. Whether the defendants continuous to be tenant even after the change of the ownership?
2. Whether the possession of the tenant becomes unlawful the moment there was a change of ownership?

Mr. Puneet Bali, learned Senior Counsel assisted by Mr. Vibhav Jain, Advocate has vehemently controverted the arguments of Mr. Bahl by raising following submissions:-

1. On going through the findings rendered by Hon'ble Supreme Court in its order dated 20.03.2013, it is clear that dispute was between the brother and sister namely Dr. Shiv Dev Singh Grewal and Shiv Dev Kaur Grewal, wherein it has been held that Shiv Dev Kaur had limited interest in the property and the said right would not confer her right of absolute ownership and, therefore, once she had not been held to be owner, she could not let out the premises on rent thus the status of the appellant-defendant is none-else but that of trespassers and appellants cannot take the benefit or protection as available under the 1949 Act i.e. the Act as then was applicable.
2. The findings rendered in RSA No.850 of 2008 decided on 28.09.2011 titled as Kanwal Thapar Supra are binding upon the facts and circumstances

of the present case as it was also an appeal on behalf of similarly situated tenant against whom the suit for possession was filed which was upheld by this Court. In the aforementioned Regular Second Appeal, the following substantial question of law had arisen:-

1. *Whether the tenant inducted by a person with a limited estate ceased to be tenant upon the demise of the limited owner and it was answered against the tenant?*

3. He has also drawn the attention of this Court to a judgment dated 02.07.2004 rendered in Regular Second Appeal No.257 of 1982 titled as Dr. R.S. Grewal Vs. Dr. Shiv Dev Kaur Grewal, upheld by Supreme Court, wherein it has been held that Shiv Dev Kaur had no right of Will, as the Will only gave her limited right and after her death, the suit property was required to be reverted to the legal heirs of the Lt. Shiv Dev Singh Grewal deceased, father of R.S. Grewal & his legal heirs i.e. of Shiv Dev Singh deceased had been held entitled to acquire the ownership in the suit property. Once the Shiv Dev Singh has held to be owner, Dr. Shiv Dev Kaur could not create the tenancy right on her demise and it ceases to exist, therefore, relationship between the plaintiff and the defendants cannot be that of landlord and tenant.

4. As per the contents of the Will, Shiv Dev Kaur Grewal could not alienate or transfer the property and creating the tenancy would also amount to transfer/alienation and in support of his contention, has relied upon following case law:-

i). *MC Thomas Vs. Sree Emoor Bhagavathy Devaswom & ors, 2011(3) KLJ 188*, to contend that lease of immoveable

property for the period of 99 years would also amount to transfer of property, much less, amounts to alienation of immoveable property.

ii). *K. Naina Mohamed (dead) through LRs Vs. A.M. Vasudevan Chettiar (dead) through LRs and others, 2010(7) SCC 603* to contend that where as per the Will, two sisters had been allowed to enjoy the property jointly during her lifetime and after death, male heirs get absolute right in the property. Male heirs of two sisters could alienate their respective share to other co-sharers and the restriction of the alienation of property to strangers mends to ensure that property bequeathed did not bow into the hands of third party.

Since, Dr. Hira Singh had inherited the right to Dr. Shiv Dev Kaur Grewal and on her demise, would revert back to the Lieutenant Colonel Shiv Dev Singh Grewal, since deceased, on the premise that property could not go to the third party and creation of tenancy is thus creating third party right which she was not permitted to do so.

5. He further submits that there is stark difference between the Licence and Lease, and, therefore, the tenancy rights created by Dr. Shiv Dev Kaur would not convert into permanent tenancy rights on her demise. The status of the appellant is of trespasser. In this regard, cited judgments of Hon'ble Supreme Court in *Pradeep Oil Corporation Vs. Municipal Corporation of Delhi and another, 2011(5) SCC 270* and various other judgments deals which are given hereinbelow:-

- i) *Bhura and others Vs. Kashi Ram, 1994 (2) SCC 111.*
- ii) *Harbans Lal and ors. Vs. Devinder Kumar and ors. 2010 (1) RCR (Civil) 626.*
- iii) *Duli Chand Vs. Om Parkash, 2000(2) PLR 775.*
- iv) *M/s Goel Engineer (India) Vs. Haryana State Electricity Board, 2003(4) RCR (Civil) 627.*
- v) *Sohan Singh Vs. Murti Rani and ors, 2008(3) RCR (Civil) 448.*
- vi) *Shivdev Kaur (D) by LRs and ors. Vs. R.S. Grewal, 2013 (4) SCC 636.*
- vii) *Kanwal Thapar (widow) and ors. Vs. Dr. R.S. Grewal and ors., 2015(1) ICC 613.*

6. He has also drawn the attention of this court to the contents of the translated copy of the Will attached with miscellaneous application No.9964-C of 2014 vide Annexure A-2. Same reads thus:-

“This Kothi shall also be the sole ownership of my son Shivdev Singh subject to the above mentioned rights. Through this Will I appoint my aforesaid son Shivdev Singh as my executor but he shall act according to the recitals in this Will and shall arrange for the maintenance and marriage of Bibi Shiv Charan Kaur and after recovering the rent of the concerned portion of the kothi, he shall spend the same in accordance with the above mentioned directions. The expenses for repairs of the kothi and payment of land revenue shall be the liability of Shivdev Kaur till her life time. Hence, this Will has been executed so that it may serve as an authority.

Date the 16th September, 1944.”

and submits that concurrent finding of fact cannot be interfered in the Regular Second Appeal filed under Section 100 of the Code of Civil Procedure until and unless very strong and positive substantial question of

law arises.

7. The order dated 21.02.2013 (Annexure A-8) passed in CR No.143 of 2013, whereby revision against the dismissal of the application filed under Section 10 of CPC seeking stay of the suit on the premise that since both the brother and sisters are litigating vis-a-vis interpretation of the Will, until and unless the matter which was at that time pending before the Hon'ble Supreme Court is not decided. Hon'ble Court stayed the final order of the suit till the decision of the Special Leave Petition by Hon'ble Supreme Court, inasmuch as that the appellants have admitted that they would be bound by the decision of Hon'ble Supreme Court and, therefore, they cannot be permitted to take up the plea contrary to the one taken in the aforementioned petition and thus prays for dismissal of the appeal.

I, have heard learned counsel for the parties and appraised the paper book and as well as case law cited at bar and am of the view that appeal deserves to be allowed for the following reasons:-

The decision rendered in RSA No.850 of 2008 by this Court in case titled as Kanwal Thapar and ors. Vs. Dr. R.S. Grewal & others would not be applicable for the adjudication of the controversy in present Regular Second Appeal, on the premise, that this Court had relied upon the judgment rendered by this Court in Harbans Lal Vs. Davinder Singh (Supra), wherein, the son of beneficiary of the Will who was given limited right had let out the premises on rent, whereas, in the instant case, it was beneficiary herself namely Dr. Shiv Dev Kaur Grewal let out the premises. Even otherwise, the tenant in those proceedings had raised the plea of adverse possession. The tenant cannot take up the plea of adverse possession. Taking up the plea of

adverse possession tantamounts to admitting the ownership of the plaintiff.

The Will does not prescribe the existence of the shops. The property described therein is of a kothi and a land adjacent thereto. For the sake of brevity, the description of the property mentioned in the Will is extracted hereinbelow:-

“There is about 100 Kham Bighas of land in village Gujarwal, out of which, I am the mortgagee of 30 bighas and for the remaining, I am the owner. The income derived therefrom is about Rs.300/- per annum. There are also 3 houses in Village Gujarwal i.e. one Pukhta and two Kham. The site of the Pukhta house is my self purchased and it is got constructed by me. Partially, it is Pukhta and partially it is Kham, I got a house from Wazir Singh Hajam by means of pre-emption. There is no income from these houses. I own a kothi on Iqbal Road opposite to Govt. College in Civil Lines. I have myself purchased its land and I also reside in this Kothi and some outer portion thereof has been given on rent. I have to receive Rs.2/3 thousand approximately from different persons. I have become old. So I execute a Will.”

There is another aspect of the matter. The respondent-plaintiff had failed to prove that Hira Singh was the owner of the property. Be that as it may, once the interpretation of the Will has already attained finality, whereby it has been held that Shiv Dev Kaur Grewal would not acquire the absolute ownership, for, right, as per the contents of the Will, was given to her/during her lifetime and thereafter, the property has been held to revert back to late Colonel R.S. Grewal since deceased & his LRs acquired the full ownership. Ratio decidendi culled out by the Hon'ble Supreme Court in *G.*

Ponniah Thevar's case is squarely applicable to the facts of the case. In the aforementioned judgment, the Hon'ble Supreme Court had an occasion to discuss the provision of Tamil Nadu Cultivating Tenants Protection Act, 1955, wherein definition of the tenant is parametric to the definition in 1949 Act. The definition of the tenant in the aforementioned Act, 1955, reads thus:-

“Section 2 (aa) of the Act lays down:-

"2(aa) 'cultivating tenant' in relation to any land-

(1) means a person who carried on personal cultivation on such land, under a tenancy agreement, express or implied, and

(2) includes--

(i) any such person as is referred to in sub-clause (1) who continues in possession of the land after the determination of the tenancy agreement,

(ii) in the district of Tiruchirapalli, a Naiaeruvaramdhar or a muttuvaramdhar who works on the land under an engagement with the landlord for remuneration by a share in the crop in respect of which the work is done, and

(iii) the heirs of any such person as is referred to in subclause (1) or sub-clause (2) (i) and (ii):

but does not include a mere intermediary or his heirs.

Explanation.---A sub-tenant shall be deemed to be a cultivating tenant of the holding under the landlord if the lessor of such sub-tenant has ceased to be the tenant of such landlord;”

and that of the East Punjab Urban Rent Restriction Act, 1949 reads

thus:-

“(i) “tenant” means any person by whom or on whose account rent is payable for a building or rented land and includes a tenants continuing in possession after the termination of the tenancy in his favour, but does not

include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out or leased by a municipal, town or notified area committees;”

On conjoint reading of the definition of the tenant, it leads to an irresistible conclusion, that status of the tenant on the determination of the tenancy would be of the tenant. Once Shiv Dev Kaur had admittedly created the right of tenancy in favour of appellant and rent received was attached by the Income Tax Authority, proved on record through Ex.D11, Ex.D14 and Ex.D15, the relationship of the appellant and Shiv Dev Kaur was that of landlord and tenant and cannot cease to exist on her demise, thus, the plea of the respondent-plaintiff that the status of the appellant-defendant would cease to is not sustainable and hereby rejected.

The relevant paras of judgment rendered by Hon'ble Supreme Court in *G. Ponniah Thevar's* case rendered vis-a-vis the status of the tenant would reads thus:-

“9. Learned Counsel for the contesting respondent had tried to advance two contentions in support of the view taken by the High Court. Firstly, he submits that the protection given under Section 3(1) was for the landlord of the cultivating tenant. In view of the statutory definition of the term "landlord", we think that the suit itself would fail if the plaintiffs were not landlords. The statutory definition of the term landlord relates not only to the person who created the lease but contemplates and takes in every successive holder who could be entitled to evict a tenant. That person can only be one who has the right, at the time

of filing the suit, to realise rents or evict persons in wrongful occupation. 'There is nothing in the Act itself to show that the protection given to the cultivating tenant, as defined in the Act, was given only against his original lessor and did not extend to subsequent holders of land occupying the capacity of the landlord. Secondly, it was urged that the protection was given only to those persons who were cultivating tenants in 1955 when the Act came into force. The argument has only to be stated to be rejected. There is not a scintilla of indication in the provisions of the Act to support such an impossible interpretation. The provisions of the Act are clearly prospective except for the provisions of Section 4(1) of the Act, showing that even a person who was a cultivating tenant of any land on 1st December, 1953. but is "not in possession thereof at the commencement of the Act" could be treated if he was in possession of the land on 1st December, 1953. Even Section 4(1) of the Act shows that the protection was not meant merely for those who were cultivating tenants in 1955. Provisions of the Act show that they became enforceable as soon as the Act became operative. There is nothing whatsoever in the Act to show that it ceased to be operative at any time or was limited in its operation only as a protection given to persons who were cultivating tenants in 1955. Hence, we are unable to see any reason whatsoever for denying the appellant the clearly intended protection conferred upon cultivating tenants, as defined in the Act, by the provisions of the Act set out above.

10. Our attention has been invited to some cases which relate to the applicability of Section 76(a) of the Transfer of Property Act. It is true that this provision has been applied to tenancies created under various statutory

provisions regulating the rights of tenants to agricultural lands in States all over India. But, we are not concerned here, with a case in which the position of the alleged lessee is struck by Section 76(a) of the Transfer of Property Act. Such alleged lessees are not tenants at all at the time when they are inducted on the land as tenants whatever else they may be. We, therefore, need not even refer to the cases cited before us which relate either to this provision of law or to enactments of other States.

11. Consequently, we allow this appeal and set aside the judgment and decree of the High Court. But, in the circumstances of the case the parties will bear their own costs.”

In judgment, titled *Jagdish Chander Gulati Vs. Kanta Devi*, 1996(36) DRJ 654, a similar proposition arose for adjudication, before Hon'ble Delhi High Court, and it was held that right to enjoy the property will include right to let out the property and also to seek eviction of the tenant. It was also the case where beneficiary had been given limited right as per the contents of the Will and had not acquired the full fledged ownership, and created the tenancy and, therefore, the tenants were held to be protected as per the provision of Rent Control Act, 1958. The relevant portion of findings rendered in the aforementioned judgment, reads thus:-

“One more aspect needs to be mentioned in this connection. Learned counsel for the petitioner tenant submitted that the Will on the basis of which the landlady derives title of the property, only grants a life estate in favour of the landlady regarding the property in suit and, therefore, she is not entitled to extinguish the existing lease in favour of the tenant with respect to the property. She is not a full fledged owner of the property. This argument to

my mind, also totally devoid of any merit. Even a life estate in a property will include the right to enjoy the property during the life time of the legatee. The right to enjoy the property will include the right to let out portions of the property, and also right to evict the tenant from the let out portions of the property.”

There is no force in the plea of Mr. Bali, that, as per the judgment rendered by this Court in respect of dispute between the siblings namely Dr. Shiv Dev Singh Grewal and Shiv Dev Kaur Grewal, it has been held that Dr. Shiv Dev Kaur Grewal could not let out the premises. The word alienation cannot correlate or would mean to creation of tenancy. Definition of alienation vis-a-vis creation of the tenancy is totally polesapart. Relevant portion of the findings rendered by this Court in its order dated 02.07.2004 in RSA No.257 of 1982 titled as Dr. R.S. Grewal Vs. Dr. Shiv Dev Kaur Grewal, reads thus:-

“In view of the dictum of Hon'ble the Supreme Court in Bhura's case (supra) as well as facts of the present case as detailed above. I am of the considered opinion that Dr. Shiv Dev Kaur Grewal respondent had no right to will way or alienate the suit property in any manner whatsoever. The Will dated 28.2.1991 as well as the codicil dated 25.8.1995, allegedly executed by Dr. Shiv Dev Kaur Grewal deceased are illegal and non est in the eyes of law. After the death of Dr. Shiv Dev Kaur Grewal respondent, the suit property is required to be reverted to the legal heirs of Lt. Col. Shiv Dev Singh Grewal deceased, father of Dr. R.S. Grewal appellant. Only the legal heirs of Shiv Dev Singh deceased, son of testator Hira Singh, who are the owners of the suit property are held to have succeeded.

Consequently, both the appeals are allowed and the

legal heirs of Shiv Dev Singh deceased are held entitled to acquire the ownership rights in the suit property. The Civil Misc. applications as well as the cross-objections filed by Dr. Shiv Dev Kaur Grewal respondent are dismissed.”

The aforementioned findings have been upheld by Hon'ble Supreme Court & in the judgment of Hon'ble Supreme Court also, it has never been held that Dr. Shiv Dev Kaur had no right to create tenancy. The alienation cannot be compared vis-a-vis creation of tenancy by a person who had limited right in the property.

In my view, the status of the appellants also were inducted as tenant by Dr. Shiv Dev Kaur Grewal would not cease to exist/extinguish on her demise. The remedy, if any, for the respondent-plaintiff who had acquired the ownership on demise of Shiv Dev Kaur Grewal would be to seek the ejectment as per the prevailing Rent laws and not by suit for possession branding them as trespasser.

Even, Lower Appellate Court while dismissing the appeal gave the findings that there was no dispute that Dr. Shiv Dev Kaur had inducted appellant-defendant as tenant in the suit property but in my view erroneously held that their possession become illegal on her demise, in essence, once it is admitted position of record that appellant-tenant had been inducted as tenant, they continue to remain as tenant, at the best the tenancy determined on demise of Dr. Shiv Dev Kaur Grewal as plaintiff did not attorn/accord them as status of tenant by not accepting the rent, this would not clothe them to the status of trespassers giving alleged cause of action to seek possession by filing the suit for possession by invoking the provision of Section 9 of the Code of Civil Procedure.

Even on going through the contents of the application filed under Section 10 CPC and the order passed thereon by this Court, nowhere it has been held that defendant admitted their status as of trespassers. Rather from the contents of the application, it is discernible that there is categorical admission of the defendants that whosoever become the owner of the disputed property, their status would be always of the tenant.

Keeping in view the aforementioned facts, I am of the view that judgment and decree of both the Courts below are not sustainable in the eyes of law and are hereby set aside.

The questions of law as noticed above are answered in favour of the appellant-defendants and against the respondent-plaintiff.

This order of mine shall not preclude the respondent-plaintiff to seek ejectment of the appellant in case of any of the grounds of ejectment are available as per the prevailing Rent Laws.

Resultantly, both appeals are allowed.

Decree sheet be prepared accordingly.

21.01.2016

pawan

**(AMIT RAWAL)
JUDGE**