

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

**RSA No.6496 of 2014 (O&M)
Date of Decision-11.01.2016**

Hira Lal (Deceased) through his LRs Bhagan Bai and ors

.....Appellants

Versus

Wakf Dera Mahant Purshottam Dass and ors.

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashok Kumar Verma, Advocate for the appellants.

Mr. Rajesh Sethi, Advocate and
Mr. Pridhi Jaswinder Sandhu, Advocate for the
respondents.

RAJ MOHAN SINGH, J.

[1]. Defendants are in second appeal against the concurrent judgments and decrees passed by the Courts below.

[2]. Plaintiff-Wakf Dera Mahant Purshotam Dass Chela Mahant Sehdev Dass filed suit for possession on the ground that Mahant Sehdev Dass Chela Mahant Ramji Dass owner of Wakf Dera in terms of compromise between the parties, leased out the suit land for 99 years vide registered lease deed No.3678 dated 23.09.1977. According to said lease deed, defendants lessee were to pay Rs.10/- annually to the plaintiff as lease amount. Mahant Sehdev Dass died on 21.12.1991 and after his death, Mahant Purshotam Dass became Mahant of said Dera as per custom and tradition of the plaintiff-Dera.

Mehant Purshotam Dass is managing affairs of the Dera in respect of immovable and movable properties. Plaintiff alleged that defendants have violated the condition of lease deed and have made themselves liable for dispossession and cancellation of lease deed. Plaintiff sought possession of the land to be delivered to the plaintiff on the ground that defendants are not paying the lease money regularly against the valid receipt. Defendant No.1 without any written consent of the plaintiff subjected the land to sublet in respect of 8 kanals being 160/2105 share out of the land in favour of defendant No.5 vide registered lease deed No.3333 dated 13.09.2000 on the basis of which mutation No.2803 dated 17.10.2010 has been sanctioned. Plaintiff claimed that the mutation is not binding upon the rights of the plaintiff and plaintiff-Dera is entitled to get possession of the land measuring 8 kanals comprised in Kila No.7 which has been illegally leased out in favour of defendant No.5. Plaintiff also alleged that the suit land was leased out for agricultural purposes but the defendants have illegally sub-letted and transferred the suit property and are changing the nature by construction of houses and colonization and defendants are not paying any rent. Therefore, defendants are liable to be evicted from the suit land by cancelling the lease. The suit came to be filed with this background.

[3]. Defendants contested the suit by taking all customary pleas. Defendants alleged that Mahant Purshotam Dass has no right or authority to file the suit, nor he has any locus standi and cause of action to file the present suit. Plaintiff has not come to the Court with clean hands and has suppressed the material facts. Civil court has no jurisdiction to try the suit. The defendant No.1 admitted that the suit

land was given on lease for 99 years by previous Mahant Sehdev Dass. Defendant No.2 alleged that plaintiff-Dera is the owner of suit land measuring 105 kanals 5 marlas as shown in the written statement and the said land was leased out to defendants No.1 to 3 by registered lease deed dated 23.09.1977 upto 22.09.2076 and defendants No.1 to 3 were put in possession of the land. Defendant No.2 is in possession to the extent of $\frac{2}{3}$ rd share and defendant No.1 is in possession to the extent of $\frac{1}{3}$ rd share. Defendant No.1 had already transferred lease rights in favour of defendant No.5 and his sons. Lease deed dated 23.09.1977 is claimed to be legal and valid. Defendant No.5 alleged that Ramesh Kumar, Suresh Kumar, Vijay Kumar sons of Hira Lal have not been impleaded as necessary parties and also admitted factum of lease deed executed in favour of defendants No.1 to 3 and defendant No.1 being lessee to the extent of $\frac{1}{3}$ rd share has transferred lease rights qua 8 kanals 10 marlas in favour of Ramesh Kumar, Suresh Kumar, Vijay Kumar sons of defendant No.5 from 05.12.2002 to 22.09.2076 for a lease amount of Rs.40,000/- through registered lease deed No.4780 dated 05.12.2002 and the possession of the land was handed over to aforesaid Ramesh Kumar etc. Defendants alleged that they have not violated the terms and conditions of the lease deed. Defendant No.1 has every right to transfer the lease rights in respect of 8 kanals of land in favour of Ramesh Kumar etc. Defence of defendant No.1 was struck off on 07.09.2007 as he failed to file amended written statement. Replication was not filed.

[4]. Parties went to trial on following issues:-

“1. Whether the plaintiff is entitled to decree for possession of the land measuring 105 kanal 5 marlas, detailed in the heading of the plaint as prayed for? OPP

2. Whether the plaintiff is entitled to decree for permanent injunction as consequential relief as prayed for? OPP

3. Whether the suit has been filed through authorized competent person?OPD

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Whether the plaintiff has no cause of action and locus standi to file and maintain the present suit? OPD

6. Whether the suit has not been valued properly for the purpose of court fee and jurisdiction? OPD

7. Relief.”

[5]. Parties led their respective evidence to prove their case. Trial Court decreed the suit vide judgment and decree dated 29.04.2011. Only heirs of Hira Lal-defendant No.5 filed appeal before the Lower Appellate Court which was dismissed vide judgment and decree dated 02.09.2014 passed by Additional District Judge, Sirsa. That is why present appeal came to be filed.

[6]. I have heard learned counsel for the parties and perused the record.

[7]. Appellants have framed following substantial questions of law in the grounds of appeal:-

“(a) Whether the lease for a period of 99 years would get terminated with the afflux of time in the absence of any express term or condition for termination of lease in the lease deed?

(b) Whether sub-lease created during subsistence of original lease would get automatically termination along with the original lease?

(c) Whether a Notice under Section 106 read with Section 111 of the Transfer of Property Act was mandatory for termination of lease?

(d) Whether provisions of Sections 106 and 111 of the Transfer of Property Act are applicable to the case in hand?

(e) Whether the suit was liable to be dismissed for non-joinder of necessary parties?

(f) Whether the suit was liable to be dismissed as against appellants No.3 to 5 on the ground that the Regd. Lease-Deed No.4780 dated 05.12.2002 created in their favour was never challenged in the suit by the contesting respondent?

(g) Whether it is incumbent upon the Ld. First Appellate Court to discussed the relevant evidence and record findings on all the contentious issues independently of the view taken by the Ld. Trial Court?

(h) Whether the findings of the two courts below made on the basis of random observations and without proper appreciation of the material evidence on record do not enjoy the sanctity of concurrent findings which can be treated as immune to challenge and interference in the second appeal?

[8]. Admittedly, plaintiff-Dera was the owner in possession of 105 kanals 5 marlas of land as detailed in the plaint. Concededly the said land was leased out by the then Mehant Sehdev Dass vide registered lease No.3678 dated 23.09.1977 for 99 years. The said land was leased out to defendants on payment of Rs.10/- as annual lease

amount but the defendants did not pay the same and have violated the terms and conditions of the lease deed. On the other hand, defendants have denied that the land was leased out on the basis of any lease money of Rs.10/- per annum. Perusal of lease deed dated 23.09.1977 Ex.PW5/A reveals that 105 kanals 5 marlas of land comprised in sq. No.61 and 62 out of 120 kanals 5 marlas was given to defendants namely Ram Chand, Bhagwan Dass and Des Raj sons of Sabu Ram in equal share for Rs.990/- for a period of 99 years from 23.09.1977 to 20.09.2076 and the said payment was fixed as Rs.10/- per annum against proper receipt.

[9]. Defendants could not demonstrate that no such condition was imposed upon them, rather, Des Raj DW-3 has admitted in his cross examination that they did not pay any rent of the disputed land, nor he could produce any receipt of payment of said annual amount of Rs.10/-. Defendant No.1 Bhagwan Dass had created sub lease of the land measuring 8 kanals 10 marlas out of his share to defendant No.5 Hira Lal vide registered lease No.3333 dated 13.09.2000 for a lease money of Rs.40,000/- for the period from 13.09.2000 to 20.09.2076. Perusal of this lease deed dated 13.09.2010 Ex.PW3/A and mutation Ex.PW4/A evidently proved that defendant No.1 had sub-letted the land to defendant No.5. Hira Lal DW1 has also admitted this fact in his affidavit Ex.DW1/A that defendant No.1 being lessee of 1/3rd share transferred the land measuring 8 kanals 10 marlas being 170/2105 share in favour of Ramesh Kumar, Suresh Kumar, Vijay Kumar who are his sons vide registered lease deed No.4780 dated 05.12.2002 and defendant No.5 and his sons are in possession of land measuring 8 kanals 10 marlas on the spot. Defendant No.1 failed to appear in the

witness box to deny the fact that land was not given by him to defendant No.5 on lease. Defence of defendant No.1 was struck off on 07.09.2007. Learned counsel for defendant No.1 argued that the land was not given to defendant No.1 by the then Mahant Sehdev Dass on lease, rather it was a compromise between the parties because whole of the land of plaintiff i.e. 120 kanals 5 marlas was in possession of defendants No.1 to 3 and out of which they had returned about 15 kanals to Dera in the said compromise. Even as per this contention, it cannot be observed in the absence of any documentary evidence or compromise that any compromise was effected between the plaintiff and defendants in respect of land of the plaintiff. In the lease deed dated 23.09.1977 Ex.PW5/A undoubtedly, it has been recited that plaintiff-Dera was owner of 120 kanals 5 marlas and defendants namely Ram Chand, Bhagwan Dass and Des Raj were in cultivating possession of the said land as '*Gair maurusian*'. A compromise was effected between the parties in order to avoid litigation and all the rights of defendants as tenants over the said land were dissolved and land comprised in sq. No.61 and 62 as shown in the lease deed was given to them on lease for 99 years on payment of Rs.10/- per annum. Defendants have not placed on record any receipt regarding payment of said amount.

[10]. Perusal of Ex.PW6/B sale deed dated 06.01.1997 in respect of return of land i.e. 15 kanals to the plaintiff on receipt of compensation of Rs.2000/- proved the aforesaid fact and this has been admitted by the learned counsel for the defendants during course of arguments. The land which remained on lease came out to be 105 kanals 5 marlas. Defendant No.1 Bhagwan Dass had sub-letted 8

kanals 10 marlas of his share to defendant No.5 without any consent of the plaintiff. Under the lease deed, no right was given to the lessee to create further lease. Plaintiff never ratified the conduct of lessee nor accepted the rent from sub-lessee.

[11]. During pendency of first appeal, Des Raj and Bhagwan Dass respondents No.2 and 3 therein made statements to the effect that they have no concern with the suit property and they have denied the possession as per decision of the trial Court dated 29.11.2011. They admitted that no consent of co-owners was obtained while sub-letting the land. LRs of respondent No.4 Ram Chand namely Jai Chand, Lekh Raj, Ramesh Kumar, Channo Bai and respondent No.5 Jammu Ram were already proceeded against ex parte before the lower Appellate Court. The point for consideration between LRs of Hira Lal and the plaintiff is that whether sub lease created by defendant No.1 out of his share to the extent of 8 kanals 10 marlas in favour of defendant No.5 for a lease amount of Rs.40,000/- vide registered lease No.4780 dated 05.12.2002 can be protected or not? Admittedly land measuring 105 kanals 5 marlas was leased out by the plaintiff-Wakf Dera to defendants No.1 to 3 for a period of 99 years for a lease amount of Rs.990 w.e.f 23.09.1977 to 22.09.2076. It was recited in the lease deed that defendants would pay lease money of Rs.10/- per year to the plaintiff against proper receipt. There would be no change in the amount of rent in terms of the lease deed. Section 111 of the Transfer of Property Act deals with determination of lease. According to provision of Section 111 of Transfer of Property Act, a lease of immovable property determines by certain modes i.e. by implied surrender and by forfeiture i.e in case the lessee breaks an express

condition which provides that, on breach thereof, the lessor may re-enter or in case lessee renounces his character as such by setting up a title in a third person or by claiming title in himself. In view of Section 111(g) of Transfer of Property Act for determination of lease by forfeiture, certain conditions must be fulfilled i.e there must be an express condition in the lease deed which provides that in case of breach of said condition, the lessor may re-enter and the lessee breaks such express condition, the lessor issues notice in writing to the lessee of his intention to determine the lease.

[12]. Learned counsel for the appellants also relies upon Section 106 of Transfer of Property Act to contend that notice in terms of Section 106 of Transfer of Property Act has been given to the lessee for determination of lease and the lease cannot be determined in the absence of such clause in the lease deed. On the strength of Section 91 and 92 of Evidence Act, learned counsel sought to argue that the lessor has not given any notice of determination of lease nor there is any clause of forfeiture in the lease deed, therefore for violation of any condition of lease by the defendants no such inference can be drawn on record. In nutshell, the argument is that a lease cannot be determined unless and until there is a forfeiture clause.

[13]. In view of facts on record, it has to be seen whether admission made by defendants No.2 and 3 in favour of plaintiff binds defendants No.1 and 4 or not? The admission made by a party may operate as an estoppel but not as a conclusive proof. Such an admission may be relieved and binding upon other party if they have community in interest i.e. common interest and was made prior to the

controversy. Any such admission made during the controversy may not be binding on the other party. Since defendants No.2 and 3 have made their statements through their Advocate and have denied their possession, such admission does not bind defendants No.1 and 4. The question arises for consideration is whether provisions of Transfer of Property Act are applicable to agriculture lease or not? The contention of learned counsel for the appellants based **on Raja Mohammad Amir Ahlmad Khan Vs. Municipal Board of Sitapur and another, AIR 1965 Supreme Court, 1923 (V 52 C 329)** and **Hotel Gudur represented by M.N. Narayanana Vs. K.Radha Krishnaiah and others, AIR 1989, Supreme Court, 1510** are required to be tested on the threshold of applicability of Section 117 of Transfer of Property Act. In **Raja Mohammad Amir Ahlmad Khan** (supra) the Apex Court held that the principles embodied in Section 111(g) are equally applicable to tenancies to which the Transfer of Property Act does not apply, because they are in consonance with justice, equity and good conscience.

[14]. Apparently in view of Section 117 of Transfer of Property Act none of the provisions of this Chapter apply to lease for agricultural purposes except insofar as State Government may by notification published in the Official Gazette declare all or any of such provisions to be so applicable. Such notification shall not take effect until the expiry of six months from the date of its publication. No such notification has come on record from either side. Aforesaid judgments relate to non-agriculture land. It is a settled principle of law that the Courts cannot add or subtract anything in the expressed provisions of the statute in the absence of any ambiguity. As such, the Court has to interpret the

law or provision as it is unless and until the ambiguity in the provision requires the Court to interpret the law or the provision in such a way to advance real import statute so as to prevent failure of justice and eschew that any such ambiguity may not defeat the purpose of the statute. Court may apply golden rule of interpretation. Section 117 of Transfer of Property Act envisages that none of the provision of this chapter apply to the agricultural purposes except in the case of notification by the competent Government. Since no such notification has come forth on record, therefore, in view of mandate of Constitution of India in terms of Article 141, the law declared by the statute shall be binding upon the Courts. Since no notification of the Government in the context of applicability of Transfer of Property Act has come on record, therefore, in the absence of such notification, Section 117 of Transfer of Property Act would not apply to the lease of agricultural land which are exempted from the provisions of the Act. Therefore, neither the provisions of Section 106 nor of Section 111 of Transfer of Property Act are applicable to the instant case, even otherwise only equitable principles of the provisions are applicable. Above all, subsequent lessee has not taken the plea that he is a lessee in his own right and the plaintiff and other defendants have included so as to ousting.

[15]. The arguments raised by the learned counsel for the appellants on the basis of **Yashpal Lala Shiv Narain Vs. Allatala Tala Malik Waqf Ajakhan Mus, 2006(2) RCR (Civil) 712, M/s Amar Promoters, Bangalore and another Vs. J.S.A Gajendra Reddy and others, 2005(3) RCR (Civil) 776, Braham Raj Singh Vs. Smt. Braham Raj Devi and others, 1982 AIR (H.P.) 57, Dharma Vs. Smt. Harbai, 1976 PLJ 617, Ram Sarup Vs. Commissioner, Ambala**

Division, 1991 PLJ 489 and **Kusum Enterprises and others Vs. Vimal Kochhar and another, 2014(3) CivCC 23** have no universal application on the facts of the present case. In the instant case, the admission of Bhagwan Dass is claimed to be not binding upon the appellants. The aforesaid contention of learned counsel for the appellants does not distract the Court from noticing the fact that since there is no notification produced on record to make the provisions of Section 106 and 111 of Transfer of Property Act applicable, therefore, in terms of Section 117 of Transfer of Property Act the case does not fall under the extraction created therein in the absence of any such notification produced on record. The principles initiated in **Raja Mohammad Amir Ahlmad Khan Vs. Municipal Board of Sitapur and another** (supra) and **Hotel Gudur represented by M.N. Narayanana Vs. K.Radha Krishnaiah and others** (supra) are not applicable as question of applicability of Section 111 and its Sub-Clause does not arise at all. The case remains simple violation of condition of lease deed in respect of agriculture land, therefore, there cannot be any ratification of conduct of lessee in the absence of acceptance of land by the plaintiff from sub lessee. Moreover, in lease deed, no right was given to the lessee to create sub lease.

[16]. In view of overall assessment of facts and circumstances of the case, this Court is of the considered view that no indulgence can be given to the appellants on the basis of questions as formulated in the grounds of appeal. Questions No.(a to d) are directly answered by the aforesaid analogy in the context of no applicability of the provision in terms of Section 106 and 111 of Transfer of Property Act for want of notification on record. In terms of Section 117 of Transfer of Property

Act, question No.(e) does not arise at all because necessary parties to the lis were before the Court. Moreover, issues No.3 to 6 were not pressed by the defendants before the trial Court. Even no issue was claimed in respect of suit being bad on account of non-joinder of necessary parties. Once there was no issue, nor any attack has been made in the grounds of appeal before the lower Appellate Court, no such question can be treated to be substantial question of law at this stage. Question No.(f) does not arise inasmuch as that the sub-lessee have no independent right to retain the land, once there was no ratification of conduct of lessee, nor the land from the sub-lessee was ever accepted by the plaintiff. Since the provisions of Transfer of Property Act have no application, therefore, this question has to be answered in negative. Question No.(g) does not arise inasmuch as that the judgment and decree passed by the Appellate Court is based on proper appreciation of facts and evidence on record. Question No.(h) is a question of fact and both the Courts below have decided the suit on proper appreciation of evidence. The judgments and decrees passed by the Courts below cannot be held to be the result of misreading of evidence and having suffered with any perversity.

[17]. Having considered the arguments, this Court does not find any substance in this appeal. Accordingly this appeal is dismissed.

11.01.2016
Prince

(RAJ MOHAN SINGH)
JUDGE