

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

RSA No.5933 of 2016 (O&M).
Decided on:-March 20, 2017.

Dhariwal & Company and another

.....Appellants.

Versus

Karam Singh (died) through LR's and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. S.P. Soi, Advocate
for the appellants.

HARI PAL VERMA, J.

The appellant-defendant, namely, Dhariwal & Company, Brick Kiln, Batala Road, village Baba Bakala, Tehsil Baba Bakala, District Amritsar has filed the present regular second appeal through its partner Sarabjit Singh Makkar against the judgment and decree dated 05.08.2016 passed by learned Additional District Judge, Amritsar whereby its appeal against the judgment and decree dated 01.03.2013 passed by learned Additional Civil Judge (Senior Division), Baba Bakala, was dismissed.

The respondents-plaintiffs have filed a suit for possession of land measuring 14 Kanals 00 Marlas bearing Khasra Nos.68//15 (7-11) and 68//6/2 (6-9), Khewat Khatoni No.8/17 as per Jamabandi for the year 2002-03 situated in village Baba Bakala, Tehsil Baba Bakala, District Amritsar after removing scrap, except hearth and chimney of the brick kiln. Claim of

mesne profits on account of use and occupation of the land and brick kiln after expiry of lease period from 30.6.2008 till delivery of possession has also been made.

Briefly stated, Fauja Singh, Karam Singh, Jaswant Singh and Kashmir Singh were owners of the suit land. Fauja Singh has died and after his death, plaintiffs No.2 to 5, namely, Amrik Singh, Paramjit Singh, Sharanjit Singh and Harjit Kaur and defendants No.7 to 11, namely, Sukhjinder Singh, Kulwinder Kaur, Bholi, Ranjit Kaur and Jeeto are his legal heirs. The defendants No.1 to 5 were interested to install a brick kiln in the suit land. For this, the parties entered into an agreement vide registered lease deed dated 17.05.1993. The lease was for a period of 15 years i.e. from 01.07.1993 to 30.06.2008. For the first 5 years, the lease amount was fixed as Rs.18,000/- per acre, per annum. For the second 5 years period, the lease amount was fixed as Rs.20,000/- per acre, per annum. However, for the remaining 5 years, lease money was agreed to be paid @ Rs.21,000/- per acre, per annum. The defendants No.1 to 5 had agreed to hand over the possession of the suit land to the land-owners after the expiry of lease period of 15 years. The defendants No.1 to 5 also agreed that they will remove all the scrap material from the premises except hearth and chimney of the brick kiln. The original lease deed is in possession of the defendants No.1 to 5. The defendants No.2 to 5 have further inducted defendant No.6 as sub-lessee in the brick kiln. In this manner, the defendants No.1 to 6 are running their business in the suit land. The lease period has expired on 30.6.2008 and after this date i.e. w.e.f. 01.07.2008, the defendants No.1 to 6 are in illegal and

unauthorized possession of the suit land. The defendants were bound to hand over the possession of the suit land to the plaintiffs and defendants No.7 to 11 on 01.07.2008 after removing the scrap material from the same. Since they have failed to act as per their commitment, the plaintiffs are entitled to recover charges for use and occupation of the suit land from the defendants No.1 to 6. Rather, these defendants are earning handsome profits by running the brick kiln. Since the defendants No.1 to 6 have not handed over the possession of the suit land on agreed terms, the suit was filed.

Written statement was filed by defendants No.1 and 6 wherein they took preliminary objections regarding non-maintainability of the suit, the plaintiffs have not come to the Court with clean hands and the defendants are in lawful and peaceful possession of the property, which is a brick kiln. The defendants have made huge financial investments to establish the brick kiln business. Vide agreement/receipts executed by plaintiff No.1 Karam Singh and plaintiff No.4 Sharanjit Singh on behalf of Fauja Singh, the lease has been extended from 01.07.2008 for a period of 5 years. But this fact has intentionally been concealed by the plaintiffs. Preliminary objection regarding estoppel was also raised. It was submitted that the plaintiff No.1 for self as general attorney of Jaswant Singh, Kashmir Singh and Jasbir Singh sons of Teja Singh son of Gujjar Singh has received a sum of Rs.16,931.25 Ps. from defendants No.1 and 6 on account of the lease money, in respect of land measuring 6 Kanals 9 Marlas comprised in Khasra No.68//6/2(6-9), 15(7-11) for the period from 01.07.2007 to 30.06.2008 vide agreement/receipt dated 29.01.2008 and extended the lease period for a term

of 5 years w.e.f. 01.07.2008 by enhancing the lease money to Rs.32,000/- per acre, per annum. Similarly, defendant No.4 representing Fauja Singh has received a sum of Rs.19,818.75 Ps. in respect of land measuring 7 Kanals 11 Marlas comprised in Khasra No.68//6/2(6-9) and 15(7-11) situated at Baba Bakala, Tehsil Baba Bakala, from the defendants No.1 and 6 for the period from 01.07.2007 to 30.06.2008 vide receipt/agreement and extended the lease period for next 5 five years w.e.f. 01.07.2008 on payment of lease money of Rs.32,000/- per acre, per annum. The defendants No.1 and 6 have repeatedly approached the plaintiffs for payment of lease money for the period from 01.7.2008 to 30.06.2009, but the plaintiffs are avoiding to receive the lease money and pressurizing them for exorbitant enhancement of the lease money. The defendants No.1 and 6 are in lawful and peaceful possession of the suit property.

On merits, it has been denied that the suit has been filed for the benefit of all the legal heirs of Fauja Singh and other co-owners. The defendant No.1 through its partners had taken the suit land on lease from the plaintiffs and other co-owners vide lease deed dated 17.05.1993 for a period of 15 years. Thereafter, a brick kiln was installed in the suit land after obtaining licence from the District Food Supplies Officer, Amritsar. Since then the defendants No.1 and 6 have been running their business in the suit land. The firm was reconstituted and in the year 2003, Jagir Kaur wife of Joginder Singh, Narinder Pal Singh son of Gurdial Singh, Baljit Singh son of Gurdial Singh, Lakhwinder Singh son of Shankar Singh and Gurdial Singh son of Harnam Singh were the partners of the defendant No.1, who sold the

defendant No.1-firm in running condition with all assets and lease hold rights etc. to defendant No.6 vide agreement dated 21.04.2003. The defendant No.6 took over the defendant No.1-firm as sole proprietor and got the license transferred in his name, as proprietor of defendant No.1-firm. Since then, the defendant No.6 has been running the business of brick kiln in the suit land. He has been regularly paying the lease money to the plaintiffs against receipt issued by plaintiffs. It has been denied that the defendants No.2 to 5 have inducted the defendant No.6 as sub-lessee. The defendants No.2 to 5 have no right, title or interest in defendant No.1-firm and its business since 21.04.2003. The plaintiffs have already accepted the defendant No.6 as proprietor of the defendant No.1-firm and have been receiving the lease money from defendants No.1 and 6 since 21.04.2003. The fact that the lease period has expired on 30.06.2008, has also been denied. However, it has been admitted that the plaintiffs and defendants No.7 to 11 are the co-owners of the suit property. It has also been pleaded that there are other co-owners as well, who have not been joined in the present suit.

The defendants No.2 to 4 have also filed their written statement wherein preliminary objections regarding non-maintainability of the suit, concealment of material facts, suit not properly valued for the purpose of court fee and jurisdiction, cause of action and locus standi have been raised. It has further been pleaded that the plaintiffs are estopped from filing the suit by their own act and conduct. The suit is liable to be dismissed as the plaintiffs have made a statement in the Court of Shri Hemant Gopal,

Additional District Judge, Amritsar on 03.10.2009. A compromise has been effected between the defendants No.1 and 6 and the plaintiffs wherein it was admitted by the plaintiffs that they will not disturb the possession of the defendant No.1 and 6 and will not interfere in the business of brick kiln except in due course of law. The defendant No.6 Sarabjit Singh Makkar also made a statement in the Court that he has compromised the matter with the plaintiffs in respect of brick kiln and he agreed to enhance the lease money to Rs.50,000/- per acre w.e.f. 01.07.2008 onwards. The defendant No.6 has further undertaken to enhance the lease money @ 15% after every 3 years i.e. from 01.07.2013 subject to the withdrawal of the appeal and suit by the plaintiffs. The plaintiffs have also accepted the compromise and have withdrawn their appeal by giving an undertaking to withdraw the suit pending before the lower Court. However, the plaintiffs have not withdrawn the suit and have committed contempt of Court. As per the terms of compromise, the defendant No.6 has deposited a sum of Rs.87,500/- in the Court on 22.03.2010.

On merits, it has been admitted that Fauja Singh etc. were the owners of the suit land. However, it has been denied that the suit has been filed for benefit of all the legal heirs of Fauja Singh and other co-sharers. The claim of defendants No.1 and 6 regarding possession of the suit property has also been admitted and it has been pleaded that the defendants No.2 to 4 have no right, title or interest in the suit property, rather, they have wrongly been impleaded as parties in the suit. The plaintiffs were receiving the lease money from the defendant No.6 and executing the receipts in his favour by

admitting the defendant No.6 to be their lessee. The defendant No.1-firm through its partners had taken the suit land on lease from the plaintiffs and others vide lease deed dated 17.05.1993 and the partners of the defendant No.1-firm sold the firm to defendant No.6 vide agreement dated 21.04.2003. Thus, the defendant No.6 is the sole proprietor of defendant No.1-firm, wherein he has been running the business of brick kiln.

On the basis of respective pleadings of the parties, the trial Court framed the following issues:

1. Whether the plaintiffs are entitled for the possession of the land measuring 14 Kanals, as detailed in the head note of the plaint? OPP
2. Whether the plaintiffs are entitled to mesne profits w.e.f. 30.06.2008? OPP
3. Whether the plaintiffs are entitled for permanent injunction as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff has got no locus standi to file the present suit? OPD
6. Whether the suit of the plaintiff is hit with the Section 106 of the Transfer of Property Act? OPD
7. Whether the plaintiff has concealed the material facts from the Court at the time of filing the present suit? OPD
8. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD
9. Relief.

The trial Court, vide judgment and decree dated 01.03.2013, partly decreed the suit of the plaintiffs to the extent that the plaintiffs are

entitled for the possession of the suit land measuring 14 Kanals 00 Marlas bearing Khasra Nos.68//15 (7-11) and 68//6/2 (6-9), Khewat Khatoni No.8/17 as per Jamabandi for the year 2002-03. The defendants No.1 and 6 were directed to hand over the possession of the suit land after removing scrap, except hearth and chimney of the brick kiln to the plaintiffs within a period of three months from the date of decree. While decreeing the suit, the trial Court in para No.19 of the judgment, has observed as under:

*“19. Thus, from the above discussed oral and documentary evidence, it transpires that original lease deed or pattanama, was executed between the plaintiffs and Jagir Kaur and others, but there was no lease agreement between the plaintiffs and defendant No.6. Rather, defendant No.6, was sub tenant. Thus, once the term of lease has expired by the efflux of time, in the year 2008, sub lease in favour of defendant No.6, stood automatically, revoked. From the receipts Ex.D1 to Ex.D3, it is further established on record that plaintiffs have been accepting the lease money from defendant No.1 M/s Dhariwal & Company, through its proprietor, on various occasions. It is further evident that during the pendency of the suit, defendant No.6 has deposited lease amount, upto 31.12.2012, in this Court. Plaintiff Karam Singh and others, have accepted the said amount, on account of use and occupation charges from the defendant. In case law titled as **Sarup Singh Versus S. Jagdish 2006(2) Apex Court Judgments 20(SC)**, it has been held that receipt of rent issued by landlord, after the termination of tenancy, can be taken, as charges towards use and occupation, because after all, a tenant is bound to pay charges, till he vacates the tenanted premises. It was argued on behalf of defendant, that since plaintiff has accepted the rent after termination of the tenancy, therefore, a fresh*

tenancy came into existence. It was contended that enhanced rent was paid to the plaintiff, as per compromise between the parties. The abovesaid contention was strenuously denied by ld. counsel for the plaintiff, who argued that his client never accepted the enhanced rent and in fact, amount was accepted by him, as use and occupation charges. Since, in the instant case, plaintiff has also prayed for mesne profits for the use and occupation of the suit property, by the defendant, after expiry of lease period, in view of above cited legal proposition and facts and circumstances of the case, this Court is of the firm view that ends of justice would meet, if the lease amount/rent deposited by defendant No.6 and received by plaintiffs, are taken, as charges towards use and occupation of the suit land.”

Aggrieved against the judgment and decree dated 01.03.2013 passed by the trial Court, the appellants-defendants No.1 and 6 filed an appeal. The said appeal was also dismissed by learned lower appellate Court vide judgment and decree dated 05.08.2016 holding that the respondents-plaintiffs have received the lease amount from 01.07.2007 to 30.06.2008, wherein even the receipt Ex.D1 has duly been referred. The lower appellate Court has also held that the findings of the trial Court are correct.

Still aggrieved, the appellants-defendants No.1 and 6 have preferred the present regular second appeal.

Following substantial questions of law have been raised by the appellants-defendants No.1 and 6:

- i. Whether the judgments and decrees passed by the learned Courts below suffer from perversity inasmuch as once the matter stood compromised and the plaintiffs undertook to withdraw the suit, the suit was no longer maintainable?

- ii. Whether the plaintiffs having accepted the enhanced lease money in terms of the compromise dated 03.10.2009, could have still continued with the suit?
- iii. Whether the compromise dated 03.10.2009 which forms part of the order dated 03.10.2009 passed by the learned Additional District Judge, Amritsar, was to be complied with in whole and still further, compliance of some part thereof would amount to the acquiescence of the plaintiffs?
- iv. Whether once the matter stood compromised, the suit being no longer maintainable, the plaintiffs were required to issue notice under Section 106 of the Transfer of Property Act?
- v. Whether the learned Courts below could have passed a decree in respect of the mesne profits, especially when there was no recital in the compromise dated 03.10.2009 in this regard?

Learned counsel for the appellants-defendants No.1 and 6 has argued that the impugned judgments and decrees passed by the Courts below are against the facts, evidence and law. The respondents-plaintiffs have filed a suit for possession in respect of the land in question on the ground that the tenancy has come to an end with the efflux of time. Along with the suit, the respondents-plaintiffs have also filed an application under Order 39 Rules 1 and 2 CPC, but the said application was dismissed by learned trial Court vide order dated 02.01.2009. Aggrieved against the said order, the respondents-plaintiffs have filed an appeal before learned Additional District Judge, Amritsar and during pendency of the said appeal, a compromise was effected between the parties. Statements of the parties were also recorded. The said appeal was dismissed as withdrawn as compromised.

He has further argued that the Courts below have not taken into consideration the compromise effected between the parties during the

proceedings of the present case. Even no notice as required under Section 106 of the Transfer of Property Act, 1882 (for short, the T.P. Act) has been served to the appellants-defendants. Therefore, the appellants-defendants cannot be directed to hand over the possession of the property in dispute to the respondents-plaintiffs. Since the matter was compromised between the parties, the trial Court should have referred the matter for conciliation under Section 89 CPC.

I have heard learned counsel for the appellants-defendants No.1 and 6.

There is no dispute that the application of the respondents-plaintiffs under Order 39 Rules 1 and 2 CPC has been dismissed by the trial Court vide order dated 02.01.2009, against which they have filed an appeal. However, during the pendency of said appeal, the appellant-defendant No.6 has suffered a statement on 03.10.2009 that he agreed to enhance the lease money to Rs.50,000/- per acre w.e.f. 01.07.2008 onwards. He has further undertaken to enhance the lease money by 15% after every 3 years w.e.f. 01.07.2013 subject to withdrawal of the appeal and suit by the plaintiffs as per compromise. It is on this basis, the appeal filed against the order dated 02.01.2009 was dismissed as withdrawn vide order dated 03.10.2009 passed by learned Additional District Judge, Amritsar (Ex.D6).

It is also not disputed that the respondents-plaintiffs undertook to withdraw the suit, but after the aforesaid statement dated 03.10.2009, the respondents-plaintiffs led their evidence and pursued their case vigorously and the appellants-defendants never agitated this issue before the trial Court

and even have gone to the extent of leading evidence and advancing arguments. The appellants had the remedy available under law, but they opted not to avail such remedy. Once it is established that the lease period is over and suit has not been withdrawn, rather, the parties have led their respective evidence and have contested the suit vigorously, it led to conclusion that they wanted to get the suit decided on merits. It is on the basis of evidence available on record on behalf of both the parties and after hearing their respective arguments, the suit has been decided by the trial Court.

The appellants-defendants were lessee in view of lease deed dated 17.05.1993 for a period of 15 years i.e. from 01.07.1993 to 30.06.2008. The appellants-defendants had agreed that they will hand over the possession of the suit property after expiry of lease period and will remove all the scrap material from the premises. The plea that there was a compromise between the parties, it has rightly been dealt with by the Courts below wherein it was established that the plaintiffs did not withdraw the suit and, rather, the parties have seriously contested the suit by leading evidence and arguments. The appellants-defendants have remedy available under law in case the respondents-plaintiffs have failed to honour the statement made in the Court of learned Additional District Judge, Amritsar on 03.10.2009. But no such application was ever moved by the appellants-defendants that the respondents-plaintiffs have not complied with their statement suffered by them in the Court. Even otherwise, the matter was compromised between the parties only with regard to an appeal filed against the order of dismissal of

application under Order 39 Rules 1 and 2 CPC. Therefore, this fact is sufficient to show that the respondents-plaintiffs had no intention to allow the appellants-defendants to continue with the tenancy over the suit land. Unless the lease-deed for a fresh period is duly incorporated in terms of lease agreement dated 17.05.1993, the status of the appellants-defendants would remain as a tenant only, from month to month basis, as there was a tenancy for a specific period of 15 years i.e. from 01.07.1993 to 30.06.2008 vide lease deed dated 17.05.1993 and the tenant would have protection, for the leased premises, or if there is no registered lease deed for the leased premises, then the tenancy will be on a month to month basis. Even vide receipts Ex.D2 and Ex.D3, the term of lease cannot be extended for 5 years as these receipts are unregistered documents.

So far as the plea of learned counsel for the appellants-defendants that no notice as required under Section 106 of the T.P. Act was given to the appellants-defendants, while terminating the lease, the same has rightly been dealt with by the Courts below. Even the filing the suit itself is a notice under Section 106 of the T.P. Act. If there is no registered lease deed for the lease period, the tenancy would be on month to month basis. The lease in excess of 12 months requires compulsory registration and when the lease deed is not registered, the same cannot be looked into evidence.

Learned counsel for the appellants-defendants has placed reliance upon *Shyam Lal Versus Deepa Dass Chela Ram Chela Garib Dass 2016(3) RCR (Civil) 812* to contend that a tenant for agricultural land cannot be evicted merely on expiry of fixed lease period. However, the referred

judgment has no applicability in the facts and circumstances of this case, as in that case, the tenancy of agricultural land has been dealt with under the Punjab Security of Land Tenure Act, 1953.

There is a concurrent finding of facts recorded by the Courts below and no ground is made out to interfere with the same. Since the controversy involved in the case has duly been considered by both the Courts below, no substantial question of law arises in the instant regular second appeal.

Resultantly, the impugned judgments and decrees passed by both the Courts below are affirmed and the present regular second appeal is dismissed.

March 20, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No