

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.3795 of 2018 (O&M)
Date of Order:10.07.2018

Kehar Singh ..Appellant

Versus

Hukam Singh and another ..Respondents

(2) RSA No.3897 of 2018 (O&M)

Kehar Singh ..Appellant

Versus

Hukam Singh and another ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pankaj Jain, Advocate,
for the appellant.

Mr. S.S.Dinarpur, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

**C.M.No.9716-C of 2018 in RSA No.3795 of 2018 &
C.M.No.10128-C of 2018 in RSA No.3897 of 2018**

Prayer in these applications is for condonation of delay of 58
and 66 days in re-filing the appeal.

For reasons mentioned in these applications, which are
supported by an affidavit, the delay of 58 and 66 days in re-filing the appeal
are condoned.

Applications are allowed.

C.M.No.9717-C of 2018 in RSA No.3795 of 2018

Prayer in this application for condoning the delay in making

good the deficiency in the payment of Court fee.

Deficiency in Court fee has already been made good. Delay, if any, is condoned.

MAIN

By this judgment, regular second appeal nos.3795 and 3897 of 2018 shall stand disposed of as both the appeals are arising out of the same suit filed by the plaintiffs-respondents. Counsel for the parties also admit that both the appeals can be conveniently disposed of by a common judgment. Counsel for the parties have produced photocopy of the record, correctness whereof is not disputed and finally argued the appeals.

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiffs-respondents filed a suit for possession and recovery of mesne profit with the averments that the plaintiffs are owners of the land measuring 3 bighas and 2 biswas comprised in khasra no.2706 situated within the revenue estate of village Mathana, Tehsil Thanesar, District Kurukshetra and the possession of the defendant-appellant is illegal, unauthorised, without any right or interest in the property.

Defendant-appellant contested the suit, pleading that he is in cultivating possession of the land as a tenant since the year 1985. It has been pleaded that the defendant-appellant had taken land comprised in khasra Nos.2704, 2705, 2706 and 2707 on lease in the year 1985 from its previous owner, namely, Rati Ram for a period of 2 years from 15.06.1996 to 14.06.1998 for a sum of Rs.24,000/- Defendant claims that during the period of lease, defendant along with his son purchased land comprised in khasra nos. 2704 and 2705 vide sale deed dated 05.06.1998, whereas the

plaintiffs purchased the land comprised in khasra nos.2706 and 2707. It is further pleaded that the tenant-appellant had previously instituted a suit for permanent injunction against its previous owner Rati Ram and plaintiff no.1 Hukam Singh for protection of his possession. However, plaintiff no.1 Hukam Singh had taken over possession of khasra no.2707 as initially possession was taken by the receiver including the standing crops and later on the possession was delivered to the plaintiffs. Therefore, defendant-appellant continues to be in possession of land comprised in khasra no.2706 on fixed lease amount of Rs.3000/- per month.

Both the courts after appreciating the evidence available on the file, have chosen to decree the suit filed by the plaintiffs.

In the considered opinion of this Court, following substantial questions of law arise for consideration:-

- (i) Whether a tenant over the agriculture land becomes unauthorised occupant after the fixed period of lease comes to an end?
- (ii) Whether an unregistered written contract of lease with respect to agricultural land for a period of more than 1 year can be read for collateral purpose to determine the relationship of landlord and tenant?

It is not disputed between the parties that the defendant-appellant had previously filed a suit for permanent injunction claiming that he is in possession of the land as a tenant. In the aforesaid suit, plaintiff no.1 and predecessor-in-interest of both the plaintiffs were party defendants. In the aforesaid suit, the court had framed a issue that whether the plaintiff is in lawful possession of the suit land as lessee or not. Learned court held that the relationship of lessor and lessee is established. It may be

significant to note here that plaintiff no.1 who was party defendant had disputed even the possession of the plaintiff as a lessee. The aforesaid suit was decreed finding that the defendant-appellant herein (plaintiff in the previous suit) is in possession as a tenant and defendants were restrained from interfering in his possession over the land comprised in khasra no.2706 except in due course of law.

Plaintiff no.1-respondent no.1 herein-Hukam Singh, filed appeal. Defendant-appellant also filed cross appeal. Both the appeals were dismissed, affirming the judgment passed by the learned trial court. Learned first appellate court also found that possession of the defendant-appellant herein continues as a lessee. The court further found that the execution of the sale deed by the original owner would not automatically bring the status of the defendant-appellant herein (plaintiff in the previous suit) to an end and the lessee will continue to be tenant under the vendees.

However, both the courts have given three reasons to decree the civil suit:-

- (i) in the previous litigation, vendees i.e. plaintiffs-respondents were permitted to take possession in due course of law and therefore civil suit is method to take possession in due course of law.
- (ii) lease deed executed by Rati Ram for a period of 2 years was compulsorily required to be registered and since it was got registered, therefore, it was not admissible in evidence.
- (iii) the lease period of 2 years has elapsed and ,therefore, tenancy has come to an end.

All the 3 reasons given by the courts below are erroneous. In the previous litigation, it has been specifically held that the defendant-appellant continues to be tenant over the land in dispute. Since, the suit was only for permanent injunction, therefore, in the previous litigation decree was passed in favour of the defendant-appellant protecting his possession and permitting the owners to take possession in accordance with law. Such decree cannot be read to hold that tenancy has ceased to exist. 'In accordance with law' would obviously infer that the possession can be taken from a tenant only in accordance with the provisions of Punjab Tenancy Act, 1887 read with provisions of the Punjab Security of Land Tenures Act, 1953.

Still further, merely because agricultural tenancy was created by a written contract for a period of 2 years. The tenancy would not cease to exist on expiry of the term. In the State of Haryana, possession of the agricultural tenant is protected by the provisions of the Punjab Tenancy Act, 1887 read with Punjab Security of Land Tenures Act, 1953. Even in the case of contractual tenant, tenancy would be governed by the provisions of the aforesaid Acts. An agricultural tenant can only be evicted as per the grounds available under the Punjab Tenancy Act read with provisions of Punjab Security of Land Tenures Act, 1953.

As regards status of tenancy after expiry of fixed lease period, a larger Bench of the Hon'ble Supreme Court has recently interpreted the Punjab Security of Land Tenures Act, 1953 and Punjab Tenancy Act, 1887 and have held that a tenant of the agricultural land cannot be evicted merely on expiry of fixed lease period and the tenant has the protection of the aforesaid acts. Reference in this regard can be made to the judgment passed

in the case of *Shyam Lal vs. Deepa Dass Chela Ram Chela Garib Dass,*
(2016) 7 SCC, 572.

In view of the aforesaid, the findings of the courts below are clearly erroneous.

Still further, a written contract of lease with respect to agricultural land for a period of more than 1 year is required to be compulsorily registered. However, an unregistered contract of lease can be used for collateral purposes. One of the collateral purpose for which a written contract of lease can be seen is to explain the character of relationship between the parties. In the present case, written contract can be seen for arriving at a finding while determining a relationship of landlord and tenant. Therefore, all the reasons assigned by the courts while decreeing the suit are erroneous.

In view of the discussion made above, both the questions of law are answered in favour of the appellant. The judgments and decrees passed by the courts below are set aside while accepting the present appeal. The suit filed by the plaintiffs shall stand dismissed.

July 10, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No