

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

**RSA No.1791 of 1980 (O&M)
Date of Decision.15.01.2019**

Ram Chand (since deceased) through LRs ...Appellant

Vs

Udai Singh alias Daya Ram and others ...Respondents

2. RSA No.2037 of 1980

Udai Singh alias Daya Ram and others ...Appellants

Vs

Ram Chand (since deceased) through LRs ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.K. Malhotra, Advocate
for the appellant in RSA No.1791 of 1980 and
for the respondent in RSA No.2037 of 1980.

Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate
for the appellants in RSA No.2037 of 1980 and
for the respondents in RSA No.1791 of 1980.
Mr. Rajesh Arora, Advocate
for the applicant in C.M. No.105-C of 2019.

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AMIT RAWAL J.

C.M. No.105-C of 2019

The application for impleadment of applicant as
contesting respondent being bona fide purchaser is dismissed, the
applicant was not party to the suit. However, the applicant being
subsequent purchaser shall be bound by the judgment passed in appeal.

Main cases

This order of mine shall dispose of two regular second
appeals bearing Nos.1791 and 2037 of 1980. RSA No.1791 of 1980
titled as “Ram Chand Vs. Udai Singh alias Daya Ram and others” and
RSA No.2037 of 1980 titled as “Udai Singh and others Vs. Ram

Chand” arising out of common suit bearing No.605 of 24.12.1976.

Ram Chand, plaintiff, instituted the aforementioned suit for possession against five defendants, defendant Nos.1 to 4 being sons of defendant No.5 Ram Narain, who was allegedly in possession of suit property by laying challenge to the mutation dated 22.05.1976 sanctioned in favour of defendants No.1 to 4 on the basis of registered Will dated 23.10.1967 but decree was confined to symbolic possession. In view of such findings, two appeals bearing No.5 and 6 of 1980 were filed, both have been dismissed, hence two regular second appeals, one by the plaintiffs and another by the defendants.

Ram Chand son of Het Ram alleged that Hiri died issueless and being collateral, as Hiri was brother of Ram Chand, was entitled to succeed his property. Defendants No.1 to 4 got implicated the plaintiff and his son Devi Ram on account of murder of Hiri, who allegedly died on intervening night of 9/10.03.1976, which resulted into acquittal on 07.12.1976. However, during the interregnum, defendants as noticed above, on the basis of registered Will obtained the mutation in respect of land sanctioned on 22.05.1976. It was alleged that the property at the hands of Hiri was ancestral and also governed by customs and as per the prevailing custom, coparcenary land cannot be disposed of except for legal necessity. Defendants No.1 to 4 had no relation with the testator Hiri.

Defendants opposed the suit and denied the nature of the property as ancestral and supported the Will being registered document attested by the witnesses and as well as scribed through the regular deed writer.

Since the parties were at variance, the trial Court framed following issues:-

- “1. Whether the plaintiff is the heir of Hiri son of Bhondu deceased? OPP*
- 2. Whether the plaintiff and Hiri deceased are governed by custom in matters of alienation and succession. If so, what that custom is? OPP*
- 3. Whether the suit property was the ancestral property of Hiri qua the plaintiff? OPP*
- 4. Whether Hiri deceased executed a valid Will dated 23.10.1967 in favour of defendants 1 to 4. If so, to what effect? OPD*
- 5. Whether the suit is bad for misjoinder of parties? OPD*
- 6. Relief.”*

The plaintiff in support of his case examined two witnesses and brought on record pedigree table Ex.P3, revenue excerpt through the testimony of PW1 to show that property at the hands of Bhondu, father of Hiri was ancestral and he inherited from Moher Singh whereas the defendants examined five witnesses including attesting witnesses of the Will and scribe.

On preponderance of evidence, the trial Court upheld validity of the Will but since the property at the hands of Hiri was found to be ancestral, held the disposition to be not within the parameters of legal necessity and partly decreed the suit by according symbolic possession, as the jamabandi brought on record established status of defendant No.5 Ram Narain as tenant for the last 15 years. In other words, it observed that it did not have jurisdiction to order ejectment as the parties were governed under the provisions of Punjab

Security of Land Tenures Act, 1953. As noticed above, both the appeals filed against the judgment and decree of the trial Court were dismissed.

Vide order dated 21.11.2011, this Court had allowed the regular second appeal bearing No.2037 of 1980 filed by the defendants and dismissed RSA No.1791 of 1980 of the plaintiff. Both the parties assailed the findings before the Hon'ble Supreme Court in Civil Appeal Nos.11107-11108 of 2017 and vide order dated 24.08.2017, the matter has been remitted to this Court to decide the appeal afresh as the appeals were decided without framing the substantial question of law.

Following substantial questions of law arise for consideration and adjudication by this Court:-

- (i) Whether the trial Court had jurisdiction to pass the decree of possession against the tenant of an agricultural land, in view of the provisions of Section 9 and 14-A of the Punjab Security of Land Tenures Act, 1953?
- (ii) Whether the defendants could claim ownership of the property by virtue of registered Will dated 23.10.1967?
- (iii) Whether the property at the hands of Hiri was ancestral and in case the property is ancestral, whether the testator's disposition was for legal necessity or not?

Mr. R.S. Sihota, learned Senior assisted by Mr. B.R. Rana appearing on behalf of the appellants-defendants in RSA No.2037 of 1980 and for the respondents in RSA No.1791 of 1980 submitted that plaintiff miserably failed to prove the nature and

character of the property to be ancestral as jamabandi for the year 1877, 1907-08 and 1940-41 denotes that three khasra numbers had fallen to the defendants being the co-sharers of the *shamlat patti*. The aforementioned piece of land cannot be ancestral. In the absence of the property being ancestral and in view of finding of fact and law holding the Will to be valid one, the suit was liable to be dismissed. It was categoric case, that Hiri was living with defendants whereas plaintiff Ram Chand and his son Devi Ram were accused of committing his murder. Despite acquittal, as per the provisions of Section 25 of the Hindu Succession Act, they were debarred from claiming to be the successors-in-interest of Hiri. It has been proved on record that Hiri was living with the defendants and due to services rendered by the defendants to him, executed the Will and died after 9 (nine) years of execution of the said Will. The lower Appellate Court has erroneously held that there was no pleading with regard to Will executed out of services, thus, there is perversity, owing to specific pleading.

The revenue excerpt brought on record through the testimony of PW1 was not legally admissible as the same has not been proved in accordance with law. After the promulgation of the Hindu Succession Act, custom previously prevailing amongst agriculturists of State of Haryana ceased to have any force in law as the property is situated in commercial town Bedha Patti Hodal. Khewat No.99 was measuring 25 bighas 7 biswas and khasra Nos.2806, 3975 and 3480 were measuring 3 bighas 2 biswas had fallen to the share of Mohar Singh out of *shamlat patti* and therefore,

could not have character of ancestral. Both the Courts below have erroneously held that once smaller portion of the property was liable to be merged with the major and the major being ancestral, therefore, by blending entire property would be ancestral.

In support of contentions, reliance has been laid to the judgment rendered by the Hon'ble Supreme Court in *Shyam Lal @ Kuldeep Vs. Sanjeev Kumar and others (2009) 12 SCC 454; 2010(8) RCR (Civil) 2798* to contend that suit filed in the year 1976 was not maintainable as possession of the suit property was with the defendants since long. Plaintiff miserably failed to prove to be collateral of Hiri. Execution of the Will was an act of deviation from the line of succession.

Per contra, Mr. N.K. Malhotra, learned counsel appearing on behalf of the appellants-plaintiffs in RSA No.1791 of 1980 and for respondents in RSA No.2037 of 1980 supported the finding of fact and law arrived at by the Courts below that even if the Will had been proved but the defendants failed to belie nature and character of the property as ancestral and in the absence of any legal necessity, the ancestral property cannot be parted with.

In support of his contention, relied upon Full Bench judgment rendered by this Court in *Manohar Lal and another Vs. Dewan Chand and others 1985(1) PLR 689* that coparcenary property in the absence of legal necessity cannot be sold and with regard to suspicion relied upon judgment rendered by Orissa High Court in *Srinivas @ Sania Bisvi (since dead) represented by Hemabati Bisoyi and others Vs. Smt. Laxmipriya Nayak 2015(86)*

RCR (Civil) 753.

Plaintiffs did not plead that Ram Narain was a tenant and therefore, finding of the trial Court according symbolic possession is totally against the record and liable to be modified, thus, prayed for decretal of the suit in toto.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below as well as judgments cited and of the view that there is no force and merit in the submissions of respective counsels. The substantial questions of law raised above are liable to be answered against the plaintiffs with regard to decretal of the suit in toto and as well as defendants. As per the revenue record brought on record, it reflected that defendant No.5 Ram Narain was in possession of the suit land as tenant. The beneficiaries of the Will are only defendants No.1 to 4, who are his sons.

Ram Chand in cross-examination admitted that Ram Narain was in cultivating possession of the land as tenant for the last 15 years. Relationship of landlord and tenant in respect of agricultural land is governed by the parties as per the provisions of Section 9 & 14-A of the Punjab Security of Land Tenures Act and Section 4 and of the Punjab Tenancy Act, 1887. For the sake of brevity, Section 4(5) of the Punjab Tenancy Act, 1887 and Section 9 and 14-A of Punjab Security of Land Tenures Act, 1953 are reproduced herein below:-

“4. Definitions.—In this Act, unless there is something repugnant in the subject or context—

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(5) “tenant” means a person who holds land under another

person, and is, or but for a special contract would be, liable to pay rent for that land to that other person; but does not include—

(a) an inferior landowner; or

(b) a mortgagee of the rights of a landowner, or

(c) a person to whom a holding has been transferred, or an estate or holding has been let in farm under the Punjab Land Revenue Act, 1887 (17 of 1887), for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear; or

(d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it.”

Section 9 & 14-A of 1953 Act

“9. Liability of the tenant to be ejected.—(1) Notwithstanding anything contained in any other law for the time being in force, no landowner shall be competent to eject the tenant except when such tenant—

(i) is a tenant on the area reserved under this Act or is a tenant of a small landowner, or

(ii) fails to pay rent regularly without sufficient cause, or

(iii) is in arrears of rent at the commencement of this Act, or

(iv) has failed, or fails, without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to the extent customary in the locality in which the land is situate, or

(v) has used, or uses, the land comprised in his tenancy in a manner which has rendered, or renders it unfit for the purpose for which he holds it, or

(vi) has sublet the tenancy or a part thereof, provided that where only a part of the tenancy has been sublet, the tenant shall be liable to be ejected only from such part, or

(vii) refuses to execute a Qabuliyat or a Patta, in the form prescribed, in respect of his tenancy on being called upon to do so by an Assistant Collector on an application made to him for this purpose by the landowner.

Explanation.—For the purposes of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent.

(2) Notwithstanding anything contained hereinbefore a tenant shall also be liable to be ejected from any area which he holds in any capacity whatever in excess of the permissible area:

Provided that the portion of the tenancy from which such tenant can be ejected shall be determined at his option if the area of his tenancy under the landowner concerned is in excess of the area from which he can be ejected by the said

landowner:

Provided further that if the tenant holds land of several landowners and more than one landowner seeks his ejectment, the right to ejectment shall be exercised in the order in which the applications have been made or suits have been filed by the landowners concerned, and in case of simultaneous applications or suits the priority for ejectment shall commence serially from the smallest landowner.

Explanation.—Where a tenant holds land jointly with other tenants, only his share in the joint tenancy shall be taken into account in computing the area held by him.

“14-A. Procedure for ejectment and recovery of arrears of rent, etc.—Notwithstanding anything to the contrary contained in any other law for the time being in force, and subject to the provisions of Section 9-A—

(i) a landowner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First Grade, having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of Section 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in relation to such application, provided that the tenant's rights to compensation and acquisition of occupancy rights, if any, under the Punjab Tenancy Act, 1887 (16 of 1887), shall not be affected;

Provided that if the tenant makes payment of arrears of rent and interest, to be calculated by the Assistant Collector, First Grade, at eight per centum per annum on such arrears together with such costs of the application, if any, as may be allowed by Assistant Collector, First Grade, either on the day of first hearing or within fifteen days from the date of such hearing, he shall not be ejected;

(ii) a landowner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade, having jurisdiction, who shall thereupon send a notice in the form prescribed to the tenant either to deposit the rent or value thereof, if payable in kind or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent or of the fact of the landlord's refusal to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in sub-section (2) of Section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent, he shall eject the tenant summarily and put the landowner in possession of the land concerned;

(iii)(a) if a landlord refuses to accept rent from his tenant or demands rent in excess of what he is entitled to under this Act, or refuses to give a receipt, the tenant may in writing inform the Assistant Collector, Second Grade, having jurisdiction of the fact;

(b) on receiving such application, the Assistant Collector

shall by a written notice require the landlord to accept the rent payable in accordance with this Act, or to give a receipt, as the case may be, or both, within 60 days of the receipt of the notice."

The aforementioned provisions of law have been pondered upon by the Hon'ble Supreme Court in **Shyam Lal Vs. Deepa Dass Chela Ram Chela Garib Dass (2016) 7 SCC 572** whereby while interpreting the aforementioned provisions, the question raised in the appeal was answered as under:-

"12. Having noticed the elaborate arguments advanced on behalf of the parties, we may now proceed to deal with the specific question referred to us, as noticed above, and in this regard take note of the questions formulated by the High Court for an answer in the second appeal before it which is in the following terms:

(i) Whether a tenant/lessee of agricultural land can be ordered to be evicted by way of suit for mandatory injunction or the only remedy with the landlord is to seek eviction under the provisions of the Punjab Security of Land Tenures Act, 1953?

(ii) Whether the lease deed of an agricultural land is admissible in evidence in the absence of registered instrument as required under Section 107 of the Transfer of Property Act, 1882 and Section 17 of the Registration Act, 1908?

16. *The above is inextricably connected to the issue of determination of the primary question arising, namely, whether the lease between the parties is a fixed term lease or not, a question that would depend for its answer on the terms of the lease deed between the parties. Unfortunately and regrettably the gazette notifications referred to above were not brought to the notice of the High Court leading the High Court to answer the question framed by holding that Section 117 of the Transfer of Property Act makes the provisions of Section 107 inapplicable to an agricultural lease and therefore the terms of the lease can be looked into for a determination of the above question.*

17. *It is not in dispute that in the present case the appellant tenant remained in possession of the land for the fixed term envisaged in the lease agreement i.e. from 29-5-1996 to 28-5-2005 and even thereafter. As the lease in question was not a registered instrument and as Section 117 of the Transfer of Property Act has no application to the State of Haryana, in view of the provisions of Sections 17 and 49 of the Registration Act read with Section 107 of the Transfer of Property Act, 1882 the terms of the lease deed would not be admissible in evidence and, therefore, cannot be looked into for the purpose of determining the duration of the lease. Though in Anthony v. K.C. Ittoop & Sons [Anthony v. K.C. Ittoop & Sons, (2000) 6 SCC 394] it was held that in such a situation an oral lease not exceeding one year can be presumed, it must not be lost sight that in Anthony [Anthony v. K.C. Ittoop & Sons, (2000) 6 SCC 394] the lease in question was one under the Kerala Buildings (Lease and Rent Control) Act, 1965, namely, a non-agricultural lease. In the present case, the lease being*

admittedly an agricultural lease the same can be deemed to be from year to year in view of the provisions of Section 106 of the Transfer of Property Act.

18. If the lease in the instant case has to be deemed to be a lease from year to year and the terms thereof cannot be looked into to determine the total duration thereof what would follow is that the tenant remained in possession beyond the legally presumptive period of the lease (one year) with the implied consent of the landlord. In the present case, such consent ceased to exist only upon institution of the cross-objection in the suit filed by the tenant, as mentioned earlier. The tenant, therefore, acquired the status of a tenant holding over or a tenant at will, which would confer on him protection under the 1953 Act requiring the landlord to establish proof of any of the conditions specified in Section 9 of the 1953 Act before being entitled to a decree of eviction. From the above it would necessarily follow that to be entitled to protection from eviction under the 1953 Act any person claiming such protection has to come within the fold of the expression "tenant" under the 1953 Act read with the relevant provisions of the 1887 Act. Statutory protection would be available only to a statutory tenant, namely, a tenant under the Act. The Punjab Act of 1953 read with the relevant provisions of the 1887 Act do not include a tenant whose lease has expired. Nevertheless, retention/continuance of possession after expiry of the duration of the lease with the consent of the landlord will continue to vest in the erstwhile tenant the same status on the principle of holding over. Such continuance even after expiry of the deemed period of the lease under Section 106 of the Transfer of Property Act, as in the present case, would clothe the occupant with the status of a tenant under the Act in view of Section 116 of the Transfer of Property Act which deals with the consequences of holding over. The operation of Section 116 of the Transfer of Property Act would confer legitimacy to the possession of the tenant even after the termination or expiration of the deemed period of the lease so as to confer on him a status akin to that of a statutory tenant and hence, protection from eviction as envisaged by the provisions of the 1953 Act.

19. We accordingly answer the question referred in the above terms, and allow this appeal and further set aside the order of the High Court under challenge."

Before commenting on finding on issue No.4, it would be apt to advert to the excerpt Ex.PW1/1. On perusal of same, it reveals that in the year 1877 or the at the time settlement, Mohar Singh was recorded as owner of the suit land bearing old khasra numbers and as per the index, new khasra numbers were assigned in 1907-08. In the jamabandi for the year 1907-08, Bhondu and his brother Makhan Singh sons of Mohar Singh were recorded as owners in possession of the land in equal shares. In jamabandi for the year

1930-40, Hiri was recorded as owner and in 1945-46, Ram Het, father of the plaintiff and son of Makhan Singh as owner of the suit land. The defendants obtained the mutation on 22.05.1976 on the basis of Will dated 23.10.1967. The Will has been proved through the attesting witnesses as well as the scribe being registered document, thus, in view of the aforementioned, the finding of the Courts below on issue No.4 is accordingly upheld.

The question which arises is whether the disposition by way of testamentary document was valid in law or not and the answer is 'no', for, the excerpt, as indicated above proved nature and character of the property as ancestral. Even if the parties were governed by custom but owing to the promulgation of Hindu Succession Act, 1956, Section 30 of the same would come into play. For the sake of brevity, Section 30 of the Hindu Succession Act reads as under:-

“30 Testamentary succession. — Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.— The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.”

It is settled law that a person, who has right by birth in

property and proved to be ancestral property, can always lay challenge to the deviation, i.e. from the line of succession, transfer deed, sale deed or Will. Once excerpt established that Ram Chand was 4th (fourth) generation in lineage as Hiri had acquired property by devolution from Bhondu and Bhondu from Mohar Singh, the character of the property was ancestral. The defendants did not lead any evidence contrary to the excerpt to establish the property being self-acquired. It is also matter of record that from small portion of land on account of partition of shamlat patti, had also fallen to share of Mohar Singh and Mohar Singh was also great grand father of Ram Chand and grand father of Hiri.

On plain and simple reading of the Will, it does not disclose that disposition was out of legal necessity that Hiri was in the need of money for the welfare and upkeep of the coparceners. Even objection qua Section 25 of the Hindu Succession Act would not be invoked, owing to acquittal of the appellants-plaintiffs, thus, substantial questions of law are answered in the above manner.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by the Courts below, much less, no ground for interference is made out. Both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

January 15, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No