

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

**RSA No.3242 of 1984 (O&M)
Date of decision:02.04.2019**

Nand Singh (deceased) through LRs ... Appellant

Vs.

Pritam Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jagdish Manchanda, Advocate
for the appellant.

Mr. Surinder Garg, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the judgment and decree of the Lower Appellate Court whereby suit of the respondent-plaintiff for possession of the suit land on the basis of the title has been decreed.

The respondent-plaintiff sought the possession of land measuring 7 kanals 3 marlas alleged to have purchased from Gurdev Singh, erstwhile owner whereas defendants according to the averments enjoying the fruits of the suit land and when requested to deliver the possession, refused to do so, therefore, necessity arose to file the suit.

The defendants opposed the suit and raised objection of long and settled possession and acquisition of title by way of adverse possession.

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

- “1. Whether the plaintiff is the owner of the suit land?OPP*
- 2. Whether the plaintiff has no locus standi to file the present suit?OPD*
- 3. Whether the suit in the present form is not maintainable?OPD*
- 4. Whether this Court has no jurisdiction?OPD*
- 5. Whether the suit is bad for mis-joinder of defendants no.2 to 4?OPD*
- 6. Whether the suit is barred by limitation?OPD*
- 6-A Whether defendant no.1 has perfected his title to the suit land by way of adverse possession?OPD*
- 7. Relief.”*

The trial Court on the basis of khasra girdawari and jamabandi for the year 1969-70 after observing the plaintiff to be owner of the property dismissed the suit as defendants had the title by way of adverse possession. However, the Lower Appellate Court reversed the findings on the premise that status of the respondent-tenant was of gair marusi.

Mr. Jagdish Manchanda, learned counsel appearing on behalf of the appellant submitted that finding of fact and law rendered by the Lower Appellate Court is erroneous and perverse, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Shyam Lal Vs. Deepa Dass Chela Ram Chela Garib Dass 2016(3) RCR(Civil) 812** as the remedy for the plaintiff was to seek ejectment under the provisions of

Punjab Tenancy Act, 1887 and Section 9 of Punjab Security of Land Tenure Act, 1953.

Mr. Surinder Garg, learned counsel appearing on behalf of the respondents submitted that plea of adverse possession tantamounts admission qua title. No such plea of maintainability of the suit was taken. The status of the appellant was un-authorized and not of tenant.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that following Substantial Question of Law arises for adjudication of the present appeal:-

“Whether the suit invoking the jurisdiction of the Civil Court in view of the provisions of Section 9 of 1953 Act is maintainable?”

On perusal of the revenue record i.e. Ex.D1, Ex.D2, Ex.D3, Ex.D4 and Ex.D5, it is revealed that status of the appellant in column no.5 was of gair marusi. Gair marusi is a tenant without payment of rent. The question with regard to the jurisdiction of the Civil Court came to be debated upon in the judgment cited (supra) wherein in paragraphs 15 to 18 held as under:-

“15. [Section 107](#) of the Transfer of Property Act, 1882 which has been made applicable to the State of Punjab (including Haryana) by the above notifications require annual leases of immovable property to be made by a registered instrument. Though [Section 117](#) of the Transfer of Property Act, 1882 makes the provisions of Chapter V, which includes [Section](#)

[107](#), inapplicable to agricultural leases, [Section 117](#) has not been made applicable to the State of Punjab by the notifications referred to above. Therefore, the provisions of [Section 107](#) of the Transfer of Property Act, 1882 would apply with full force and vigor to all leases of immovable property including agricultural leases in the State of Punjab (including Haryana).

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 29th May, 1996 to 28th May, 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 & Ors.](#)[2] it was held

that in such a situation a oral lease not exceeding one year can be presumed it must not be lost sight that in Anthony (supra) 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 Act of 1953.”

In view of such circumstances, the Civil Court did not have the jurisdiction, nor the appellant acquired the title by way of adverse possession. The remedy for the respondent is to seek ejectment in accordance with law.

The substantial question of law aforementioned is answered in favour of the appellant and against the respondent-plaintiff. The suit is dismissed with liberty aforementioned.

Resultantly, the regular second appeal is disposed of.

(AMIT RAWAL)
JUDGE

April 02, 2019
savita
Whether Speaking/Reasoned
Whether Reportable

Yes/No

Yes/No