

**RSA-2719-1988 (O&M)**

**480**

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

**RSA-2719-1988 (O&M)**

**Date of decision : 10.04.2019**

Randhir Singh and others

... Appellants

Versus

Rajinder Kaur and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Vikas Singh, Advocate  
for the appellants.

Mr. V.K. Kataria, Advocate  
for respondent No.1.

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**AMIT RAWAL, J. (ORAL)**

The short point involved in the present regular second appeal is whether in a suit for possession of the defendants, on the allegation that Kartar Singh was a tenant in the suit property and the possession is unauthorized, the Civil Court would have the jurisdiction or not?

Defendant Nos.1 to 4, denied the ownership of the plaintiff and alleged that Kartar Singh was the tenant of the plaintiff. He executed a Will dated 31.03.1981 in favour of defendant Nos.1 to 4 and therefore, their status is of a tenant and the jurisdiction of the Civil Court is ousted.

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

- 1. Whether the plaintiff is owner of the land in dispute? OPP*
- 2. If issue No.1 is not proved whether defendants are owners*

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- of the land in dispute as alleged? OPD*
- 3. Whether the suit is not maintainable? OPD*
  - 4. Whether the plaintiff has no cause of action? OPD*
  - 5. Whether the plaint is properly signed and verified? OPD*
  - 6. Whether suit is time barred? OPD*
  - 7. Whether defendant No.5 being the only surviving legal heirs of Kartar Singh deceased continues to be a tenant after his death? OPDs*
  - 8. Whether this Court has no jurisdiction to entertain and decide the suit? OPDs*
  - 9. Whether the suit is false, frivolous and defendant No.5 is entitled to special costs? OPDs*
  - 10. Relief.*

The plaintiff in support of the pleadings examined himself as PW1 and brought on record Ex.P1 to Ex.P7. On the other hand, the defendants examined five witnesses and brought on many documents.

The trial Court by noticing the status of the plaintiff in the revenue entry (Ex.P3), dismissed the suit, on the premise, that the Civil Court did not have the jurisdiction, but the lower Appellate reversed the finding by noticing the exclusive entry in column No.9 dealing with the compensation with regard to the tenant as "Billa Lagan Bewaja Moawja", but failed to advert to the entry in column No.5.

Mr. Vikas Singh, learned counsel appearing on behalf of the appellants-defendants submitted that the law with regard to the jurisdiction of the Civil Court for eviction of the tenant is no longer *res integra* as the remedy lies under the provisions of Section 9 and 14-A of the Punjab Security of Land Tenures Act 1953 (in short 'the 1953 Act'). The judgment and decree of the lower Appellate Court is not sustainable in the eyes of law and urges this Court for setting aside the same.

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Mr. V.K. Kataria, learned counsel appearing on behalf of respondent No.1-plaintiff, submitted that the defendants failed to establish the Will and their status as tenant. The tenancy was not inheritable and it was exclusive of Kartar Singh. The defendants failed to eradicate the suspicious circumstances surrounding the Will, thus, they are not the legal heirs. The findings of the lower Appellate Court, noticing the entry in column No.9, are perfectly legal and justified. In such circumstances, the suit for possession has rightly been held to be maintainable, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following “Substantial Question of Law” arises for determination.

*Whether the gair marusi tenant of agricultural land can be evicted by a Civil Court or under the provisions of Sections 9 and 14-A of the 1953 Act.*

The question, aforementioned, had already been answered by Hon'ble the Supreme Court in “Shyam Lal V/s Deepa Dass Chela Ram Chela Garib Dass” 2016 (3) RCR (Civil) 812, wherein, para Nos.15 to 18 have 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*

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*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.](#) 2000 (3) RCR (Civil) 735, 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*

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*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*

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*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."*

Ex.P3, jamabandi, reflects in column No.4, the status of Kartar Singh as "*gair marusi*". The suit was dismissed by the trial Court and the appeal was filed by the plaintiff before the lower Appellate Court, but in the issues, as noticed above, the plaintiff did not challenge the status of the defendants, being beneficiaries of the Will of the tenant. The status of the tenant would always be of a tenant. The finding of fact rendered by lower Appellate Court, noticing entry in column No.9, in isolation, is not a valid reasoning, for decreeing the suit as the entries, in cumulative, have to be seen.

Keeping in view the aforementioned facts, the judgment and decree of the lower Appellate Court is hereby set aside and that of the trial Court is restored. The Substantial Question of Law is answered in favour of the appellants-defendants and against the respondents-plaintiffs. Resultantly, the second appeal is allowed.

**10.04.2019**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

Whether speaking/reasoned    **Yes/ No**

Whether Reportable            **Yes/ No**