

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.4294 of 2017 (O&M)
Date of decision:01.04.2019

Devender Singh and another ... Appellants

Vs.

Jai Karan ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jatin Hans, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-plaintiffs have been non-suited by both the Courts below regarding maintainability of the suit seeking mandatory injunction handing over the vacant possession of *gair mumkin* plot measuring 1 kanal 19 marlas being *gair marusi*.

The law with regard to the jurisdiction of the Civil Court and remedy is no longer *res integra*, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Shyam Lal Vs. Deepa Dass Chela Ram Chela Graib Dass 2016(3) RCR (Civil) 812**. The remedy for the appellants is to seek eviction under the Punjab Security of Land Tenure Act, 1953. The relevant paragraphs 15, 17 and 18 of the judgment read thus:-

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).

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 the aforementioned observations, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 01, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No