

ESA 49 of 2015(O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

ESA 49 of 2015 (O&M)

Date of Decision: January 21, 2020

Joginder Sharma through LR's.

.....Appellant

Vs.

Kulwant Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

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Present:- Mr. Sumeet Mahajan, Sr. Advocate with
Mr.Amit Kohar, Advocate for the applicant-appellant.

Mr.K.S.Dadwal, Advocate and
Ms.Neha Jain, Advocate
for non-applicant/ respondent No.2.

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MAHABIR SINGH SINDHU, J.

Appellant-Joginder Sharma, a third party objector, hereinafter referred as "objector"(now deceased and represented by Lrs.) is aggrieved against the orders passed by both the Courts below whereby his objections for resisting the execution of a civil court decree dated 22.12.1980 were dismissed. It is clarified that decree under execution attained finality up to Hon'ble Supreme Court on 15.01.2010.Respdnts-plaintiffs are the decree holders.

2. Facts giving rise to the present execution second appeal, (for short "second appeal") are that decree holders filed Civil Suit No.13 dated 29.01.1975, for declaration to the effect that they, along with defendants No.6 to 8 were owner in possession of the shops, side-passage as well as vacant plot at the rear side shown in red colour of the site plan attached with the plaint; further that sale deed dated 08.10.1974, executed by Gurdial Singh-defendant No.2, in favour of Sant Ram-defendant No.1 (both judgment debtors) being illegal, void, inoperative, without legal consequences and did not confer any right, title or interest in favour of

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defendant No.1- Sant Ram, with a relief of permanent injunction and for possession thereof.

Suit was decreed by the then Sub Judge Ist Class, Samrala vide judgment and decree dated 22.12.1980, declaring the decree holders i.e. plaintiffs as well as defendants No.6 to 8 as owners of the suit property, but only the plaintiffs were held entitled to the joint possession to the extent of 5/8th share.

An appeal was preferred by the judgment debtors against the above judgment and decree; decree holders also filed cross-objections therein.

Ld. Ist Appellate Court dismissed the appeal of the judgment debtors; whereas accepted the cross-objections thereby modifying the decree of the learned trial Court to the extent that defendants No.6 to 8 would also be entitled to the joint possession of suit property along with the plaintiffs; thus the suit was decreed in entirety.

Aggrieved against the above judgments and decrees, judgment debtors filed RSA No. 927 of 1984, before this Court, but the same was also dismissed on 19.12.2008 and ultimately, the matter attained finality before the Hon'ble Supreme Court by way of SLP (Civil) CC 20698 of 2009, vide order dated 15.01.2010.

3. Thereafter, on 02.08.2010, decree-holders initiated execution proceedings, which were resisted by judgment debtors as well as the present objector while filing separate objections. Appellant/objector *inter-alia* submitted that he is continuing as a tenant over the property in dispute shown in red colour of the site plan attached with the objections at the rate of Rs.2400/- per annum since 1980 and at present, it has been increased to Rs.35000/- per annum; and thus, claimed the relationship of land-lord

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and tenant with the decree holders. Also submitted that rent stood paid upto 31.03.2011, but the receipts have been issued only upto 31.03.2010.

In response to the objections, decree holders filed reply specifically denying the relationship of landlord and tenant between the parties. Learned executing court did not find any substance in the the objections and consequently dismissed the same vide order dated 18.04.2013, but in an appeal, the rejection order was set aside and the matter was remanded back to the learned executing court with the directions to decide afresh, after framing the issues.

In compliance of the remand order, learned executing court framed the following issues:

- “1. Whether the objections as raised by the objector are not maintainable? OPP*
- 2. Whether the objector is tenant of the DH? OPD*
- 3. Whether the judgment and decree dated 22.12.1980 is not binding upon the objector.*
- 4. Relief.”*

Both sides led evidence and also filed their written arguments and after hearing the parties and taking into consideration the material available on record, learned executing court dismissed the objections vide order dated 01.04.2015.

4. Aggrieved against the above order, objector as well as judgment debtors, filed separate Appeal Nos. 8 and 9 of 13.04.2015/15.04.2015, respectively, but both the appeals were dismissed by the learned Appellate Court, by way of a common judgment dated 13.08.2015.

5. Hence, the present second appeal was filed by the objector in the year 2015 against both the orders discussed above. This Court on

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02.09.2015, granted status-quo in the matter which was extended from time to time, but ultimately the same was ordered to be vacated vide order dated 21.05.2019 w.e.f. the next date of hearing i.e. 13.08.2019. Despite that, this Court has been apprised that objector is still continuing in possession of the property in dispute.

It is contended by learned Senior Counsel on behalf of the objector that he has been continuing in possession of the property in dispute since 1980 as a tenant and paid rent uptill 31.03.2011 to the decree holders, thus there is a relationship of landlord and tenant between the parties. Further argued that objector was not a party to the civil suit No.13 of 29.01.1975, therefore, he cannot be dispossessed under the garb of the decree dated 22.12.1980 being a stranger to the lis. Learned senior counsel, in support of his contention, made reference to the letters dated 05.06.1996, 20.06.1998 and 08.02.2001, (Ex.O.10, Ex.O.12 and Ex.O.14), respectively, purported to have been written by one of the decree holders, namely, Kulwant Singh. Also contended that 'lease' between the parties has been continuing on month to month basis and the same is permissible in view of the provisions of Section 106 of the Transfer of Property Act, 1882, (for short 'the Act of 1882'), thus being a statutory tenant, can only be evicted by way of a rent petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, (for short 'the Rent Act'), but not otherwise, including execution of the decree dated 22.12.1980. Reference was also made to interim order dated 01.05.1985, (Ex.O.16) passed by this Court during the pendency of RSA No. 927 of 1984 for deposit of rent as well as application dated 29.09.2010 (Ex.O.17) filed by the decree holder for withdrawal of rent from the executing court.

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On the other hand, learned counsel for decree holders specifically denied the relationship of landlord and tenant between the parties. He further submitted that objector in connivance with the judgment debtors has filed false and frivolous objections just to delay the execution of the decree for seeking possession for which they are fighting since 1975. Again submitted that even prior thereto, an attempt was made by one of the judgment debtors, namely, Gurdial Singh-defendant No.2, to grab the suit property in the year 1951 on the basis of an ex-parte decree dated 24.11.1951, but the same was set aside by moving an application under Order 9 Rule 13 CPC on 05.05.1953. Also submitted that civil suit No. 13 filed on 29.01.1975 was decreed on 22.12.1980, and upheld upto the Hon'ble Supreme Court on 15.01.2010, but despite that, they are not able to get the possession of the property in dispute till date. He emphatically submitted that when decree holders themselves, are not able to get the possession of the suit property till date, then there is no question of inducting the appellant as tenant in the year 1980. Regarding the payment of rent, he submitted that deposit was made by objector in pursuance of the interim order dated 01.05.1985 passed by this Court during the pendency of the RSA No.927 of 1984 to safeguard the interest of the successful party, so that there may not be any further complication for recovery of rent and similar is the position with regard to the application dated 29.09.2010 for withdrawal of the rent deposited by the objector before the Id. executing court, but deposit and withdrawal of the rent in pursuance of the interim order of this Court is not a proof of creation of the *tenancy* between the parties. Further argued that plea of monthly '*lease*' is absolutely baseless on behalf of the objector, rather as a matter of fact, he is in league with the judgment debtors to prolong the litigation and just to deprive the decree

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holders from enjoying the fruits of the decree dated 22.12.1980 on one pretext or the other. He lastly submitted that objections are totally frivolous and have rightly been dismissed by both the Courts below.

6. Heard both sides and perused the paper-book along with the records, which have swelled into more than 700 pages.

The decree holders are fighting for possession since 1975. Even the relics of previous litigation which started with an ex-parte decree obtained by one of the judgment debtor-defendant No.2 in the year 1951, but later on set aside in the year 1953, under Order 9 Rule 13 CPC, are also discernable from the judgment dated 22.12.1980. During the course of hearing, this court was apprised that all three original litigants i.e. decree holders, judgment debtors and objector have gone to heavenly abode and left behind this legacy of litigation for the coming generation(s) to continue fight.

7. Although, the objector was not a party in the civil suit No.13 of 29.01.1975, but he has resisted the execution of the decree dated 22.12.1980 against his dispossession, being a third party while raising the plea of landlord and tenant relationship between the parties, thus, the issue raised in the present second appeal, no doubt an offshoot of execution proceedings, but it has become the bone of contention. Therefore, the material issue for consideration in the present second appeal is as under:-

i) Whether the appellant has been continuing in possession of property in dispute since 1980 on the basis of a 'lease' between the parties, resulting into the relationship of landlord and tenant or not?

If yes, what would be the effect thereof on the execution proceedings?

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No doubt, for seeking protection under Section 13 of the Rent Act, objector will have to establish the relationship of landlord and tenant between the parties and in case, the same is proved, the resultant question would be, as to whether he (objector) can resist the execution of the decree dated 22.12.1980 for seeking physical possession of the property in dispute by the decree holders?

8. Both the Courts have found that objector has failed to produce any evidence on record to show that he is a tenant under the decree holders. Learned executing Court observed that in the year 1980, decree holders were not in possession of the suit property and objector was inducted as a tenant by defendant No.1-Sant Ram and the relevant part of paragraph 12 of the order dated 01.04.2015, passed by learned executing court reads as under:-

“Further as per written statement filed by the defendant No.1/ JD/ Sant Ram dated 10.2.1976, defendant No.1 Sant Ram has categorically mentioned that shop No. 125 was let out to M/s Kedar Nath Hans Raj vide rent note dated 13.2.1973 by defendant No.2/ JD/Gurdial Singh from 1.4.1973 to 31.3.1974. The defendant No.2/ Gurdial Singh/ JD let out the same to M/s Tara Singh and Company and then to M/s Jagir Singh Hans Raj from 31.3.1974 to 30.3.1975 and at present this is rented out by the answering defendant/ Sant Ram/JD to them from 1.4.1975 to 31.3.1976 vide receipts in writing. Meaning thereby, during the pendency of the main suit M/s Jagir Singh Hans Raj was in possession of the suit property and objector came in possession of the suit property during the pendency of the suit and property in question was let out by Sant Ram/ JD who was not competent to do so. As per Section 52 of the Transfer of Property Act, a person who obtains possession of suit

property during pendency of the suit cannot maintain an application under Order 21 Rule 97 CPC and such transfer is hit by doctrine of lis pendens.”

Learned executing court further observed that rent was accepted by the decree holders in pursuance of the order dated 01.05.1985, passed by this court during the pendency of RSA No. 927 of 1984, just to safeguard the interest of the successful party in the appeal and the same shall not be construed that objector was a tenant under decree holders. Ultimately, Id. executing court came to the conclusion that objections were absolutely baseless as there was no relationship of landlord and tenant between the parties. Consequently, the judgment and decree dated 22.12.1980 were held to be binding upon the objector and dismissed the objections.

The pleas raised before the learned executing Court were repeated before the learned Appellate Court, but as mentioned above, both the appeals were rejected by learned Additional District Judge vide common judgment/order dated 13.08.2015 and para No. 18 as well as relevant part of para No.19 being relevant to the appeal of the objector, are extracted as under:-

“18. I do not find any force in the aforesaid contentions of appellant Joginder Sharma as the learned executing Court gave a clear cut finding on the basis of the evidence that he was not a tenant under the decree holders. He came into picture in the year 1982 after the passing of the decree of the civil suit in the year 1980. He was in illegal possession of the suit property. Therefore, in view of the principle of lis pendens, he was bound by the decree passed against the J.Ds, though he was not a party to the original suit.

19. *The above findings of learned Executing Court are well founded as appellant Joginder Sharma failed to produce in evidence any document like a rent note/ lease deed in his favour executed by the Decree Holders containing the alleged terms and conditions of the tenancy. He is a transferee during pendency of the proceedings and is hit by the principle of lis pendens”*

9. There is no dispute by either side that Rent Act does not define the word ‘tenancy’ or ‘lease’; and even the heading thereof also reads as under:-

“An Act to restrict the increase of rent of certain premises situated within the limits of urban areas, and the eviction of tenants therefrom.”

Thus, a perusal of the heading of the Rent Act itself reveals that it simply deals with the restrictions against the unreasonable increase of rent at the instance of the landlord within the urban areas covered thereunder as well as for seeking eviction of the tenant(s) on specified ground(s) in addition to other ancillary matters contained therein.

This Court has gone through the entire statute minutely, but does not find any provision (s) for creation of ‘lease’ or ‘tenancy’ thereunder.

The Halsbury’s Laws of England, 1958, (4th Edition, Vol.27 (1)) which describes the relationship of landlord and tenant, talks about the general principles regarding creation of tenancy in the following manner:-

**“THE GENERAL LAW
RELATIONSHIP OF LANDLORD AND TENANT
CREATION OF TENANCY**

1. **General principles:-** *The relationship of landlord and tenant arises as a rule when one person (‘the landlord’) grants to another (‘the tenant’) a right to the exclusive possession of land for a term less than that which the landlord has in the land. The grant*

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or demise must be either for a time which is subject to a definite limit originally, as in the case of a lease for the term of years certain, or for a time which, although originally indefinite, may be made subject to a definite limit by either party as of right by that party giving appropriate notice to the other, for example a tenancy from year to year. The interest in the property which remains in the landlord is called reversion, and, as a rule, there is incident to it the right to receive from the tenant payment of rent for the use of the property.”

Apart from the above persuasive guidance, Chapter V of the Act of 1882, deals with the ‘lease’ of immoveable property in our country, therefore, before proceeding further in the matter, it would be worthwhile to extract the relevant provisions contained under Sections 105, 106 and 107 thereof, and which are as under:-

“Section 105: Lease defined.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

106. Duration of certain leases in absence of written contract or local usage: (1) In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months’ notice; and a lease of immoveable property for any other purpose shall be deemed to

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be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Section 107: Leases how made:-- *A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.*

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

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Perusal of Section 105 reproduced hereinabove, clearly reveals that '*lease*' of immovable property is a transfer of a right to enjoy such property, made for certain time, in lieu of consideration to be made to the transferor by the transferee and who accepts the transfer *on such terms*. The transferor is called '*lessor*'; whereas the transferee is called '*lessee*'. The consideration i.e. money etc. is termed as '*rent*'. Thus, for creation of a '*lease*' of immovable property, there must be transfer of a right to enjoy such property by the transferor in favour of the transferee; for a consideration and the transfer is accepted on such terms.

The word '*property*' is nowhere defined under the Act of 1882, but Section 3 talks about the "*immoveable property*" and which says that "in this Act, unless there is something repugnant in the subject or the context, "*immoveable property*" does not include standing timber, growing crops or grass", thus the word '*property*' is of very wide amplitude and that will include the possession also.

Section 106 talks about the duration of *lease(s)* and which inter-alia says, that in the absence of a contract, local law or usage to the contrary, a '*lease*' of immoveable property for agricultural or manufacturing purposes shall be deemed to be a '*lease*' from year to year terminable on the part of either lessor or lessee by six months notice; and a '*lease*' of immoveable property for any other purpose shall be deemed to be from month to month, terminable on the part of either lessor or lessee by 15 days notice.

From perusal of Section 107 of the Act, which deals with the mode of '*leases*', it is discernable that:--

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(1) 'a lease' of immovable property from year to year or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument;

(2) all other 'leases' of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession; and there is no other method provided for the creation of the 'lease' under this section.

Thus, the modes for creating the 'lease' under Section 107 are exhaustive and there is no scope for any other construction.

Undoubtedly, for the 'lease' mentioned under first part of Section 107, registered instrument is must, but so far as second part of this section is concerned, it says that all other 'leases' of 'immoveable property' may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Reference in this regard can be made to the judgment reported as **ILR, 1943 (Lahore) Page 695, Mohan Lal Vs. Ganda Singh (Full Bench)**, regarding the applicability of Section 107 of the Act in the State of Punjab for creation of a 'lease' and manner thereof, in the following terms:-

"Under that Section a transfer of a right to enjoy immoveable property for a certain time in consideration of things mentioned in Section 105, T.P.Act, could only be effected either by means of a document executed both by the lessor and the lessee or in case of a lease not exceeding one year or not reserving an yearly rent, also by means of an oral agreement accompanied by delivery of possession. The amended Section 107, Transfer of Property Act, deals with the modes how a tenancy can be created so exhaustively that there is now no scope for the

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argument that a lease could be created in any manner other than what has been specified in that section.”

In view of the law laid down by Full Bench, which is binding upon this Court, for creation of a ‘lease’ under second part of Section 107, the requirement of registered instrument is optional, but at the same time, if the ‘lease’ is made on the basis of an oral agreement, then it must be accompanied by delivery of possession, failing which, it cannot be construed that a ‘lease’ is created between the parties. In the present case, although, learned senior counsel for the objector has tried to argue that monthly ‘lease’ was created between the parties in the year 1980, but he is not able to show any evidence to the effect that there was any oral agreement between the parties accompanied by delivery of possession of the property in dispute.

This Court has gone through the entire record of the case minutely, but it is nowhere discernable that there was any agreement between the parties, i.e. oral or otherwise, accompanied by delivery of possession at the instance of the decree holders in favour of the objector in the year 1980. On the contrary, the record reveals that decree holders themselves are fighting for recovery of possession of the property in dispute since 29.01.1975, but till date, they are not able to get the same, therefore, there is no hesitation to record that objector has miserably failed to prove the fulfillment of requirement stipulated under second part of Section 107 for creation of a ‘lease’ on month to month basis i.e. oral agreement accompanied with delivery of possession.

10. Also noteworthy that first time, before this Court, the objector has claimed the ‘lease’ on month to month basis, but perusal of his objections filed before the Id. execution court clearly reveals that his

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pleaded case is that he was continuing as a tenant since 1980 on annual rent of Rs.2400/-, which was increased from time to time and in the year 2011, it was Rs.35000/- per annum, and relevant part of the objections reads as under:--

“That the objector filed Civil Suit No. 270 of 21.12.2011 tilted as “Joginder Sharma Vs. Rameshwar Singh”, on the ground that the property in dispute shown in red colour in the site plan was taken on rent by the Objector from Sh. Rameshwar Singh in the year 1980 @ Rs.2400/- per annum and thereafter the rent was increased from time to time and at present the rate of rent is Rs.35000/- per annum which stands paid upto 31.3.2011 but the rent receipts have been issued by the defendant (Rameshwar Singh) upto 31.3.2010.”

A bare perusal of the above extracted portion of the objections clearly reveals that objector was claiming the ‘lease’ of property in dispute on the basis of yearly rent, and therefore, the same shall fall within the purview of first part of Section 107 i.e., ‘lease’ reserving an yearly rent and thus, the same will require a registered instrument. It seems that just to wriggle out of the above legal interdict, now first time before this Court, objector raised altogether a new plea of oral ‘lease’ on month to month basis and as discussed above, that is also not proved.

11. Although learned Senior counsel has given much stress to the deposit of rent by the objector and receipt of the same by the decree holders, but same will not be helpful in any manner, as the deposit was made by the objector in terms of the interim order dated 01.05.1985 passed by this Court and that would not prove the creation of ‘lease’ between the parties, until and unless the requirement of oral agreement accompanied by delivery of possession is fulfilled. Similarly, the letters Exs.O10, O.12

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and O14 are also not helpful to support the case of the objector in any manner, as all these communications pertain to the period during the pendency of the RSA and that too, as a result of the passing of interim order dated 01.05.1985 by this Court. It is worthwhile to mention here that RSA was dismissed by this Court on 19.12.2008, and upheld upto Hon'ble Supreme Court on 15.01.2010 and thereafter, neither the decree holders ever asked the objector for deposit of any rent; nor he deposited the same with effect from 01.04.2011, uptill date. Moreover, all three letters talk about the execution of an yearly rent-agreement, but that was never executed between the parties, thus, mere writing of these letters would not prove the creation of any 'lease' between the parties. Similarly, application dated 29.09.2010 (Ex.O17) which is regarding the withdrawal of rent deposited in pursuance of the above interim order, also would not prove the existence of any 'lease' between the parties. It is necessary to mention here that issue of 'lease' or relationship of landlord and tenant between the parties was not under consideration in RSA No. 927 of 1984

The law is well settled since long that "*if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all*" vide **Babu Verguese Vs. Bar Council of Kerala**, (1999) 3 SCC 422. The above principle was propounded way-back in the year 1875 (**Taylor Vs. Taylor**), (1875) 1 Ch. D 426, and the same has been consistently followed in our country.

Moreover, the rent was deposited by the objector in compliance of the interim order dated 01.05.1985 to safeguard the interest of the successful party at the end of the litigation and the same cannot be construed as an act of parties for creation of a 'lease' of the property in dispute. Even otherwise, passing of the order dated 01.05.1985 by this

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Court, would not tantamount to transfer of a property between the parties under the Act of 1882, as the same is to be made (by the act of parties), as is clear from the heading of the Act itself, which reads as under:-

“An Act to amend the law relating to the Transfer of Property by act of parties.”

Since this Court was not a party to the transfer of the property either as a transferor or a transferee, thus, the objector cannot take any benefit of the above interim order, in any manner to prove the creation of the ‘lease’.

Still further, in view of the maxim ‘*actus curae neminem gravabit*’, the act of Court shall not prejudice any party; thus on that count also, the objector cannot take any benefit from the interim order dated 01.05.1985.

12. The objector was very well aware about the pendency of the Civil suit as well as appeal in the year 1983, but kept mum for approximately 30 years and woken up in the year 2012 with a plea that he is a tenant over the property in dispute and that is only a ploy just to delay the execution proceedings in connivance with the judgment debtors.

During the course of hearing, learned counsel for decree holders has pointed out that in addition to the present appeal, objector also filed Civil Suit for permanent injunction against the decree holders regarding the property in dispute, but the same was dismissed by learned Civil Judge (Junior Division) Khanna, vide judgment and decree dated 02.11.2018. He has further apprised the Court that even the LRs. of objector have also filed another suit for permanent injunction claiming to be in possession of the property in dispute as tenant since 1996, thus, that is altogether a different stand which is nothing, but misuse of the process of

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the Court by instituting one after another false and frivolous suit just to thwart the execution proceedings.

13. In view of the facts and circumstances discussed hereinabove, the irresistible conclusion is as under:-

1. Civil Suit No. 13 dated 29.01.1975 filed by the decree holders was decreed on 22.12.1980 and attained finality upto Hon'ble Supreme Court on 15.01.2010;
2. The decree holders are fighting for possession of the property in dispute, but till date they are not able to get the same;
3. Objector has miserably failed to prove any agreement between the parties, i.e. oral or otherwise, accompanied with delivery of possession in his favour by the decree holders in the year 1980 or subsequent thereto in terms of second part of Section 107 of the Act of 1882;
4. Till date, there is no registered instrument between the parties for creation of a 'lease' regarding the property in dispute in terms of first part of Section 107 of the Act of 1882.

14. In view of the above, this Court is of the opinion that objector has miserably failed to prove that he has been continuing in possession of the property in dispute since 1980 on the basis of a 'lease' between the parties and thus, there is no relationship of landlord and tenant between them. As a result thereof, the plea raised on behalf of the objector, that he is a statutory tenant and cannot be evicted except under Section 13 of the Rent Act, is absolutely baseless and thus, the whole exercise undertaken by the objector is nothing, but can be termed as *Champerty*.

15. Consequently, the objections are held to be without any substance and it is held that objector cannot resist the execution of the lawful decree passed in the year 1980, for seeking possession at the instance of the decree holders, in any manner and he is bound to handover the possession of the property in dispute.

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16. Although, in view of the repeated frivolous litigation instituted at the instance of the objector, this Court was inclined to impose exemplary costs, but taking a lenient view of the fact that objector is no more alive and matter is being pursued through his LRs, the second appeal is simply dismissed with the above observations.

17. Ordered accordingly.

Pending application (s), if any, stand(s) disposed off.

January 21, 2020
sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.