

Shyam Lal vs Deepa Dass Chela Ram Chela Garib Dass on 5 July, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3243, AIR 2016 SC (CIVIL) 2568, (2016) 4 CIVILCOURTC 797, (2016) 3 PUN LR 607, (2016) 3 PUN LR 810, 2016 (7) SCC 572, (2016) 2 RECCIVR 812, (2016) 6 SCALE 335, (2016) 2 WLC(SC)CVL 365, (2016) 3 UC 2266, (2016) 165 ALLINDCAS 190 (SC), (2016) 118 ALL LR 253, (2016) 2 ALL RENTCAS 820, (2016) 5 MAD LJ 389, (2016) 133 REVDEC 406, (2016) 2 LANDLR 347, (2016) 4 ALL WC 4043, 2016 (3) KLT SN 45 (SC), 2016 (4) KCCR SN 492 (SC)

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Bench: Prafulla C. Pant, Arun Mishra, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4245 OF 2012

SHYAM LAL

... APPELLANT

VERSUS

DEEPA DASS CHELA RAM
CHELA GARIB DASS

... RESPONDENT

J U D G M E N T

RANJAN GOGOI, J.

1. This appeal is at the instance of the tenant who is aggrieved by an order of eviction affirmed by the High Court following the expiry of period of lease.

A two-Judge Bench of this Court in Sukhdev Singh (Dead) through legal representatives and Ors. V. Puran and Ors.[1] has taken the view that a tenant under Punjab Security of Land Tenure Act, 1953 (hereinafter referred to as the '1953 Act') ceases to be one on expiry of the fixed term tenancy under the contract whereafter he is not entitled to the statutory protection from eviction as envisaged under the Act. A Co-ordinate Bench, for reasons indicated, could not agree with the aforesaid view

in Sukhdev Singh (supra). Hence this reference for an answer on a question that may be formulated as hereunder:

Whether after the expiry of the fixed term tenancy in respect of an agricultural lease under the Punjab Security of Land Tenure Act, 1953 (hereinafter referred to as “the 1953 Act”) the tenancy gets automatically terminated and the person occupying the leased premises ceases to be a tenant?

2. It will be useful to notice, at this stage, some of the relevant provisions of the Statutes dealing with the issue. “Tenant” is defined by Section 2(6) of the 1953 Act in the following terms:

“Tenant” has the meaning assigned to it in the Punjab Tenancy Act, 1887 (Act XVI of 1998), and includes a sub-tenant, and self-cultivating lessee, but shall not include a present holder, as defined in section 2 of the Resettlement Act.”

3. Section 4(5) of the Punjab Tenancy Act, 1887 (hereinafter referred to as “the 1887 Act”) defines “tenant” as under:

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

xxxx (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 (XVII 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.”

4. The 1887 Act confers occupancy rights on the occupants of land who fulfill the requirements spelt out by Section 5 thereof. An occupancy tenant is liable for ejectment under the 1887 Act on the grounds specified in Section 39(1), namely,

(a) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purpose for which he held it;

(b) where rent is payable in kind, that he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate;

(c) when a decree for an arrear of rent in respect of his tenancy has been passed against him and remains unsatisfied.

5. On the other hand, under Section 40 of the 1887 Act, a tenant who does not have a right of occupancy but holds the land for a fixed term under a contract is liable to be ejected from his tenancy on the expiry of the term of the lease and before such expiration on the following grounds:

“(a) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it;

(b) where rent is payable in kind, that he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate ;

(c) on any ground which would justify ejectment under the contract decree or order.”

6. Section 9 of the 1953 Act which deals with the liability of a tenant to be ejected is in the following terms:

“9. Liability of the tenant to be ejected.— (1) Notwithstanding anything contained in any other law for the time being in force, no land-owner 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 land-owner,
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 land owner 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 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 land-owner concerned is in excess of the area from which he can be ejected by the said land owner;

Provided further that if the tenant holds land of several land-owners and more than one land-owner 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 land-owners concerned, and in case of simultaneous applications or suits the priority for ejectment shall commence serially from the smallest land-owner.

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.”

7. It will be necessary at this stage to take note of Section 14A of the 1953 Act which deals with the procedure for ejectment:

“14-A. 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.-

a land owner 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 sub-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 tenants rights to compensation and acquisition of occupancy rights, if any under the Punjab Tenancy Act, 1887 (XVI 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 land-owner 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 landlords 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 maybe, or both, within 60 days of the receipt of the notice“

8. Before proceeding any further it must be clarified that both the enactments i.e. the 1887 Act and the 1953 Act are in force and continue to operate in their respective fields. Insofar as common spheres are concerned, the 1953 Act by virtue of the non obstante clause in the relevant provisions prevail over the pari materia provisions of the 1887 Act. Section 40 of the 1887 Act dealing with ejectment of tenants and Section 9 of the 1953 Act is one instance where such an interplay between the provisions of the two Acts occur.

9. The arguments advanced on behalf of the rival parties relate to a true and proper construction of the provisions of Section 9 and 14-A of the 1953 Act in the light of the definition of “tenant” under both the Acts and also the provisions of Section 39 and 40 of the 1887 Act. It is argued that the appellant herein is a self-cultivating lessee and, therefore, a tenant under Section 2(6) of the 1953 Act entitling him to protection under Section 9 of the Act. A person who is a tenant under the 1953 Act can be ejected only on any of the grounds enumerated in Section 9 of the 1953 Act. Such protection does not cease merely on the expiry of period of tenancy in view of the statutory protection granted under the Act. In fact the contractual tenancy loses all relevance in case of a lessee who is a tenant under either of the statutes in question. Though under Section 40 of the 1887 Act eviction of a tenant on completion of the period of lease is contemplated, there is no such provision in the 1953 Act. The non obstante clause in Section 9 gives the said provision of the 1953 Act an overriding effect over the aforesaid provisions of the 1887 Act. Sub-section (viii) of Section 9 of the Act of 1953, introduced by Punjab Act 17 of 2011 (not made applicable to the State of Haryana) has also been placed before the Court. Besides, the procedure for ejectment/eviction must necessarily conform to what is spelt out in Section 14-A of the 1953 Act and proceedings for eviction must be before the Revenue authority and not the Civil Court. These are the broad propositions that have been advanced on behalf of the appellant to answer the question arising.

10. In reply, it is contended that statutory protection to a tenant would be available after the expiry of the fixed term lease only if the definition of tenant under the Act is broad enough to include a

person whose contractual period of tenancy is over. No such provision exists either under the 1887 Act or the 1953 Act. The definition of tenant in either of the Statutes does not include a tenant whose period of tenancy is over. In the absence of any such provision, a person whose period of lease is over ceases to be a tenant and, therefore, is not entitled to the protection under the 1953 Act. A self-cultivating lessee would be a tenant under the Act only for the duration of the lease. On expiry of the period of the lease he would cease to be a tenant unless the statute specifically provides for such a status which is not so provided for by either of the Acts i.e. Act of 1953 and of 1887.

11. In the present case, admittedly, eviction of the tenant had not been sought on any of the grounds enumerated in Section 9 of the 1953 Act and by following the procedure under Section 14-A of the 1953 Act. In fact, it is the appellant before this Court who had filed a suit for injunction seeking a restraint on his ouster and it is in the said suit that the respondent – landlord, as the defendant, had filed a cross-objection seeking mandatory injunction for the vacation of the premises by the appellant-tenant on the ground that he had ceased to be a tenant on expiry of the period of lease.

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.

13. The Transfer of Property Act, 1882, as evident from opening provision thereof, makes it clear that it is not to be applicable to the State of Punjab (including the present State of Haryana which was included in the erstwhile State of Punjab). However, by a Gazette Notification dated 26th March, 1955 (No.1605-R(CH)-55/589) published in the Punjab Govt. Gazette dated 1st April, 1955 (Part I, page 372) the provisions of Sections 54, 107 and 123 of the Transfer of Property Act, 1882 were extended to the entire State of Punjab with effect from 1st April, 1955. The Gazette Notification in question reads as follows:

“The 26th March, 1955 No.1605-R(CH)-55/589. In exercise of the powers conferred by section 1 of the Transfer of Property Act, IV of 1882, and all other powers enabling him in this behalf, the Governor of Punjab is pleased to extend the provisions of sections 54, 107 and 123 of the said Act with effect from the 1st April, 1955 to the entire State of Punjab. The Punjab Government notification No.183-ST dated the 27th April, 1935, is hereby cancelled.”

14. Sections 54, 107 and 123 of the Transfer of Property Act, 1882 were applied to the PEPSU area of that State with effect from 15th May, 1957 by Notification dated 15th May, 1957 published in the Punjab Government Gazette (Extraordinary) (at page 633 dated 15th May, 1957), which is in the following terms:

“Punjab Government Gazette Extraordinary Published by Authority Chandigarh, Wednesday, May 15, 1957 Revenue Department Notification The 15th May, 1957 No.305-ST-57/2166.- In exercise of the powers conferred by section 1 of the Transfer of Property Act, 1882 (Central Act IV of 1882), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to extend the provisions of Sections 54, 107 and 123 of the said Act to the territories which, immediately before the 1st November, 1956, were comprised in the State of Patiala and East Punjab States Union, with effect from the date of publication of this notification in the official Gazette.”

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.

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.

.....,J.

(RANJAN GOGOI)J.

(ARUN MISHRA)J.

(PRAFULLA C. PANT) NEW DELHI;

JULY 05, 2016.

[1] (2015) 12 SCC 344

[2] (2000) 6 SCC 394