

**Gurdial Singh Through Lrs Vs. Rajinder Kaur Through Lrs**

**Gurdial Singh Through Lrs Vs. Rajinder Kaur Through Lrs**

**SooperKanoon Citation :** [sooperkanoon.com/1162884](http://sooperkanoon.com/1162884)

**Court :** Punjab and Haryana

**Decided On :** Aug-07-2014

**Appellant :** Gurdial Singh Through Lrs

**Respondent :** Rajinder Kaur Through Lrs

**Judgement :**

RSA-1520-1986 -1- IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH RSA-1520-1986 Date of decision:

7. 8.2014 Gurdial Singh through LR's ..... Appellant Versus Rajinder Kaur through LR's ..... Respondent CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH<sup>1</sup> Whether Reporters of the local papers may be allowed to see the judgment?.

2. To be referred to the Reporters or not?.

3. Whether the judgment should be reported in the digest?. PRESENT: Ms. Alka Sarin, Advocate for the appellant. Mr. Arun Nehra, Advocate for the respondent. R.P. NAGRATH, J.

Plaintiff/respondent-Rajinder Kaur filed a suit for ejection in respect of site described as taur, measuring 2 marlas bounded as fully detailed in the head note of the plaint and shown in the site plan Ex. P-3 and also for recovery of ` 300/- as three years rent @ ` 100/- per annum.

2. It is not a disputed question of fact that defendant-appellant had executed a rent deed dated 19.9.1958 agreeing to pay rent @ ` 100/- per annum. It is also not disputed that in the rent deed Ex. P-2 the purpose of letting was expressly stated as residential. The lease period was for one year w.e.f. 21.9.1959. The grounds of ejectment pleaded RISHU KATARIA201408.23 13:00 I attest to the accuracy and integrity of this document RSA-1520-1986 -2- were that he was in the arrears of rent from 1.4.1979 to 31.3.1982 for three years and that the plaintiff-respondent requires the premises in question for own use and occupation. Before institution of the suit a notice dated 26.3.1982 (Ex. P-4) was sent to defendant-appellant asking him to vacate the premises. The defendant-appellant sent a reply dated 26.4.1982 Ex. P-7 to the said notice.

3. The defence set up by the defendant-appellant was that the property was situated within the municipal limits of Municipal Committee Garhdiwala and, therefore, the Civil Court did not have the jurisdiction to entertain and try the suit as provisions of East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act of 1949') are applicable for which the Rent Controller has the exclusive jurisdiction. Following issues and additional issues were framed from the pleadings of the parties:-

1. Whether the disputed property is outside the municipal limits of Gardhdiwala?. If so, its effect?. OPP.
2. Whether the defendant is in arrears of rent from 1-4-79 to 31.3.1982?. OPP.
3. Whether the plaintiff requires the disputed premises for her own use and occupation as alleged?. OPP.
4. Whether the defendant is liable to be ejected from the disputed premises?. OPP.
5. Whether the tenancy of the defendant stands determined by a valid notice dated 26.3.1982?.
6. Relief. 6-A. Whether Lakhbir Kaur and Sadhu Singh are necessary parties to the suit?. OPD6B. Whether the plaintiff has no locus-standi to file this suit?. OPD

RISHU KATARIA201408.23 13:00 I attest to the accuracy and integrity of this document RSA-1520-1986 -3- 6-C. Whether the purpose of the tenancy was expressly settled and decided as residential. If so, to what effect?. OPP.

4. On issue No.1, learned trial Court held that the property in question falls within the municipal limits of Garhdiwala Municipal Committee. However, purpose of the lease as per the terms of rent note dated 19.9.1958 was residential and, thus, the disputed site does not fall within the definition of term 'rented land' as defined in Section 2 (f) of the Act of 1949 and only the Civil Suit was maintainable.

5. Issue Nos. 2 and 3 were held not material in a suit for ejectment in view of the submissions made by counsel for the parties before the trial court. Issues No.6-A to 6-C were decided against the defendant-appellant.

6. The learned trial Court also found and quite correctly that since the lease deed was executed in favour of plaintiff-respondent only, the appellant could not raise an issue about other persons also to be co-owners in the property. First appeal filed against the judgment of learned Lower Court was dismissed by the learned Additional District Judge, on 10.4.1986.

7. Following substantial questions of law were proposed by defendant-appellant:-  
(i) Whether the land in dispute fell within the definition of Rented Land. as defined in Section 2 (f) of the East Punjab Urban Rent Restriction Act, 1949?. (ii) Whether the Civil Court had jurisdiction to entertain the present suit?. (iii) Whether the provisions of East Punjab Urban Rent Restriction Act, 1949 were applicable to the land dispute?. RISHU KATARIA201408.23 13:00 I attest to the accuracy and integrity of this document RSA-1520-1986 -4- (iv) Whether the judgments and decrees passed by the Courts below are perverse and hence liable to be set-aside?..

8. I have heard learned counsel for the appellant, learned counsel for the respondent and have given anxious thought to the controversy. The record of trial Court has also been perused.

9. The entire controversy is confined to the contention that the suit property does not fall within the term 'rented land' as defined in definition of Section 2 (f) of the Act of 1949. This contention of the learned counsel for appellant is the sole substantial question of law arising in this appeal. The factum that the property in dispute falls within the Municipal Limits of Garhdiwala is no more in dispute. I am of the considered view that the entire controversy rests on the terms of the admitted lease deed Ex. P-2 settled between the parties. It cannot be gainsaid that as per the terms of lease deed Ex P-2 the suit property measuring 2 marlas was given on rent w.e.f. 21.9.1958 for residential purposes.

10. Learned counsel for the defendant-appellant, however, referred to the cross-examination of the plaintiff-respondent who appeared in the witness-box as PW-6. PW-6 stated that during the pendency of suit, the defendant-appellant had constructed a house near the site in dispute. It was also stated that a workshop was built by the defendant-appellant over the site in dispute about 25 years ago. There was no suggestion to the plaintiff-respondent for contradicting her about the purpose of lease nor that was possible as no oral evidence was permissible with regard to the purpose other than the RISHU KATARIA201408.23 13:00 I attest to the accuracy and integrity of this document RSA-1520-1986 -5- terms settled in the rent deed itself by virtue of Sections 91 and 92 of the Indian Evidence Act.

11. DW-1 Gurdial Singh is the son of defendant-appellant. He appeared as attorney of the defendant. DW-1, however, stated that the site in question was taken on rent by his father in the year 1958 for carrying on business by setting up a factory. However, in the chief- examination itself DW-1 stated that the other plots of the plaintiff- respondent were also taken on rent. DW-1 further stated that sometimes DW-1 himself and sometimes his father or the servants reside in the site in dispute.

12. The term 'rented land' as defined in Section 2 (f) of the Act of 1949, means any land let separately for the purpose of being used principally for business or trade. This matter has been elaborately dealt with by a Division Bench of this Court in Hukam Chand Vs. Om Chand 1997 (3) PLR410 while deciding Letters Patent Appeal. In that case, the disputed land was taken on lease for 99 years by one Om

Chand who further leased it out by registered lease deed to Hukam Chand and another for a period of 10 years. The material terms of the lease deed were that the lessees were entitled to use the land in question themselves or may lease it out further to a sub-lessee. It was further stipulated that the lessees were entitled to raise any construction thereon and shall also be liable to obtain sanction from the Municipal Committee in respect of the same. The plea of the tenant was that even after the expiry of lease period they continued to be the statutory tenants by virtue of the Act of 1949. RISHU KATARIA201408.23 13:00 I attest to the accuracy and integrity of this document RSA-1520-1986 -6- 13. In Hukam Chand's case (supra) this Court found from the terms of lease deed that the land could be used for any purpose. Even building could be constructed thereon, for the residential purpose or otherwise. It was further held by this Court as under:- .....It was not being let out principally for the purpose of business or trade. For purpose of bringing the land within the definition of 'rented land', it cannot be said that if the land can be used for purpose of business or trade, though not separately let out principally for that purpose it would still fall within the definition of 'rented land'. Nature of the property is to be determined as on the date when it was let out. In Hazara Singh and others v. Dalip Singh and others, 1981(1) RLR222 it was held that the land over which the tenant could use it for cultivation through himself or through anybody else or could use for installation of some factory does not fall within the term rented land inasmuch as the land is not separately let out principally for business or trade. In Prem Narain v. Smt. Rajo and others Civil Revision No.177 of 1966, Decided on October 31, 1967, a learned Single Judge of this Court took the view that it is apparent from the definition of "rented land" under Section 2(f) of the Act that even if the land has been let out for business or trade but not let out principally for RISHU KATARIA201408.23 13:00 I attest to the accuracy and integrity of this document RSA-1520-1986 -7- business or trade the definition would not be attracted. In Gian Chand v. Parkash Chand and others (1984) 1 PLR322 it was held by this Court that where the land was let out with a discretion to the tenant that he could use it for any purpose and he constructed rooms and varandah on the land and started running a Karyana business in the same, the land could not be said to have been let out for being used principally for business or trade and would not fall with in the definition of 'rented land'. The

aforesaid authorities with which we concur are an answer to the argument of the learned counsel for the appellant. In Bai Chandhal and others v. Syed Jalaludin and others, 1970 (2) RCR915 it was urged before the apex Court that pleadings indicated that the land had been let out for making structures and the structures could only be utilized by being let out on rent. Such purpose would constitute business or trade. The apex Court observed that it was unable to see any justification for such an inference. The mere fact that there was a mention that structures that may be erected would be removed could in no way lead to a conclusion that the principal purpose of the lease was to use the land for business or trade.....

. It was further held that the Courts are to see the terms of the lease and not  
RISHU KATARIA201408.23 13:00 I attest to the accuracy and integrity of this document RSA-1520-1986 -8- the actual user in case of a rented land.

14. In Gian Chand's case (supra) the rent deed was executed by the tenant/lessee on 4.10.1973 in favour of the respondents and clause was silent about the purpose for which the plot was let out. The lessee constructed a room and a verandah over the plot and started running a Karyana shop. It was held as under:-

5. It is from this evidence that we are to find out if the plot in dispute had been rented out for the purposes of being used principally for business or trade. Pawan Kumar respondent is one of the landlords. He admittedly let out the plot in dispute to the petitioner. He is categorical that he did not know for what purpose it was let out to the petitioner and that the petitioner could use it for any purpose. Gora Lal is the brother of the respondents. He has also stated that the plot in dispute was let out to the petitioner by Pawan Kumar respondent. He has, however, added that it was rented out for doing business for fuel wood. It was orally agreed that the petitioner would use the plot in dispute for fuel wood business. In the face of the categorical stand of Pawan Kumar respondent, who had admittedly let out the plot in dispute to the petitioner that the latter could use it for any purpose, it cannot be inferred from the bald testimony of Gora Lal that the plot was let out for the purpose of being  
RISHU KATARIA201408.23 13:00 I attest to the accuracy and integrity of this document RSA-1520-1986 -9- used principally for business or

trade. The plot in dispute cannot be treated 'rented land' in terms of Section 2(f) of the Act unless it is held to have been specifically let out for the purpose of being used principally for business or trade. The respondents have failed to prove that the plot in dispute had been let out to the petitioner for the purposes of being used for business or trade.

6. The finding of the Appellate Authority that it is proved from the testimony of Gora Lal that the plot in dispute had been let out for the purposes of being used principally for business or trade cannot be sustained. The respondents, therefore, could not maintain their petition under the Act for ejectment of the petitioner from the plot in dispute.. 15. Learned counsel for the appellant, however, relied upon certain judgments which are not helpful to the appellant in the instant case because all those judgments arise out of the petitions seeking eviction before the Rent Controller under the Act of 1949 on the ground whether there was a change of user of the premises for a purpose other than for which it was let or have made material alterations without permission of the landlord. In those cases it was held that user of the premises for the purposes other than for which it was leased or material alterations was to the knowledge of the landlord who had been receiving rent and, therefore, had acquiesced to those acts and thus the the rent RISHU KATARIA201408.23 13:00 I attest to the accuracy and integrity of this document RSA-1520-1986 -10- petitions were not allowed. These judgments are (i) Ved Parkash Vs. Darshan Lal Jain 1986 PLR90 and (ii) New Garage Limited Vs. Khushwant Singh and another 1951 PLR136 The question of acquiescence and waiver cannot be of any help to the tenant in a case for determining whether the premises falls within the term rented land..

16. Statement of DW-1 the attorney of defendant-appellant that his father took the site in question for carrying on the business for setting up a factory is totally contrary to the lease deed where the principal purpose settled was residential. Even if the tenant is running a workshop for many years that will not change the purpose of letting as mentioned in the rent deed, the execution of which is not disputed. Anything contrary to the terms of the lease deed Ex. P-2 could be stated by the defendant- appellant himself who was party to the document and not by the attorney. DW-1 in cross-examination stated that the rent note was not signed by

him but by his father.

17. The view adopted by the Courts below is based on the settled law. So the sole substantial question of law that has been proposed cannot find any favour with the defendant-appellant by differing with the conclusions reached by the Courts below. Rest of the questions proposed depend upon the findings on the aforesaid issue. There is no merit in the instant appeal and the same is dismissed. August 7, 2014 ( R.P. NAGRATH ) rishu JUDGE RISHU KATARIA201408.23 13:00 I attest to the accuracy and integrity of this document

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**