

(2014) 11 SHI CK 0081
In the High Court Of Himachal Pradesh
Case No : R.S.A. No. 53 of 2012

Kuldip Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 04-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 80
Constitution of India, 1950 — Article 143, 363, 363(1)
Easements Act, 1882 — Section 52
Transfer of Property Act, 1882 — Section 105, 108

Citation : (2014) 11 SHI CK 0081

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : B.P. Sharma, Senior Advocate, Arun Kumar and G.K. Nadda, Advocate for the Appellant; P.M. Negi and Parul Negi, Deputy Advocate Generals, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—The appellants/plaintiffs filed a suit for declaration and consequential relief of injunction to the effect that they are permanent lessees of the grass land known as "Ghas Godam Mundkhar" comprised in Khasra Nos. 3 and 4 of the revenue estate No. 252/1, Jangal Jhanjar Tehsil Ghumarwin and that the defendants be restrained from interfering with the possession of the plaintiffs over the said land and from auctioning the grass of the said land.

2. The case of the plaintiffs is that their father late Mian Lekh Ram was granted the aforesaid land by the then ruler of Bilaspur State, Sir Raja Vijay Chand Sahib Bahadur. The grant was made on 19 Sawan 1977 BK and a document known as "Satha" was issued on 23 Sawan, 1977 BK. This "Satha" was duly signed by the then ruler Sh. Vijay Chand. It was conveyed through the said "Satha" that Sh. Lekh Ram aforesaid would be entitled to the grass of the aforesaid forest against an annual rent of Rs. 5/-. Mian Lekh Ram continued enjoying the aforesaid right of cutting the grass till his death in the year 1953 and thereafter the plaintiffs are enjoying the said right and are in possession of the land, in question. Mian Lekh

Ram had been paying rent of Rs. 5/- per annum regularly to the State Government. Similarly, the plaintiffs continued paying the said rent after the death of their father. However, subsequently, the said rent was enhanced from Rs. 5/- to Rs. 7/- per annum. It is further mentioned that the land is about 100 acres. Previously, this land used to be a demarcated forest under the ownership and possession of late Ruler of Bilaspur, but, subsequently when it was allotted to the father of the plaintiffs, it was taken out of the list of the demarcated forest and was declared as Ghas Godam. Thereafter, Khasra Nos. 3 and 4 was allotted to Mian Lekh Ram and thereafter the plaintiffs continued enjoying the right aforesaid till 1970. It was in 1970 that the State Government decided to put the forest into auction in respect of the grass which is grown in the said land. Having come to know the intention of the Government, the plaintiffs served a notice upon the State Government under Section 80 CPC. Consequently, the auction was stayed and the Government referred the matter for legal opinion of the Law Department. The main question for interpretation and opinion was the "Satha" aforesaid. The Law Department opined that "Satha" in question, was a perpetual and heritable lease and that the plaintiffs had right over the land in dispute. Subsequently, Kuldip Singh Patyal one of the plaintiffs preferred an application on 13.11.1973 to the Collector Ghumarwin for recording the factum of aforesaid lease in the revenue record. The said Collector passed an order on 26.3.1974 and ordered that an entry be made in the revenue record in respect of the said right of the plaintiffs. However, the defendants preferred an appeal against the said order of the Collector. The Commissioner directed the plaintiffs to get the matter settled through the Civil Court. The plaintiffs brought the present suit and also availed of the opportunity of filing an appeal against the order of the Divisional Commissioner. The appeal was pending before the Financial Commissioner, who had granted stay order against the defendants thereby restraining the defendants from interfering with the possession of the plaintiffs over the suit land. Thereafter, the defendants have been fixing various dates for putting the grass of the forest, in question, to auctioned. The defendant No. 4, Shiv Ram Arya, DFO, Bilaspur had fixed the auction of the said land for 4.8.1976 and 28.8.1976 despite the stay order of the Financial Commissioner and it was with the intervention of the Collector concerned that the said auction was not held. It is stated that the defendants have admitted the right of the plaintiffs over the suit land and the defendants are estopped from disputing the right of the plaintiffs over the suit land. As such, a declaratory decree has been sought thereby declaring the plaintiffs as perpetual lease holders of the land, in question, and also prayed that the defendants be restrained permanently from auctioning the grass land or interfering with the possession of the plaintiffs over the suit land.

3. The defendants contested the claim of the plaintiffs and they have denied that the plaintiffs are permanent lease holders of the land in dispute. It has been pleaded that "Satha" in question, was not a lease, but it was a concession granted by the then Ruler to Sh. Lekh Ram, father of the plaintiffs. It is further

stated that father of the plaintiffs and plaintiffs have never been in possession of the land in dispute and that no rent was paid by them to the Government. It has also been mentioned that Khasra Nos. 3 and 4 still continue to be demarcated protected forest and are recorded as such in the revenue record. It has emphatically been denied that the Government had admitted "Satha" to be the perpetual and heritable one. It has also been averred that the Divisional Commissioner had rejected the claim of the plaintiffs in respect of making of the entries regarding the factum of lease. As regards the admission made by the defendants, it is stated that the same is not binding on the Government and the defendants are not estopped from raising the objections aforesaid. It has further been stated that the auctions were fixed by the defendants because the Financial Commissioner had vacated the stay on 26.8.1976. Apart from this, certain preliminary objections like maintainability of the suit etc. have been raised. However, these averments were denied by the plaintiffs in their replication which they were allowed to file.

4. On the pleadings of the parties, the following issues were framed by the learned trial Court:

1. Whether the plaintiffs are permanent lease holders of the land known as Ghas Godam Mundkhar Khasra Nos. 3 and 4 of Village Jangal Jhanjar, Tehsil Ghumarwin, District Bilaspur, H.P. under the Government? OPP

1-A. Whether the suit land is comprised in Khasra No. 4 only as alleged? OPD

2. Whether the defendants are estopped from denying the rights of the plaintiffs in the land in dispute by their conduct and admission as alleged? OPP

3. Whether the defendants are interfering with the rights of the plaintiffs in the land in dispute as alleged? OPP

4. Whether the plaintiffs are entitled to the relief of injunction and declaration as prayed for? OPP

5. Whether the suit is not legally maintainable? OPD

5-A. Whether the plaintiffs have no locus standi to file the present suit? OPD

6. Whether the suit is without limitation? OPD

7. Whether this court has no jurisdiction to try the suit? OPD

8. Whether no valid and legal notice U/s. 80 CPC has been served upon the defendants? OPD

9. Whether the suit has been properly valued for the purpose of court fee and jurisdiction? OPP

10. Whether the plaintiffs are in continuous possession of the land in dispute for more than 30 years as alleged in the alternative, if so, its effect? OPP

10-A. Whether the plaintiffs are in adverse possession of the land in dispute for more than 30 years as alleged, if so, its effect? OPP

11. Whether the Satha in dispute is not at all a lease and had terminated at the death of the father of the plaintiffs? OPD

12. Whether the land in dispute falls in demarcated forest and the plaintiffs are not permanent lease holders of the land in dispute known as Ghas Godam Mundkhar? OPD

12-A. Whether the suit land ceased to be a demarcated forest after its grant to the father of the plaintiffs, as alleged, if so, its effect? OPP

13. Relief.

5. The suit was initially decreed by the learned Senior Sub Judge, Bilaspur vide judgment and decree dated 7.12.1981 in case No. 141/1 of 1976. The State preferred an appeal which was dismissed by the learned Additional District Judge, Bilaspur and the second appeal preferred before this Court was also dismissed.

6. The respondents then filed an appeal before the Hon"ble Supreme Court of India and the same was allowed and the case was remanded to the learned trial Court in the following terms:

"Learned counsel appearing for the appellant urged that the courts below have committed a serious error in holding that what was given to the plaintiff-respondents was lease and not licence and moreover such a right stood extinguished once the area for which licence was given vested and became part of the protected and demarcated forest. Learned counsel has relied upon relevant notifications, survey map and judgment of this Court in support of his argument. After we heard the matter we find many documents which are sought to be relied upon were not filed in the Courts below. Learned counsel for the parties are agreed that the case may be remanded to the trial court with liberty to file documents.

In view of above, we set aside the judgment of the Courts below and send the case back to the trial Court to decide the matter afresh. It will be open to the parties to adduce fresh evidence.

The appeal is allowed. There shall be no order as to costs.

Sd/- (V.N. Khare) (K.G. Balakrishan)"

New Delhi, February 01, 2001.

7. Learned trial Court after receipt of the file, fixed the case on 20.3.2010 a date for final arguments. However, when the case was listed on the said date, the parties sought time for arguments and the case was thereafter fixed for final arguments on 17.4.2010. On 17.4.2010, the respondents filed an application under Section 151 CPC for filing the documents i.e. Survey Map etc. However,

this application was dismissed on the ground that the case had been remanded by the Hon''ble Supreme Court by affording opportunities to the State to place on record the documents relating to the property but it had failed to exercise its right. The matter was then heard in part and fixed for arguments on 30.4.2010 on which date the suit of the plaintiffs came to be dismissed.

8. The plaintiffs preferred an appeal before the learned lower Appellate Court which also came to be dismissed and yet aggrieved, the plaintiffs/appellants have approached this Court by way of filing the present appeal.

9. When the appeal came up for consideration on 17.2.2012 this Court admitted the same on the following substantial questions of law:

1. Whether Sanad Ex. PW-2/A is beyond the jurisdiction of the Civil Courts and cannot be set aside in any civil proceedings?

2. Whether Article 363 of the Constitution of India ousts the jurisdiction on the Civil Courts to adjudicate, set aside the grant in the Sanad Ex. PW-2/A or to pass any other order annulling the grant so made?

3. Whether the Sanad Ex. PW-2/A is not subject to the limitation imposed by other laws including the laws relating to forest settlement?

4. Whether the Courts below have ignored/glossed over/misinterpreted the evidence of Raja Anand Chand son of Raja Bijai Chand, Ex Ruler of Bilaspur, who granted the Sanad Ex. PW-2/A?

5. Whether the Courts below have erred in interpreting the terms of the grant of the Sanad Ex. PW-2/A?

6. Whether the Courts below were in grave error in ignoring Ex. PZ, letter dated 18.06.1973, issued by the respondent-State acknowledging the possession of the plaintiff-appellant, if so its effect?

7. Whether the Courts below have misread and misinterpreted the evidence and pleadings of the parties on record?

8. Whether the judgment of the Courts below is against law and facts on record?

10. Thereafter, vide order dated 15.7.2014 in CMP No. 9274 of 2014, the following additional substantial question of law was framed:

9. Whether the respondents have played fraud on the Hon''ble Supreme Court by filing and persuading the Hon''ble Supreme Court to remand the case on false plea and on wrong translation of Urdu word "Doam" and if so, the judgment passed by the then Ld. Trial Court and both the Ld. Appellate Courts are to be revived by this Hon''ble Court by a judgment as per law laid down by the Hon''ble Apex Court.

Substantial questions of law Nos. 1 and 2:

Since both these questions of law are interconnected and interrelated, therefore, these are taken up together for consideration.

11. Article 363 of the Constitution of India reads thus:

"363. Bar to interference by Courts in disputes arising out of certain treaties, agreements, etc.-(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article-

(a) "Indian State" means any territory recognized before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State."

12. Till the Indian Independence Act, 1947, the Indian States were not subject to the administration of the Government of British India. The Indian States were under the suzerainty of the British Crown and were subject to control of the suzerain in certain matters. This suzerainty elapsed with the coming into force of the Indian Independence Act, 1947. With the passing of the Constitution, India became sovereign republic and Article 363(1) has barred the jurisdiction of the Civil Court arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party. To my mind, the provisions of this Article are not at all attracted to this case because sine qua non with respect to the documents like treaty, agreement etc. for coming within the ambit of Article 363 of the Constitution of India is that the same must have been entered into or executed before the commencement of the Constitution by any Ruler of an Indian State and thereafter importantly the Government of the Dominion of India or any of its predecessor Governments must be a party thereto. Resultantly, this would not cover the grants made like in the present case by the erstwhile Rulers in favour of individuals to which the Government of the Dominion of India or any of its predecessor is not a party thereto. Accordingly, it is held that Article 363 of

the Constitution is not applicable to the facts of the present case and the Civil Court had jurisdiction to entertain the suit. These substantial questions of law are answered accordingly.

Substantial questions of law Nos. 3, 4, 5, 6, 7, 8 & 9:

Since these questions of law are somewhat inter-connected and inter-related, therefore, these are collectively taken up together for consideration.

13. At the outset, it may be pointed out that granting of "Satha" Ex. PW-2/A has not been disputed by the respondents. The claim of the appellants is that the "Satha" was a perpetual lease while on the other hand, the claim of the respondents is that it was simply a concession granted on the application of Lekh Ram, which had terminated automatically on the death of Lekh Ram, father of the plaintiffs. The translation of "Satha" has been placed on record by the appellants, which reads as under:

"Before Captain Sir Raja Vijay Chand Sahib Bahadur

K.C.I.C.C.S. Bilaspur State (Kehloor)

No. of case

Corresponding Date

Register file.

133

23 Savan 1977 Sambat

Sd/-

(Vijay Chand)

Signature in English.

Addressed Mian Lekh Ram S/o Malagar Singh by Caste Rajput, resident of Village Mundkhar, Pargana Sunhani.

Whereas according to your petition for the contract (THEKA) of Grass Godown (Grass area) in Village Mundkhar, Pargana Sunhani on payment of Rs. 5/- per year is granted on perpetual basis on 19th Savan 1977 Sambat. This will be deemed effective from the 1977 Sambat. The contract amount shall be deposited with the Forest Department every year. This contract is thus granted by way of Sanad (certificate) and you are directed to retain it with you.

Sd/- Inder Singh (Signature in English)

Sd/- Hari Singh Nazirn Forest (Signature in English)

Sd/- Shiv Singh Forester Forest (Signature in Urdu)."

14. The respondents on the other hand have placed on record the translation of

"Satha" which reads as under:

"Before Captain Sir Raja Vijay Chand Sahib Bahadur K.C.I.E.C.S. Riyasat, Bilaspur.

Case No. - 133

Date of Registration - 23 Savan Sambat 1977 B.K.

Sd/- Raja Vijay Chand (in English).

Versus Mian Lekh Raj, son of Malagar Singh, Caste Rajput, R/o Mundkhar, Pargana Sunhani.

As per your written request, the contract of the grass godown Mundkhar, Pargana Sunhani on payment of Rs. 5/- yearly, has been accepted in public hearing, by order of the Raja dated 19 Savan 1977 and is granted to you, which shall be operative from 1977. The agreed contract amount shall be deposited every year with Forest Department. Hence, this Sanad is granted which be kept with you. Promulgated 23rd Savan, Sambat 1977.

Scribe Shiv Singh, Forester, Forest Department.

Sd/- Hari Singh Nazirn of Forest Department.

Sd/- Inder Singh.

The Hindi translation of the above document has been transcribed by the trial Court in its judgment dated 7.12.1981 in English alphabets. Copy of the above judgment is endorsed as Annexure A-1. The admissions if any, made by the official of the Government are not binding on the State being against the official record."

15. It is argued by learned counsel for the appellants that the respondents have played mischief and have even misled the Hon"ble Supreme Court to remand the case on account of wrong translation of the Urdu word "doam" by terming it to be "public hearing", which in fact otherwise means "perpetual". The appellants in support of his contention with regard to meaning of "doam" has placed on record an extract of Advance Urdu-Hindi-English Dictionary by V.V. Sahani wherein the "doam" means perpetual, continual, eternal. The respondents on the other hand have not been able to show that "doam" in fact means "public hearing". The translation submitted by the respondents in fact changes the entire complexion of the case and, therefore, it is established that the translation of "Satha" made by the respondents is incorrect while the translation made by the appellants is correct. However, this does not mean that only on account of the wrong translation, the judgments passed previously by the learned trial Court and learned Appellate Court would automatically revive.

16. Undisputedly, Raja Vijay Chand was the Ruler of erstwhile State of Bilaspur and had granted the "Satha" in favour of late Sh. Lekh Ram. PW-2 Anand Chand Sahib, who is the son of Raja Vijai Chand while deposing in this case, has stated

that he was Ex-Ruler of Bilaspur and "Satha" Ex. PW-2/A bore the signatures of his father. It was also signed by administering the same. He identified the signatures of both the aforesaid persons. It cannot be disputed that being a complete sovereign, he had made the "Satha" and the only question which arises for consideration as to whether the "Satha" was a perpetual lease granted in favour of the plaintiffs or was it only a concession granted in favour of the predecessors in interest of the plaintiffs.

17. The learned courts below while rejecting the claim of the plaintiff/appellants have held that the plaintiffs were only licensee whose predecessor-in-interest had been given concession of licence merely to cut the grass from the suit land. While the claim of the plaintiffs/appellants was that they were permanent lessee of the suit land. At this stage, this Court is required to see as to what were the precise pleadings of the respective parties.

18. The plaintiffs in paras No. 1 and 2 of the plaint had alleged as under:

"1. That the plaintiffs are permanent lease holders of the land in dispute known as Ghas Godam Mundkhar comprising of Khasra No. 3 and 4 of Village Jangal Jhanjhar Hadbast No. 252/1, Tehsil Ghumarwin, District Bilaspur, H.P. measuring about 100 acres (489-11-0 bighas) since it was granted to their worthy father.

2. That the land in dispute was granted to their worthy father of the plaintiffs late Mian Lekh Ram, Jagirdar by the then Ruler of Bilaspur State Siri Raja Bijai Chand Sahib Bahadur K.e.i.C.s. vide his order dated 19 Sawan 1977 BK and Satha dated 23 Sawan 1977 BK, signed by the then Ruler of the State Siri Bijai Chand, his minister late Shri Inder Singh, Forest Nazam Late Shri Hari Singh and Forester late Sh. Shiv Singh, as perpetual lease in lieu of rupees five annual rent to deposited with the forest department. The attested copy of the original Satha is enclosed herewith.""

While corresponding paras 1 and 2 of the written statement reads as under:

"1. That the contents of para No. 1 are wrong, hence not admitted. The plaintiffs are not permanent lease holders of the land in dispute known as grass Godam Mundkhar, comprised in Kh. No. 4 and not in Khasra No. 3 of Village Jangale Jhanjhar hadbast No. 258/1, Jhanjhar Forest hadbast No. 258/1 has been notified as demarcated protected Forest, under Chapter IV of Indian Forest Act.

2. That the contents of para No. 2 of the plaint are wrong and hence denied. The so called Satha which the plaintiffs claim as permanent lease, is not at all lease and was simply a concession granted on the application of late Sh. Lekh Ram, which had terminated automatically on the death of Shri Lekh Ram, the father of plaintiffs."

19. Thus, what would be seen from the pleadings is that the plaintiffs had claimed themselves to be a lease-holders of the land comprised in Khasra Nos. 3 and 4, while the defendants on the other hand had alleged that the plaintiffs were not permanent lessee but only a simple concession had been granted on

the application of late Sh. Lekh Ram, which had terminated with his death. The defendants did not even set up a plea that the predecessor-in-interest of the plaintiffs was only a licensee. I wonder from where and how the learned Courts below assumed the status of the predecessor-in-interest of the plaintiffs to be that of a licensee when this was not even the plea set up by the defendants. The learned Courts below could not have carved out an entirely a new case in favour of the defendants to dis-lodge the claim of the plaintiffs. There were no pleadings on behalf of the defendants that the plaintiffs were licensees. In absence of pleadings to this effect, the trial Court did not frame any issue on that question. However, still the learned Courts below have concluded that the plaintiffs were mere licensees. This view is contrary to the settled law that a question, which did not form part of the pleadings or in respect of which the parties were not at variance and which was not the subject matter of any issue, could not have been decided. Reliance can conveniently be placed upon the judgment of the Hon'ble Supreme Court in Union of India Vs. E.I.D. Parry (India) Ltd., wherein it was held as follows:

"The suit was filed for the recovery of excess demurrage allegedly charged by the appellant from the respondent. The claim depended upon Goods Tariff Rules, specially the Rule quoted above, which authorizes the respondent to claim damages in respect of the entire block of wagons supplied to a party who does not empty those wagons at the siding within the time permitted for that purpose. There was no pleading that the Rule upon which the reliance was placed by the respondent was ultra vires the Railways Act, 1890. In the absence of the pleading to that effect, the trial Court did not frame any issue on that question. The High Court of its own proceeded to consider the validity of the Rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890 and consequently held that it was ultra vires. This view is contrary to the settled law that a question, which did not form part of the pleadings or in respect of which the parties were not at variance and which was not the subject matter of any issue, could not be decided by the Court. The scope of the suit was limited. The pleadings comprising of the averments set out in the plaint and the defence put up by the present appellant in their written statement did not relate to the validity of the Rule struck down by the High Court. The High Court, therefore, travelled beyond the pleadings in declaring the Rule to be ultra vires. The judgment of the High Court, therefore, on this question cannot be sustained."

20. What is a lease, licence and what is the difference between the two, has been succinctly summed up by the Hon'ble Supreme Court in Pradeep Oil Corporation Vs. Municipal Corporation of Delhi and Another, , which reads as follows:

"12. It would be useful to examine at this stage the definition of "lease" and "licence" as envisaged under Section 105 of the Transfer of Property Act, 1882 and section 52 of the Indian Easements Act, 1882 respectively. Section 105 of

the Transfer of Property Act, 1882 reads:-

"105. Lease defined.--A lease of immovable 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."

On the other hand, Section 52 of the Indian Easements Act, 1882 reads as:

"52. "Licence" defined.--Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called, a licence."

13. A licence may be created on deal or parole and it would be revocable. However, when it is accompanied with grant it becomes irrevocable. A mere licence does not create interest in the property to which it relates. License may be personal or contractual. A licensee without the grant creates a right in the licensor to enter into a land and enjoy it.

14. In Halsbury's Laws of England, 4th Edition, Vol. 27 at page 21 it is stated:-

"12. Licence coupled with grant of interest.-A license coupled with a grant of an interest in property is not revocable. Such a license is capable of assignment, and covenants may be made to run with it. A right to enter on land and enjoy a profit a prendre or other incorporeal hereditament is a license coupled with an interest and is irrevocable. Formerly it was necessary that the grant of the interest should be valid; thus, if the interest was an incorporeal hereditament, such as a right to make and use a watercourse, the grant was not valid unless under seal, and the license, unless so made, was therefore a mere license and was revocable but since 1873 the Court has been bound to give effect to equitable doctrines and it will restrain the revocation of a license coupled with a grant which should be, but is not, under seal."

A lease on the other hand, would amount to transfer of property.

15. In Associated Hotels of India Ltd. Vs. R.N. Kapoor, , the following well established proposition were laid down by a Constitution Bench for ascertaining whether a transaction amounts to a lease or a licence: (AIR p. 1269, para 27)

"27. There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The

Lesser parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the Lessor. Whereas Section 52 of the Indian Easement Act defines a licence thus:

* * *

Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a license. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission his occupation would be unlawful. It does not create in his favor any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. A long time it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in *Errington v. Errington* 1952(1) All ER 149, wherein Lord Denning reviewing the case law on the subject summarises the result of his discussion thus at p. 155:

"The result of all these cases is that, although a person who is let into exclusive possession is, prima facie to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy."

16. It is quite clear that the distinction between lease and license is marked by the last clause of Section 52 of the Easement Act as by reason of a license, no estate or interest in the property is created.

17. In the case of *Qudrat Ullah Vs. Municipal Board, Bareilly*, it was observed at p. 398 thus:-

"... If an interest in immovable property, entitling the transferors to enjoyment is created, it is a lease; if permission to use land without right to exclusive possession is alone granted, a license is the legal result."

(emphasis underlined)

18. A licence, inter alia, (a) is not assignable; (b) does not entitle the licensee to sue the stranger in his own name; (c) it is revocable and (d) it is determined when the grantor makes subsequent assignment. The rights and obligations of the lessor as contained in the Transfer of Property Act, 1882 are also subject to the contract to the contrary. Even the right of assignment of leasehold property may be curtailed by an agreement."

21. On the touch-stone of the aforesaid exposition of law, I proceed to examine the oral and documentary evidence available on record. "Satha" Ex. PW-2/A in itself does not mention specifically the total area and khasra numbers which is only ascertainable from the entries made during the Bandobast of the Mundkhar

forest wherein this area was denoted in Khasra Nos. 3 and 4. There is no contrary evidence on record so as to suggest that any other area save and except the aforesaid khasra numbers were also known as "Mundkhar". The area shown under Khasra No. 3 is 344-12 bighas while under Khasra No. 4, it is 141-19 bighas and in this manner the total area works out to be 486-11 bighas.

22. Now, in case the wording of the document Ex. PW-2/A is seen, the same reads as under:

"Before Captain Sir Raja Vijay Chand Sahib Bahadur K.C.I.C.C.S. Bilaspur State (Kehlloor)

No. of case

Corresponding Date

Register file.

133

23 Savan 1977 Sambat

Sd/-

(Vijay Chand)

Signature in English.

Addressed Mian Lekh Ram S/o Malagar Singh by Caste Rajput, resident of Village Mundkhar, Pargana Sunhani.

Whereas according to your petition for the contract (THEKA) of Grass Godown (Grass area) in Village Mundkhar, Pargana Sunhani on payment of Rs. 5/- per year is granted on perpetual basis on 19th Savan 1977 Sambat. This will be deemed effective from the 1977 Sambat. The contract amount shall be deposited with the Forest Department every year. This contract is thus granted by way of Sanad (certificate) and you are directed to retain it with you.

Sd/- Inder Singh (Signature in English)

Sd/- Hari Singh Nazirn Forest (Signature in English)

Sd/- Shiv Singh Forester Forest (Signature in Urdu)."

23. There is specific reference of a grant having been made by Raja of Bilaspur and the same is not restricted and there is no time frame rather the same has been granted in perpetuity subject to the payment of Rs. 5/- as rent (later increased to Rs. 7/-). It is not disputed that at the time of making the grant, the Raja of Bilaspur was a sovereign enjoying the full powers of the State and his Will was the law with no restriction or obstruction on his power and he in exercise of his prerogative right had made the grant.

24. I wonder how the learned Courts below have assumed that this land was

given for cutting grass alone. The purpose of lease is nowhere mentioned in the "Satha". The mere mentioning of grass Godam (Grass area) in itself may only suggest that it had something to do with grass but it cannot be inferred that this was the right for which it was given. The Courts cannot of its own introduce those words which otherwise have not been mentioned in the document.

25. At this stage, it would be relevant to make note of copy of memorandum dated 18.6.1973 issued by the Conservator of Forest, Bilaspur, which has been duly proved on record and reads as under:-

"No. 4081

Himachal Pradesh Forest Department.

Dated Bilaspur, the 18.6.73

From: C.F. Bilaspur.

Subject: Lease of Mundkhar Grass Godown in Bilaspur Forest Division.
Memorandum,

There is an area named Mundkhar Grass Godown, included in Palasla DPF of Bilaspur Forest Division, which was with lease for grass cutting with late Mian Lekh Ram of village Mundkhar for an annual payment of Rs. 5/- as lease money. This area was granted for grass cutting by His Highness Raja Sir Vijai Chand, the then ruler of Bilaspur State on 19th Sawan 1977 vide "Satha" dated 23rd Sawan, 1977 (attested copy enclosed). After the death of Mian Lekh Ram, his heirs have asserted their claim that the lease of grass cutting originally entered into with Mian Lekh Ram may be continued in their name as well. In support of their assertion they have stated that the lease was granted in perpetuity in the name of original grantee, therefore, the lease is to be continued to the succeeding generations as well. Since the transfer of lease to the heirs involves legal interpretation of the contents of "Satha", therefore, the case is referred to you for kindly getting necessary clarification from the law department as to whether the lease can be transferred to the heirs of Mian Lekh Ram or not. It may however, be mentioned that the grass godown is at present under the possession of the heirs of Mian Lekh Ram and they are prepared to pay the arrears of lease amount of the grass godown which has not been accepted by the Department for the last few years. An early clarification in the matter is requested as the heirs of the original lease holder are keen to get the matter decided at the earliest.

2. The copy of "Satha" enclosed with this letter may kindly be returned after it is no longer required in your office.

Sd/- C.F. Bilaspur."

In the aforesaid memorandum, the Conservator of Forest had not only acknowledged the appellants to be in possession, but had also acknowledged the receipt of rent.

26. The learned Advocate General would contend that the appellants at best can agitate their claim over Khasra No. 4 and not over Khasra No. 3 since this khasra number had been notified as demarcated protected forest under Chapter IV of the Indian Forest Act. There is a fallacy in this argument because the demarcated protected forest was declared only in the year 1952 while the grant in this case admittedly had been made in the year 1977 BK corresponding to the English Calendar 1920. Any unilateral act of the defendants that too subsequent to the grant of "Satha", would not be binding upon the plaintiffs.

27. The learned Advocate General would thereafter argue that the revenue records do not record and recognize right as claimed by the plaintiffs. I am afraid that even this contention does not appeal to this Court. It is settled law that no presumption of truth is attached to the revenue entries, particularly jamabandi, the entries whereof are primarily for fiscal purpose and moreover, the rights of the parties would be governed by the "Satha" and this Court need not fall back or rather look at any other document.

28. The learned Courts below have not only gone astray but these findings are perverse when they place reliance on the entries of revenue records in the teeth of this "Satha" Ex. PW-2/A. Equally misplaced is the reliance placed by the learned Courts below to the forest settlement report compiled by Mian Durga Singh under the authority of H.H. Raja Bijie Chand Sahib as it does not even make a reference to the land in question. The further reliance placed by the learned Courts below upon the judgments of the Rajasthan High Court and Orissa High Court, respectively, to hold that the plaintiff was only a licensee and not lessee to say least are misplaced for the simple reason that the "Satha" did not reflect the usage of the land mentioned therein much less the same being granted only for the purpose of cutting grass. Even the word "Doam" has been totally misconstrued by the learned Courts below as the word "Doam" was with respect to the grant being made in perpetuity, how the learned Courts below have held the "Satha" to be a grant and how it amounts to Theka or contract year after year is neither discernable or forthcoming. A bare perusal of the "Satha" would clearly show that the grant had been made in perpetuity on the payment fixed therein and in no manner was a licensee as held by the learned Courts below.

29. Thus, in view of the aforesaid discussion, it can be safely concluded that while granting the "Satha" no subordinate tenure or an interest was created in anybody else and the same was a proprietary sovereign grant, granting all kinds of rights on these lands while making no reservation whatsoever in that connection. A perusal of the Sanad indubitably and unequivocally indicates that the intention of the Ruler was to grant a right in perpetuity to the predecessor-in-interest of the plaintiffs. No doubt, ordinarily the rule is that the grant made by the sovereignty are to be construed most favourably for the sovereign but if the intention is obvious a fair and liberal interpretation may be given to the grant to enable it to take effect; and the operative part if plainly

express may take effect notwithstanding qualifications, if any, in the recitals.

30. Lastly, it may be observed that the Hon"ble Supreme Court had remanded the case so as to enable the respondents to file documents so that the matter could be decided afresh, which is clear from the following observations of the order:

"Learned counsel appearing for the appellant urged that the courts below have committed a serious error in holding that what was given to the plaintiff-respondents was lease and not licence and moreover such a right stood extinguished once the area for which licence was given vested and became part of the protected and demarcated forest. Learned counsel has relied upon relevant notifications, survey map and judgment of this Court in support of his argument. After we heard the matter we find many documents which are sought to be relied upon were not filed in the Courts below. Learned counsel for the parties are agreed that the case may be remanded to the trial court with liberty to file documents....."

Admittedly no additional documents were filed by either of the parties, more particularly by the respondents. This being the factual position then whether the learned trial or even the appellate Court could have given findings different and contrary to ones rendered earlier by them once the pleadings and evidence available on the record remained same. The substantial questions of law are answered accordingly.

31. In view of the above, there is merit in this appeal and accordingly, the judgment and decree dated 19.11.2011 passed by learned Additional District Judge, Ghumarwin, District Bilaspur, H.P. (Camp at Bilaspur) in Civil Appeal No. 26/13 of 2011/10 are set-aside and the suit of the plaintiffs is decreed as prayed for. Pending application(s), if any, stands disposed of.