SHRI TULSI

v.

SMT. PARO (DEAD)

NOVEMBER 6, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Transfer of Property Act, 1882 :

Lease—Agriculture land—Suit for possession by landowner claiming that the defendant was a licensee—Defendant—Appellant claiming himself to be a tenant at will and Revenue records showing him as such—Held, when the name of the appellant has successively found place in revenue records from 1951-52 to 1971-72, as 'tenant at will' and he remained in uninterupted possession and enjoyment of the property for over 20 years, he cannot be said to be only a licensee: he is tenant at will liable to eviction according to law.

'Lease' and 'licence'—Difference between—Explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2585 of 1980.

From the Judgment and Order dated 16.6.80 of the Himachal Pradesh High Court at Simla in R.S.A. No. 138 of 1979.

A.P. Mohanty for S.K. Sabharwal for the Appellant.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the learned Single Judge of the Himachal Pradesh High Court, dated June 16, 1980 in RSA No. 138/79. The trial Court had decreed the suit and appellate Court allowed the appeal and dismissed the suit. In the second appeal, the High Court reversed the judgment and decree of the appellate Court and confirmed that of trial Court. Thus, this appeal.

The admitted facts are that the suit properties of various Khasra nos. admeasuring 12.4 bighas and 22.4 bighas situated in Mohal Kanyarka

A Pargana Churah Tehsil Bhattiyat District Chamba in the State of Himachal Pradesh, belonged to the respondent. She had filed a suit for possession against the appellant pleading that he is a licensee and had agreed to cultivate the lands on her behalf as licensee and, therefore, he is liable to be ejected by a decree of eviction in the suit. It is the case of the appellant that though the parties are related, he is only a tenant at will and he agreed to B cultivate the land as a tenant giving the produce to the respondent—landlady as he was looking after her. The admitted position is that the Revenue records for the period from 1951-52 to 1971-72 do indicate that the appellant had been shown as 'Gar Marusi'. It would appear that it means "tenant at will". Section 105 of the Transfer of Property Act defines lease thus: "A lease of immovable property is a transfer of a right to enjoy such C property made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a store 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". It is not necessary that lease should always be D reduced to writing. What is necessary is for transfer of a right of enjoyment of the property made for a certain time, expressed or implied and for consideration of the price, paid or promised, the transferee must have been put in possession of the demised property, it is also necessary that an agreement can be entered into for rendering periodical service and for consideration thereof and on transfer of the land to the transferee and E acceptance thereof, either orally or in writing, the lease comes into existence. It is seen that when the name of the appellant has successively found place in the records for period from 1951-52 to 1971-72 as "tenant at will", the necessary conclusion is that he is tenant at will liable to eviction according to law. The theory that he is a licensee, as has been accepted by the High F Court and the Trial Court, is untenable. A licensee has no right in the property, not to speak of any right to the exclusive possession of the property and animus of possession always remains with the licensor; the licensee gets the possession only with the consent of the licensee and is liable to vacate when so asked. In this case, since the appellant remained in uninterrupted possession and enjoyment of the property for over 20 years, G it is unthinkable to conclude that they are only licensee. The High Court and the trial Court, therefore, were clearly in error in reaching the conclusion that the appellant is only a licensee. On the other hand, from the facts, it is clear that the appellant is a tenant and he will be liable for ejectment only in accordance with law. If he is otherwise entitled to tenancy right of the H property, the right can be had in accordance with law and it is open to him

to work out the same in accordance with law. A

The appeal is allowed in the light of the above facts and circumstances. No costs.

R.P. Appeal allowed.