IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 79 of 2005

Reserved on: 28.2.2026

Date of Decision: 09.04.2026

Ram Vinod and another ...Appellants

Versus

Parveen Kumar and others ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***No.***

For the Appellants : Mr Ajay Sharma, Senior Advocate, with Mr Atharv Sharma, Advocate.

Names of respondents No.1 and 6(b) stand deleted.

For Respondents No.2, 3, 4(a) to 4(c) and 5 : Mr Neeraj Gupta, Senior Advocate, with Mr Ajeet Pal Singh Jaswal, Advocate.

For Respondents No.6, 7(a) to 7(c) : None

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 6.12.2004, passed by the learned District Judge, Una, H.P. (learned Appellate Court), vide which the judgment and decree passed by the learned Sub Judge, First Class, Court

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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No.2, Amb, District Una, H.P. (learned Trial Court), were upheld. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court seeking a permanent prohibitory injunction restraining the defendants from forcibly ousting the plaintiff, dismantling the suit premises, described by the letters ABCDEFGH and obstructing the passage denoted by the letters EFLD mentioned in the head note of the plaint, situated in Village Chaproh, Chintpurni except in due course of law. A mandatory injunction directing the defendants to remove the construction put by them in front of the door and clear the passage denoted by the letters EFLD was also sought. It was asserted that the suit premises denoted by the letters ABCDEFGH comprise one room with a verandah whose roofs are covered with corrugated sheets. The portion CDLN is covered by a tarpaulin. The passage denoted by letter EFLD leads from the stairs to the verandah. These premises were in the possession of the predecessors-in-interest of plaintiff as a tenant for 25 years. He has kept his various articles inside the premises. The rent of

the premises was fixed as ₹150/- per annum, which was enhanced to ₹1200/- per annum. The predecessor-in-interest of the plaintiff paid the rent till 1988. Predecessor-in-interest of the plaintiff's son Parveen Kumar is running a manyari shop with defendant No.5 in partnership for eight years. The relationship between defendant No.5 and Parveen Kumar became strained due to the misappropriation of the accounts. Defendant No.5 instigated other defendants, and they extended illegal threats of forcibly ousting the plaintiff, dismantling the premises and obstructing the passage. They attempted to remove the articles on 27.12.1989 and caused damage of ₹7,000/-. The matter was reported to the police, and FIR No.158/89 was registered. The defendants continued with their threats. Hence, a suit was filed before the learned Trial Court seeking the reliefs mentioned above.

3. The suit was opposed by defendants No.1 to 3 by filing a written statement taking preliminary objections regarding lack of maintainability, locus standi and cause of action, the plaintiffs being estopped by their act and conduct to file the suit, and the suit being bad for non-joinder and mis-joinder of necessary parties. The contents of the plaint were

denied on the merits. It was asserted that defendants No.1 and 3 are joint owners of the premises to the extent of a half share each. Defendant No.2 is the son of Defendant No.1. The room was rented to Jagdish Ram, the predecessor-in-interest of the plaintiffs, for ₹150/- per annum. This rent was enhanced to ₹1200/- per annum. The room was to be used as a store, and the entrance for the room was provided from the back door opening towards Chintpurni Talwara road. Jagdish Ram remained in possession of the room till 1987, and he surrendered his possession to the owners because the premises were in a dilapidated condition and he had constructed a building of about 30 rooms just opposite to the suit premises. Defendant No.2 started selling religious books, caps and other articles in the premises after the year 1988. The front portion, except the portion in possession of defendant No.2, was rented to defendant No.5, who started running a shop of maniyari. The plaintiffs interfered with the possession of defendant No.5, who made complaints to Vyopar Mandal and the Panchayat. It was agreed that defendants No.1 to 3 would carry out the repairs; however, when the repair work was started on 27.12.1989, the plaintiffs attacked the defendants and the workers and removed

the goods lying on the spot. FIR No.159/89 was registered regarding the incident. The plaintiff filed a false suit. Hence, it was prayed that the present suit be dismissed.

4. A separate written statement was filed by defendant No.5, taking a preliminary objection regarding lack of maintainability, and the plaintiff being estopped by their act and conduct to file the present suit. The contents of the plaint were denied on merits. It was asserted that defendant No.5 is in possession of the premises in front of the room owned by Ram Vinod (defendant No. 1). Defendant No.5 was running a business as a general merchant. The rear door was used by the plaintiff for ingress and egress. The plaintiff surrendered the possession of the room to the landlord. Defendant No.5 was inducted as a tenant on the payment of ₹600/- by defendant No.3. The back rooms were also rented to defendant No.5 at the rate of ₹200/- per month by Ram Vinod. The premises needed repair badly. Defendant No.5 repaired the room. The passage located on the rear side was damaged during the floods of 1988. Plaintiff had nothing to do with the premises. There was no partnership between defendant No.5 and the plaintiff or his son. The plaintiff threatened to disconnect the electricity supply of the

premises. A false suit was filed to grab the premises. Hence, it was prayed that the suit be dismissed.

5. Separate replications denying the contents of the written statement filed by the defendants and affirming those of the plaint were filed.

6. Learned Trial Court framed the following issues on 20.1.1993 and 2.8.2001: -

1. Whether plaintiff is a tenant over portions A to H under defendants No.1 to 4? OPP.
2. Whether the plaintiff is a tenant of the back portion of a room? OPD.
3. Whether plaintiff is a partner with defendant No.5 over EDLN, if so its effect? OPP.
4. Whether Jagdish surrendered the possession of the room in 1987? OPD.
5. Whether suit is not maintainable? OPD.
6. Whether plaintiff is estopped by his act/conduct? OPD.
7. Whether defendant No.5 is tenant of the front portion of the room? OPD-5.
8. Whether plaintiff abandoned the tenancy rights of the room to the owners? OPD.
9. Whether the plaintiff is entitled to the relief of permanent injunction? OPP.

9A. Whether the plaintiffs are entitled to the relief of possession as prayed? OPP.

9B. Whether the suit is barred by limitation? OPP.

10. Relief.

7. The parties were called upon to produce evidence. The plaintiffs examined Bishan Dass (PW1), Jai Ram (PW2), Ravi

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Dutt (PW3), Satpal (PW3), Yash Pal (PW4), Anil Katoch (PW5), Parveen Kumar (PW6), Rajinder Dutt (PW7) and Prakash Chand (PW8). The defendants examined Ram Vinod (DW1), Dwarka Dass (DW2), Sewa Singh (DW3), Swaran Dass (DW4), Harbans Lal (DW5), Kailash Chand (DW6), Pramod Kumar (DW7), Narinder Swaroop (DW8) and Ravi Kumar (DW9).

8. Initially, the suit was dismissed by the learned Trial Court vide judgment and decree dated 19.9.1998. An appeal was preferred. The plaintiff filed an application under Order 6 Rule 17 of CPC to amend the plaint to seek an alternative relief of possession. The learned Appellate Court allowed the application and remanded the matter to the learned Trial Court with a direction to permit the defendants to file a written statement and dispose of the matter as per law. Learned Trial Court permitted the defendants to file the written statement. The plaintiffs were also permitted to file replications. Learned Trial Court framed additional issues 9A and 9B (noticed above) on 2.8.2001. No fresh evidence was led by the parties.

9. The learned Trial Court held that the description of the suit land was not disputed in the written statement. The

ingress and egress of the room was towards the portion denoted by the letters RFLR through the verandah. The plea taken by the defendants that the passage led to the room from the Talwara road was not established. The front portion of the room was also in occupation of the plaintiff. The payments were made by Parveen Kumar in favour of Ram Vinod Kalia by means of cheques, which were encashed by the defendants. The electricity meter was also in the name of Jagdish, which corroborated his version. Parveen Kumar was the holder of the sales tax number since 2.2.1977. The plea taken by the defendants No.1 to 3 that tenancy was surrendered was not proved. There was a variance between the pleadings and the proof of the defendants. The plea taken by defendant No.5 that he was inducted as a tenant in the year 1980 and he was paying the rent of ₹600/- was not proved by any material on record. The predecessor-in-interest of plaintiffs was tenant over the portion denoted by letters A to H under defendants No.1 to 3, and the shop denoted by letters EDL N was being run by Parveen Kumar in partnership with defendant No.5. The plaintiffs were not estopped from filing the suit. The defendants interfered with the possession of the plaintiffs without any right to do so. Hence, the learned Trial

Court answered Issues No.1, 3, 9 and 9A in the affirmative, Issue No.2, 4 to 8 and 9B in the negative and decreed the suit.

10. Being aggrieved by the judgment and decree passed by the learned Trial Court, defendants No.1 to 3 and defendant No.5 filed separate appeals and cross objections which were decided by learned District Judge, Una, HP (learned Appellate Court). Learned Appellate Court held that the defendants had failed to prove the surrender of the tenancy, defendant No 5 was not proved to be the tenant of the suit premises, no adverse inference could be drawn for withholding the partnership deed between defendant No. 5 and Pawan Kumar, the destruction of the building would not affect the continuance of the lease, the learned Trial Court had rightly appreciated the evidence and no interference was required with the judgment and decree passed by the learned Trial Court. Hence, the appeal was dismissed.

11. Being aggrieved from the judgments and decrees passed by the learned Courts below, defendants No.1 to 3 have filed the present appeal, which was admitted on the following substantial questions of law on 9.9.2005: -

1. Whether both the learned Courts below having failed to appreciate the frame of the suit inasmuch as that person

out of possession is seeking injunction, in law, could not have been granted, as such impugned judgments and decrees passed by learned Courts below stand vitiated?

2. Whether the mere making of document as exhibit (Ex. P-8), without its proof in accordance with the provisions of Evidence Act, could not have been read in evidence, both the learned Courts below having read the said document in evidence vitiated the impugned judgments and decrees?

3. Whether in view of the admitted position of tenanted premises having been fallen down, in view of the judgment of the Apex Court, contrary decision rendered by the learned Courts below vitiated the impugned judgments and decrees.

12. I have heard Mr Ajay Sharma, learned Senior Counsel, assisted by Mr Atharv Sharma, learned counsel for the appellants and Mr Neeraj Gupta, learned Senior Counsel, assisted by Mr Ajeet Pal Singh Jaswal, learned counsel for respondents No.2, 3, 4(a) to 4(c) and 5.

13. Mr Ajay Sharma, learned Senior Counsel for the appellants/defendants, submitted that as per the plaint, the Parveen Kumar had entered into a partnership with defendant No.5. Defendant No.5 denied this fact. No Partnership Deed was produced on record, and the partnership was not proved. The possession was with defendant No.5 as per the plaint, and the plaintiffs could not have sought the mandatory injunction. The

learned Trial Court erred in admitting the documents on record without their formal proof. The tenancy, if any, would come to an end after the destruction of the subject matter; therefore, he prayed that the present appeal be allowed and the judgments and decrees passed by learned Courts below be set-aside.

14. Mr Neeraj Gupta, learned Senior Counsel for the respondents/plaintiffs No.2, 3, 4(a) to 4(c) and 5, submitted that both the learned Courts below have consistently held that the plaintiffs were in possession and the surrender of tenancy was not proved. These are pure findings of fact, and there is no perversity in them. The partnership can exist without a written document. Mere failure to produce the partnership deed is not fatal. The destruction of the subject matter will not terminate the lease. He relied upon the judgment of this Hon'ble Court in ***Shaha Ratansi Khimji & Sons v. Kumbhar Sons Hotel (P) Ltd., (2014) 14 SCC 1: (2015) 1 SCC (Civ) 186: 2014 SCC OnLine SC 557*** in support of his submission.

15. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No. 1:

16. Both the learned Courts below have specifically held that the plaintiffs are in possession of the suit premises. It was submitted that the findings recorded by the learned Courts below regarding the possession of the plaintiffs are perverse. The plaintiff had specifically pleaded in para-3 of the plaint that Parveen Kumar was running a maniyari shop with defendant No.5 in partnership, but no Partnership Deed was produced, and the possession of defendant no.5 could not be connected to the plaintiff. This submission cannot be accepted. Parveen Kumar (PW6) stated in his examination in chief that he had inducted defendant No.5 Narinder Saroop Bhatnagar as a partner in the year 1981. He has nowhere stated that he had entered into a written partnership agreement with defendant No.5. Section 4 of the Indian Partnership Act, 1932, provides that a partnership is the relationship between the persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, the definition does not require the partnership to be in writing. It was laid down by the Bombay High Court in ***Dwarkadas Khetan & Co. Bombay v. CIT, (1956) 29 ITR 903: 1956***

SCC OnLine Bom 44 that an oral partnership agreement is as effective as a written agreement. It was observed at page 909:

> "What is overlooked is that the law does not require that a partnership deed should be in writing. The agreement of partnership may be oral, and the oral partnership agreement is as effective as a written partnership agreement. It is only for the purpose of section 26A and for the purpose of registration that an instrument of partnership is necessary, and partners who have already started doing business by an oral agreement would be perfectly justified in saying to themselves: "We want our partnership to be registered. The income- tax law does not permit us to do so unless we have an instrument in writing, and therefore we will now proceed to have an instrument in writing." That is exactly what seems to have been done in this case, and in our opinion, it was done with perfect propriety. The same view of the law was taken by the Punjab High Court in an earlier case reported in Padam Parshad Rattan Chand of Delhi v. Commissioner of Income-tax, Delhi."

17. It was laid down by the Gujarat High Court in ***Rajabali Jadavji Popatiya v. Karim Rajabali Popatiya, 2014 SCC OnLine Guj 5483*** that the law does not prohibit oral partnership. It was observed:

> **20**. Learned advocate Mr Shastri, however, submitted that there is no concept of oral partnership. The respondent No. 1 has just made a bald assertion in the plaint as regards partnership business between the parties, and there is no written partnership between the parties; therefore, the suit is not maintainable. Such cannot be said to be the objection as regards the bar of the suit so as to attract the provision of Order VII Rule 11 of the Code.

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> Apart from this, the partnership is always a contractual relationship between the parties to share the profit of the business carried on by them. There could be an oral contract also for such business. In fact, learned advocate Mr Jani was right in submitting that Section 4 of the Act defining partnership nowhere provides for a written document of a partnership, but it just defines the partnership relation between the persons who agree to share the profit of the business carried on by them. Therefore, there could be an oral partnership as well.

18. Therefore, an oral partnership can exist, and the plaintiffs case cannot be doubted because no partnership deed was produced.

19. Parveen Kumar stated in his cross-examination by learned counsel for defendant No.5 that he had taken the sale tax number in 1977 in the name of M/s Parveen Kumar and Company, which is a sole proprietorship concern. This part of the statement was corroborated by Anil Katoch (PW5), who stated that Sale Tax No.4275 was allotted to Parveen Kumar on 2.7.1977. Narinder Saroop Bhatnagar, defendant No.5, admitted in his cross-examination that he had taken the sales tax number in the year 1991, and he was maintaining the record thereafter. This falsifies his plea that he was running a shop since 1980 because he would have taken the sales tax number in the year

1980 and not in the year 1991 had he been running the shop since 1980.

20. Praveen Kumar stated that the electricity meter was issued in the plaintiff's name. This is corroborated by the statement of Sat Pal (PW3), who stated that the electricity meter was installed in the name of Jagdish Ram on 21.04.1982. The defendant no. 5 also admitted in his written statement that the electricity in the suit premises is in the name of the plaintiff.

21. Ravi Dutt Sharma (PW3), stated that the cheque of ₹1200/- was issued on 21.4.1986 by Parveen Kalia, mentioning the rent in the year 1985-86. This was got encashed by Ram Vinod Kalia. Similarly, another cheque of ₹1200/- was encashed by Ram Vinod Kalia on 7.7.1987, in which the rent for the year 1987-88 was mentioned. Ram Vinod Kalia (DW1) stated in his examination-in-chief that Jagdish Ram had taken a shop in the year 1970-71, which was being used as a store. He admitted in his cross-examination that Jagdish used to pay the rent by means of a cheque. He used to sign in the ledger regarding the receipt of the amount. He admitted that the rent was received

from Parveen till 31.3.1988. These admissions corroborate the version of Parveen that the tenancy continued.

22. Plaintiffs also filed the cash memos (Ex.PW8/1 to Ex.PW8/10), which show that the articles were being supplied in the name of Parveen Kumar and Company from 1983 to 1988. The letters written to Parveen Kumar and Company demanding the C-Form (Ex.PW8/11 to Ex.PW8/13) were also filed. These documents corroborated the plaintiffs' version that Parveen Kumar and Company were running the shop.

23. Both the learned Courts below have concurrently negated the claim of surrender of tenancy. There is no perversity in this finding. The defendants claimed in para 2 of the original written statement filed by them that Jagdish Ram remained in possession till 1987 and thereafter surrendered the tenancy. They filed an amended written statement after the amendment of the plaint was allowed by the learned Appellate Court and claimed that Jagdish Ram remained in possession till March, 1988. Learned Appellate Court had rightly held that the defendants could only have amended their written statement to the extent the plaintiffs had amended their pleadings, and it is

not permissible to amend the written statement beyond that. It was laid down by this Court in ***Tek Chand Chitkara versus Union of India, ILR 1974 (HP) 616***, that when the plaintiff is allowed to amend his plaint, the defendant is entitled to amend his written statement. However, the scope of the amendment available to the defendant is confined to the amendment effected in the plaint. It was observed:

> "4. On the first contention, it seems to me that the plaintiff is right. There can be no doubt that if a plaintiff is allowed to amend his plaint, a defendant is entitled to amend his written statement. But the scope of the amendment available to the defendant must relate to the amendment effected in the plaint. The occasion for permitting the defendant to amend the written statement is provided by the amendment of the plaint, and the whole purpose of allowing the defendant to amend the written statement is to afford him an opportunity to set out his defence in reply to the amended pleading introduced in the plaint. It must be remembered that after the plaint is filed and the defendant files his written statement in defence, he exhausts his right to do so, and he cannot subsequently amend the written statement except by leave of the Court. To permit the defendant to do so otherwise could result in defeating Order 8 Rule 9 of the Code. Now, it is one thing to amend the written statement in reply to an amendment of the plaint; it is quite another thing to amend the written statement by introducing entirely fresh pleadings not warranted by the amendment in the plaint. To amend the written statement in the latter case, the defendant must satisfy requirements which proceed beyond those arising upon a mere amendment of the

plaint. I am in agreement with the view taken in ***Diltu Ram vs. Amar Chand (A.I.R. 1961 H.P. 46)***. It may be mentioned that the Punjab High Court has taken a contrary view in ***Girdharilal vs. Krishan Datt (A.I.R. I960 Pb, 575)***. Subsequently, the view taken by that court was explained in ***New Bank of India Ltd. vs. Smt. Raj Rani(A.I.R, 1966 Pb. 162)*** and the law was stated thus:

> "On behalf of the respondent, it has been urged with a certain amount of force that in the case in hand it must be deemed that the Court below had not reopened the entire trial but had merely directed the plaintiff to add to the relief clause an additional relief and that the defendants were also accordingly permitted merely to answer to this additional plea and not to put in an absolutely fresh written statement. Whether or not the Court below intended to adopt this procedure is far from obvious, and its order is certainly not clear and explicit in this respect. I can see that the amendment in the plaint is of a formal nature, but in the absence of any restriction placed by the Court below, I am unable, as at present advised, to hold that as a matter of law, the defendant can be debarred from putting in a fresh written statement to a fresh plaint filed in pursuance of an unqualified order."

There may be a case where, subsequent to the amendment of the plaint, a defendant may make out a case before the court for amending his written statement so as to enable him not only to introduce pleas in reply to the amendment in the plaint but also to introduce fresh pleas. So far as such fresh pleas are concerned, the court will consider, independently of the amendment effected in the plaint, whether the defendant has made out a case for introducing such pleas in the written statement. The circumstance that the plaint has been amended is irrelevant, and the court will proceed to consider the prayer for introducing such pleas in the same way as it

> would an application for permission to amend the written statement had the plaint remained unaltered."

24. This judgment was approved by the Division Bench in ***Sawan Singh versus Radhakishan, 1979 SCC OnLine HP 20: AIR 1980 HP 8.*** The Division Bench noticed the question of law posed before it as under:

> "6. Thus it is evident that in all three revisions a common question of law arises as to whether in a case where plaint is amended and the court directs for additional written statement under Order 8, Rule 9, the defendant would be at liberty to take up any plea he prefers even in derogation to O. 6, R. 7 and O. 6, R. 17 of the CPC without seeking for any amendment in the pleadings."

25. The Division Bench held that when the plaintiff is permitted to amend the plaint, the defendant can file a written statement, but the written statement has to be confined to the amendment. It was observed:-

> "17. As we have already pointed out, Order VI deals with pleadings generally, and the provisions of that order do apply to the plaint as well as to the written statement. Under Order VIII, Rule 9, there is a provision for subsequent written statements. Nevertheless, Rule 9, Order VIII has to stand with Rr. 7 and 17 of O.VI. Under Rule 9, Order VIII, additional written statements can be permitted to be filed. But that does not mean that Rr. 7 and 17 of Order VI have been given a go bye. If such an additional written statement contains any departure in the pleadings within the meaning of O.VI, Rule 7, in our opinion, Rule 17, O.VI will be effective, and a proper amendment of the pleadings will have to be asked for.

Without the court applying its mind as to whether there has been really a departure in the pleadings and as to whether the amendments should be permitted for the purpose of determining the real question in controversy, in our opinion, the mere fact that additional written statement has been permitted to be filed under Rule 9 of Order VIII will not give a right to the defendant to raise new or inconsistent pleas or to make allegation contrary to the facts alleged in the previous pleadings.

18. The observations of the learned Judge in Girdharilal ***(supra)*** and ***New Bank of India Ltd.(supra),*** depending upon the nature and application of the law of procedure, in our opinion, will be of no avail, the reason being that it would by itself be a rule of law as to whether Rr. 7 and 17 of Order VI are not required to be complied with, and merely because Rule 9 of Order VIII has been observed, a departure would be permitted in the pleadings without seeking an amendment under Rule 17 of Order VI. That would not be a question of procedure, although, while allowing or disallowing the amendment, the court can always take a liberal view and may even permit the defendant to raise whatever defence he chooses to take in his favour.

19. Therefore, in our opinion, it will be a question of the application of the law pointed out in Rr. 7 and 17 of Order VI, and not a pure question of procedure to be decided for allowing a departure in the pleadings under a pretence that an additional written statement is permitted to be filed under Rule 9 of Order VIII. With respect to the opinion expressed in the above-noted two Punjab cases, we have further to observe that the language used in the order allowing the amendment in the plaint or allowing the additional written statement to be filed would be of no consequence. It is obviously correct that under O.VIII, R. 9, the Court would allow the subsequent written statement merely because the plaint was amended. While making that order, the court is not expected to be aware of the pleas which may be taken while filing such an

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additional written statement. It is only when the additional written statement is filed that the court will become conversant with the pleas taken in that additional written statement. At that point in time, Rr. 7 and 17 of Order VI will come into play, and in case, in the opinion of the court, the additional written statement is not confined to the amendments sought for in the plaint, the defendant will be compelled to file an application for amendment of the pleadings under Rule 17 of Order VI. Thereafter, the court will examine the entire matter, and if the amendments sought were necessary for determining the real question in controversy, the court may or may not allow the amendments. In fact, the mere direction by the court that an additional written statement be filed would convey only one meaning that the additional written statement hereinafter to be filed has to confine to the amendments already sought by the plaintiff. If the court prejudges the issues and permits additional pleas to be taken by the defendant, in a particular case, it may elaborate its order seeking the additional written statement by making pertinent observations. But, as we have stated above, we cannot conceive of a case in which the court will be in a position to prejudge the issues and make an elaboration in its order to enable new pleas in additional written statements.

20. At any rate, in the case before us, the orders were simple under Order VIII, Rule 9, permitting additional written statements to be filed. After that stage, the court was not aware of what sort of pleas were likely to be raised in the additional written statements. The question arose at the time when the additional written statements were filed, and the court found that there was a departure in the pleadings and rightly asked for the amendment under R. 17 of O.VI.

21. The learned counsel also referred to us Order XII Rule 6, which deals with admissions made in the pleadings, and said that a right accrues to the plaintiff to ask for

> judgment on such admissions. If a departure in the pleadings is permitted in a situation of like nature, perhaps that right for a judgment may be lost. It was, therefore, rightly contended that unless specific permission of the court was taken for amendments in the pleadings under Rule 17 of O.VI, the mere order for the filing of an additional written statement under O.VIII, Rule 9 will not enable the defendant to commit a departure in his previous pleadings. It is, of course, evident that such an additional written statement will enable the defendant to take up additional pleas in respect of the amendments sought in the plaint. The dispute arises only when he takes up new pleas or inconsistent pleas with reference to the original pleas taken up in the written statement. In our opinion, amendments will have to be sought under Rule 17 of Order VI. Thus, we are inclined to accept the view expressed by this Court in Dittu ***Ram v.Amar Chand(supra)*** and Tek ***Chand Chitkarav. Union of India(supra)*** and we respectfully differ from the view taken by this Court in Lachhmi Devi(supra)."

26. The Hon'ble Supreme Court also held in ***Gurdial Singh v. Raj Kumar Aneja, (2002) 2 SCC 445: 2002 SCC OnLine SC 178***, that where a party is permitted to amend the pleadings, the changes should be incorporated in a different ink. The other side can file a reply, but the reply has to be confined to the answer to the amended pleadings. It was observed:

> "13. Before parting, we feel inclined to make certain observations about the loose practice prevalent in the subordinate courts in entertaining and dealing with applications for amendment of pleadings. It is a disturbing feature and, if such practice continues, it is likely to thwart the course of justice. The application

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moved by the occupants for amendment in their written statements filed earlier did not specifically set out which portions of the original pleadings were sought to be deleted and what were the averments which were sought to be added or substituted in the original pleadings. What the amendment applicants did was to give in their applications a vague idea of the nature of the intended amendment and then annex a new written statement with the application to be substituted in place of the original written statement. Such a course is strange and unknown to the procedure of amendment of pleadings. A pleading, once filed, is a part of the record of the court and cannot be touched, modified, substituted, amended or withdrawn except by the leave of the court. Order 8 Rule 9 CPC prohibits any pleadings subsequent to the written statement of a defendant being filed other than by way of defence to a set-off or counterclaim except by the leave of the court and upon such terms as the court thinks fit. Section 153 CPC entitled "General power to amend" provides that the court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding. Order 6 Rule 17 CPC confers a discretionary jurisdiction on the court exercisable at any stage of the proceedings to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The Rule goes on to provide that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Unless and until the court is told how and in what manner the pleading originally submitted to the court is proposed to be altered or amended, the court cannot effectively exercise its power to permit amendment. An amendment may involve withdrawal of an admission previously made, may attempt to introduce a plea or claim barred by limitation, or may be so devised as to deprive the

opposite party of a valuable right accrued to him by lapse of time and so on. It is, therefore, necessary for an amendment applicant to set out specifically in his application, seeking leave of the court for amendment in the pleading, as to what is proposed to be omitted from or altered or substituted in or added to the original pleading.

14. In ***Pleadings: Principles and Practice by Jacob and Goldrein*** (1990 Edn.), it is stated that a party served with a pleading which is subsequently amended may not amend his own pleading and may rely on the rule of implied joinder of issue, but

> "If he does amend his own pleading, he is not entitled to introduce any amendment that he chooses. He can only make such amendments as are consequential upon the amendments made by the opposite party" (at p. 193).
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> "In all cases except where amendment is allowed without leave, the party seeking or requiring the amendment of any pleading must apply to the court for leave or order to amend. The proposed amendments should be specified either by stating them, if short, in the body of the summons, notice or other application or by referring to them therein. In practice, leave to amend is given only when and to the extent that the proposed amendments have been properly and exactly formulated, and in such case, the order giving leave to amend binds the party making the amendment, and he cannot amend generally." (at pp. 206-07).

15. The court may allow or refuse the prayer for amendment in sound exercise of its discretionary jurisdiction. It would, therefore, be better if the reasons persuading the applicant to seek an amendment in the pleadings, as also the grounds explaining the delay, if there be any, in seeking the amendment, are stated in

the application so that the opposite party has an opportunity of meeting such grounds and none is taken by surprise at the hearing on the application.

16. How does an amendment allowed by the court to be effectuated in the pleadings? English practice in this regard is stated in ***Halsbury's Laws of England*** (4th Edn., Vol. 36, para 63, at pp. 48-49) as under:

> "63. Mode of amendment. —A pleading may be amended by written alterations in a copy of the document which has been served and by additions on paper to be interleaved with it if necessary. However, where the amendments are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document must be prepared incorporating the amendments. If such an extensive amendment is required to a writ, it must be reissued. An amended writ or pleading must be endorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the Judge, master or registrar by whom any order authorizing the amendment was made and the date of the order; or, if no such order was made, the number of the rule in pursuance of which the amendment was made. The practice is to indicate any amendment in a different ink or type from the original, and the colour of the first amendment is usually red."

17. ***Stone and Iyer in Pleadings*** (2nd Edn.) state the practice in regard to incorporating amendments in pleading as under (at p. 165):

> "In England, it often happens that before the case comes into court and while still, the Master is exercising the powers conferred by a summons for directions, counsel seeks leave to amend not once but several times. The practice is to amend first in

> red and make later amendments in different coloured inks. A practice which we think might, with advantage, be followed would be to place before the Court, as one places before a Master in England, the proposed amendments. These may or may not be allowed as proposed, or may be altered before leave is given. Leave having been given, a new plaint or written statement showing the old pleading and with the amendments written or typed in might then be prepared and taken on the file of the Court. In cases where the addition is substantial, it may be necessary to deliver a copy of the pleading as amended. If the old matter is scored out, it must be done in such a manner as to show the original pleading and the alteration. Under Order VI Rule 7 CPC, a party has apparently to amend his pleading while it is in court. Under the old Code, it was returned to him for amendment. The Court may even now have the power to return it if it is necessary to do so. Where leave to amend is asked for, the actual amendment must be formulated before the leave is given. If it is proposed to apply for an amendment, it is desirable to inform the other side so that there can be no question of surprise, and no adjournment may be necessary on allowing the amendment. Pursuant to the leave granted, the proceedings should be amended before the judgment is pronounced."

18. Thus, once a prayer for amendment is allowed, the original pleading should incorporate the changes in a different ink, or an amended pleading may be filed wherein, with the use of a highlighter or by underlining in red the changes made, may be distinctly shown. The amendments will be incorporated in the pleading by the party with the leave of the court and within the time limited for that purpose, or else within fourteen days as provided by Order 6 Rule 18 CPC. The court or an officer authorised by the court in this behalf may compare the

original and the amended pleading in the light of the contents of the amendment application and the order of the court permitting the same and certify whether the amended pleading conforms to the order of the court permitting the amendment. Such practice accords with the provisions of the Code of Civil Procedure and also preserves the sanctity of the record of the court. It is also conducive to the ends of justice inasmuch as by a bare look at the amended pleading, the court would be able to appreciate the shift in stand, if any, between the original pleading and the amended pleading. These advantages are in addition to the convenience and achieving maintenance of discipline by the parties before the court. Amendments and consequential amendments allowed by the court and incorporated in the original pleadings would enable only one set of pleadings being available on record, and that would avoid confusion and delay at the trial. Most of the High Courts in the country follow this practice, if necessary, by making provisions in the Rules framed by the High Court for governing the subordinate courts and their original side, if there be one. In fact, in the State of Punjab and Haryana and the Union Territory of Chandigarh, there is a local amendment whereby the text of Rule 17 in Order 6 CPC has been renumbered as sub-rule (1) and the following sub-rule (2) added:

> "17. (2) Every application for amendments shall be in writing and shall state the specific amendments which are sought to be made, indicating the words or paragraphs to be added, omitted or substituted in the original pleading."

The above-mentioned Rule appears to have been completely overlooked while moving the application for amendment. It is expected that the courts in Punjab, Haryana and Chandigarh would follow the Rule in letter and spirit.

19. When one of the parties has been permitted to amend his pleading, an opportunity has to be given to the

> opposite party to amend his pleading. The opposite party shall also have to make an application under Order 6 Rule 17 CPC, which, of course, would ordinarily and liberally be allowed. Such amendments are known as consequential amendments. The phrase "consequential amendment" finds mention in the decision of this Court in***Bikram Singhv.Ram Baboo[(1982) 1 SCC 485: AIR 1981 SC 2036]***. The expression is judicially recognised. *While granting leave to amend a pleading by way of consequential amendment, the court shall see that the plea sought to be introduced is by way of an answer to the plea previously permitted to be incorporated by way of an amendment by the opposite party. A new plea cannot be permitted to be added in the garb of a consequential amendment, though it can be applied by way of an independent or primary amendment.*
>
> 20. Some of the High Courts permit, as a matter of practice, an additional pleading, by way of response to the amendment made in the pleadings by the opposite party, being filed with the leave of the court. *Where it is permissible to do so, care has to be taken to see that the additional pleading is confined to an answer to the amendment made by the opposite party and is not misused for the purpose of setting up altogether new pleas springing a surprise on the opposite party and the court.* A reference to Order 6 Rule 7 CPC is apposite, which provides that no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same." (Emphasis supplied)

27. Hence, the learned Appellate Court was justified in rejecting the plea taken by the defendants regarding the surrender of tenancy in the month of March 1988.

28. The defendants had initially pleaded in their written statement that Jagdish Ram had surrendered the tenancy in

1987. This plea was contrary to the payment of the rent for the year 1987-88 and its acceptance by defendant No. 1 by means of the cheque which was encashed on 7.7.1987.

29. It was submitted that the receipt of the rent till March 1988 will not prevent a person from surrendering the tenancy midway. This submission will not help the appellant. The person surrendering the tenancy in the middle would have sought the refund of the balance amount, and there is no proof of this fact. Further, the cogent evidence was required to prove the surrender of the tenancy after the acceptance of the rent; however, no such cogent evidence was produced, and the evidence of Ram Vinod (DW1) was not sufficient because of the contradictory pleas taken by him. The defendants did not examine any witness in whose presence the tenancy was surrendered or prove any document regarding the surrender of the tenancy. Therefore, the findings recorded by the learned courts below cannot be said to be perverse, and the learned Trial Court had rightly issued the injunction in the plaintiff's favour. Hence, this substantial question of law is answered accordingly.

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Substantial Question of Law No.2:

30. Prakash Chand (PW8) stated that he had brought the original record and the certified copies (Ex.PW8/1 to Ex.PW8/15) were correct as per the record. The defendants objected to the documents (Ex. P11 to Ex. P25) in the original file and not to (Ex.PW8/1 to Ex.PW8/15). Prakash Chand had produced the certified copies of the public record, which were, *per se,* admissible as per Section 65 read with Section 77 of the Indian Evidence Act[2]. In the present case, the original record was brought before the Court, and it cannot be said that the documents were wrongly admitted by the learned Trial Court. Hence, this substantial question of law is answered in the affirmative.

Substantial Question of Law No.3:

31. It was laid down by the Hon'ble Supreme Court in ***Shah Ratansi Khimji & Sons*** (supra) that the tenancy of a building includes the tenancy of the land lying underneath it, and mere destruction of the building does not terminate the tenancy. It was observed on page 19:-

[2] Madamanchi Ramappa v. Muthaluru Bojappa, 1963 SCC OnLine SC 36, C. Thimmappa v. Mariyappa, 2008 SCC OnLine Kar 23

> "**24.** As we notice from the aforesaid analysis, it is founded on an interpretation of Section 108(*B*)(*e*) by assuming that when a building or structure is leased out, it is the superstructure that is leased out in exclusivity. As we perceive, the language employed in Section 108(*B*)(*e*) does not allow such a construction. The singular exception that has been carved out is the wrongful act or default on the part of the lessee, which results in the injury to the property that denies the benefit. In all other circumstances which find mention under Section 111 of the Act, are the grounds for the determination of the lease. This is the plainest construction of the provision, and there is no other room for adding to or subtracting anything from it. Be it stated that Section 108 postulates the rights and liabilities of lessor and lessee. If a right is not conferred by the statute on the lessor for determination, except for one exception which is clearly stipulated there in Section 108(*B*)(*e*) by the legislature, it would not be permissible for the court to add another ground of the base or fulcrum of ethicality, difficulty or assumed supposition."

32. Therefore, the tenancy would not have come to an end by the demolition of the superstructure. Hence, this substantial question of law is answered accordingly.

Final Order:

33. Therefore, there is no infirmity in the judgments and decree passed by the learned Courts below.

34. Hence, the present appeal fails, and it is dismissed.

35. Pending application(s), if any, also stand(s) disposed of.

36. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

9th April, 2026
(Chander)