

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4316 of 2015

Date of Decision: 31.08.2015

Kaushlya Devi and Others

.....Petitioners

Vs.

Mandir Thakur Dwara Shiv Dwala @ Shiv Mandir Dwala Soodan and Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ashish Gupta, Advocate for the petitioners.

RITU BAHRI, J.

The petitioners/defendants have come up in the revision against the order dated 10.03.2015, whereby, an application under Order 7 Rule 11 CPC has been filed by them for rejection of the plaint was dismissed.

The brief facts of the case are that plaintiff/ respondent No.2 had filed a suit for declaration that he was Mohtim (Manager) or Pujari of the Mandir Thakur Dwara Shiv Dwala. The defendants in his application under Order 7 Rule 11 CPC submitted that plaintiff No.2 had no locus standi and no cause of action has accrued to plaintiff No.1 to file the present suit on behalf of Mandir Thakurdwara Shiv Dwala. The suit was barred by limitation as the matter in controversy had already been decided vide judgment and decree dated 24.09.1984 by the then Subordinate Judge, First Class, Patiala, dismissing the suit.

In the year 1984, father of the present defendants was the Pujari of the Mandir Thakurdwara Shiv Dwala and he had contested the suit against the present plaintiffs. The defendants No.1 to 4 are the successor of Raj Kumar son of Charan Singh and were managing the affairs of the Mandir Thakurdwara Shiv Dwala. After his death in the year 1999, plaintiff No.2-Shiv Mandir Dharamshala Welfare Society, was formed and registered in the year 2000 and this society has

nothing to do with the Mandir as land of the Dharamshala was a separate land and has not in any manner concerned with the Mandir. After formation of the society in the year 2000, they have chosen to file the present suit and on 15.05.2014, they have filed the suit against the defendants/petitioners. The earlier suit was dismissed by the Court on 24.09.1984 as plaintiffs/respondents had sought permanent injunction against the defendants restraining him from recovering rents and profits of the property in dispute. As per judgment given, they have filed the present suit after a gap of almost 30 years.

On notice of the application, reply has been filed by the plaintiffs/respondents (Annexure P-3) clarifying that it was not correct that society has been formed only to look after and maintain the Dharamshala or that the Dharamshala has nothing to do with the Mandir or the land of Dharamshala was separate and was not concerned with the Mandir. Petitioners/defendants were not managing the affairs of the Mandir Mandir Thakurdwara Shiv Dwala, after the death of Raj Kumar son of Charan Singh.

The trial Court after going through the reply filed by the respondents, dismissed the application.

A perusal of the judgment dated 24.09.1984 (Annexure P-5) shows that the suit had been filed by the Mandir Thakar Dawara Shiv Dwala, restraining Raj Kumar son of Charan Singh from recovering rents and profits of the property which belong to the Mandir. There were 4 shops and residential quarters. While dismissing the suit, the finding was given by the trial Court that Raj Kumar got made three shops in the premises of the temple before filing of the suit. Since the defendant Raj Kumar was not the owner of the land, it was held that he had made the construction on behalf of owner and the capacity of Pujari. The presence of Raj Kumar was admitted from the year 1968. The suit filed by Sh.Jai Parkash Dass was also dismissed as he was not able to lead any evidence that his father

plaintiffs in that suit to show that at any time the ancestor of the plaintiffs i.e. father of Bhishan Dass was the owner and they had handed over the property to the plaintiffs at the time of his death to his son. The defendant Raj Kumar was managing the property and had constructed three shops on behalf of Mandir. The suit of the plaintiff was accordingly dismissed.

The trial court has rightly dismissed the application under Order 7 Rule 11 as the plaintiffs have refuted the claim of the defendants they are still managing the affairs of the Mandir Thakur Dwara Shiv Dwala. It is further denied that the society was formed in the year 2000 and was not managing the affairs of Mandir. The above disputed questions of fact would be gone into by the trial Court at the final stage of the trial. Hence the application under Order 7 Rule 11 CPC for rejection of the plaint has been rightly dismissed and no interference is required.

There is no merit in the revision petition, so it is hereby dismissed.

(RITU BAHRI)
JUDGE

31.08.2015
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