

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

R.S.A No. 1542 of 1999

DATE OF DECISION : 23.09.2015

Narotam Dass Chela Shri Amar Dass Chela Ramji Dass

.... APPELLANT

Versus

Murti Shivji Maharaj and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Amit Jain, Advocate,
for the appellant.

Mr. I.K. Mehta, Senior Advocate, with
Mr. Rajesh Sethi and Mr. Arun Biriwal, Advocates,
for the respondents.

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SATISH KUMAR MITTAL, J.

This is plaintiff's Regular Second Appeal against the judgment and decree passed by both the courts below, whereby the suit of the plaintiff for declaration to the effect that he is owner in possession of the suit land and also that the judgment and decree passed in Civil Suit No. 91 of 1987, titled as 'Murti Shivji Maharaj Versus Mehma Singh and others' is illegal, null and void, was partly allowed to the extent that the plaintiff is in possession of the suit land. Part of the suit to the effect that he is owner of the suit land has been dismissed.

It is the case of the appellant-plaintiff that the suit land was

originally owned by his Guru Amar Dass Ji, who appointed him as his Chela, and after the death of his Guru Amar Dass Ji on 14.02.1967, he became owner of the suit land on the basis of registered Will executed by his Guru in favour of the appellant-plaintiff on 08.08.1966 and registered on 17.09.1966. In this regard, mutation was also sanctioned on 16.11.1967. Later on, defendant No.1 in connivance with defendants No.2 to 4 had got passed a collusive decree on 14.09.1988 with regard to the suit land in Civil Suit No. 91 of 1987. It was pleaded that defendants No.2 to 4 were not owners of the suit land. As such, they had no right to suffer a collusive decree in favour of defendant No.1 with regard to ownership of the suit land, which according to the appellant is owned by him. He sought declaration that the said decree be declared illegal, null and void.

Defendant No.1 contested the suit by filing written statement.

From the pleadings of the parties, various issues including Issue No.1 regarding ownership and possession of the suit land, as alleged in the plaint, were framed.

The plaintiff led his evidence. However, the defendants were proceeded against ex-parte and they did not lead any evidence.

The trial court, after considering the evidence led by the plaintiff, recorded the following findings on issue No.1 :-

“It is very much clear from the documents Ex.P1 to Ex.P12 that the suit land was originally owned by 'Patti Brahmanan' and was in possession of Ramji Dass and later on

Amar Dass and thereafter the plaintiff. It is clear from the copy of the mutation No. 1204 Ex.P9 that plaintiff came into possession of the suit property after the death of Amar Dass. Plaintiff in the present suit has challenged the decree in civil suit No. 91 of 1987 on the ground that the suit property was owned by Amar Dass and the proprietors of the village had suffered the decree in favour of Murti Shivji Maharaj. Plaintiff's contention that Amar Dass was the owner of the suit property, is not well founded. It is very much clear from the documents placed on the record that the suit property was not owned by Ramji Dass but by the proprietors of Patti Brahmanan. However, it is correct that Amar Dass was in possession of the suit property and after the death of Amar Dass plaintiff came into possession of the suit property. Accordingly the suit of the plaintiff is decreed only to the extent that he is in possession of the suit property. His suit to the effect that he is the owner of the suit property is dismissed. The decree in civil suit No. 91 of 1987 is wrong only to the extent that Murti Shivji Maharaj is in possession of the suit property. However, the fact that Murti Shivji Maharaj is the owner of the suit property is upheld.”

In view of the aforesaid finding of fact recorded on the basis of documentary evidence available on record, the trial court partly decreed the suit of the plaintiff to the extent that he is in possession of the suit property. However, part of the suit with regard to ownership of the plaintiff was dismissed.

On appeal filed by the plaintiff, the aforesaid finding of fact

was affirmed and his appeal was dismissed.

Learned counsel for the appellant argued on the following two substantial questions of law arising for consideration of this court :-

- (i) *Whether in the facts and circumstances of the case the approach of the learned First Appellate court in partly reversing the well reasoned findings of the learned trial court by misreading and misinterpreting the material oral and documentary evidence on record is perverse ?*
- (ii) *Whether in the facts and circumstances of the case the mere grant of 'muafi' to mahant would convert the property into a religious or charitable property and in the ownership of 'Thakurdwara' ?*

However, during the course of arguments, learned counsel for the appellant could not controvert the finding of facts recorded by both the courts below with regard to possession of the appellant-plaintiff over the suit land. The documentary evidence available on record clearly reflect and prove that the suit land was originally owned by 'Patti Brahmanan' but the same was in possession of Ramji Dass, later on in possession of Amar Dass and thereafter, it came in possession of the plaintiff. These documents clearly establish that neither Ramji Dass nor Amar Dass was owner of the suit property, rather proprietors of 'Patti Brahmanan' were owners of the property in question. This factual position has not been controverted by learned counsel for the appellant. Thus, in my opinion, there is no illegality or perversity in the finding of facts recorded by the courts below with regard

to possession of the suit property. Therefore, being a pure finding of fact, no substantial question of law, as proposed by learned counsel for the appellant is arising in the case.

In view of the aforesaid finding of fact, both the courts below have rightly decreed the suit of the plaintiff with regard to his possession over the suit land. Thus, I do not find any merit in the appeal.

Consequently, the appeal filed by the plaintiff is dismissed with no order as to costs.

September 23, 2015
ndj

(SATISH KUMAR MITTAL)
JUDGE