

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1468 of 2008

Date of Decision: February 26, 2015

Dera Baba Saul Dass of Village Bhullar Heri

...Appellant

Versus

Sukhdev Dass Chela of Kesho Dass Chela of Gauri Dass Mohitmim of Dera
Baba Saul Dass of Village Bhullar Heri & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Inderjit Sharma, Advocate,
for the appellant.

Mr.Tushar Sharma, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 25.2.2008 of the Lower Appellate Court, whereby the appeal filed by the respondent-defendant against the judgment and decree of the trial Court, decreeing the suit and granting injunction in favour of the plaintiff, has been allowed.

Mr.Inderjit Sharma, learned counsel appearing for the appellant-plaintiff submits that the Lower Appellate Court has committed illegality and perversity in reversing the well reasoned and justified judgment and decree of the trial Court, which were based on the

appreciation of oral and documentary evidence. He further submits that jamabandi (Ex.P2) for the year 1997-98 shows that the appellant-plaintiff is a Mahant to the extent of half share of Dera Baba Saul Dass of Village Bhuller Heri. He also submits that the trial Court rightly decreed the suit and granted injunction in favour of the appellant-plaintiff by restraining the respondent-defendants in causing obstruction in performance of the duties as Mahant of the aforementioned Dera.

Mr.Tushar Sharma, learned counsel appearing for respondent No.1 submits that the appellant-plaintiff had not come to the Court with clean hands as prior to the filing of the suit which was filed on 17.2.2003, there was congregation of the members of the Saints on 8.2.2003, whereby in the ceremony, defendant No.2 was appointed as Mahant and this fact had been proved by bringing on record the evidence and on the basis of the said evidence, the Lower Appellate Court has reversed the judgment and decree of the trial Court. He further submits that the appellant-plaintiff has not sought any declaration qua ownership, much less, even challenged the alleged ceremony.

I have heard the learned counsel for the parties and perused the judgments and decrees of both the Courts below and am of the view that the appeal is liable to be dismissed, being devoid of merit, for the following reasons:-

Since the parties were at variance, the trial Court framed as many as seven issues, including the issue of maintainability of the suit. It was observed that the suit, *ex-facie*, for permanent injunction at the behest of the appellant-plaintiff was not maintainable as the remedy, if any, was to

seek declaration along with consequential relief. The unclinching evidence brought on record unequivocally proves that the appellant-plaintiff was also present in the ceremony, whereby defendant No.2-Sukhdev Dass was appointed as Mahant, which fact has been noticed by the Lower Appellate Court in paragraph 16 of the judgment. For the sake of brevity, para 16 of the judgment of the Lower Appellate Court is extracted herein below:-

“When the pleadings are seen the plaintiff/respondent has claimed himself to be Mohatmim of the Dera but without explaining when he became Mohitmim of the Dera and appointment of Mohitmim is to be made by following some procedure as has been observed in judicial pronouncements relied upon by the appellant but there is no explanation in entire plaint how he became Mohitmim. As per revenue record property belongs to Dera earlier stated to be Ba-itmam-Gauri Dass Amar Dass as Mahant in the Khasra Girdawri Ex.P3, but there is no pleading under what procedure they were made Mahant. The question remains who have appointed them as such at present. The plaintiff examined PW2 Jarnail Singh Lambardar and Gurmail Singh Lambardar PW3 to deny that any religious gathering was made in the village to appoint Mohitmim of Dera. It become apparent that these witnesses of plaintiff are telling white lie as plaintiff himself as PW4 admits that gathering of Mahants had collected and he was present in the gathering and that Pagri was given to Sukhdev Dass and Path and Bhog of Shri Guru Granth Sahib was made and Langar was also distributed, but expressed his ignorance on the point whether any writing in the Panchayat was made or not. The defendants have brought on record writing in that respect as Ex.D2 dated 8.2.2003 and plaintiff has also admitted that he is seen the photographs vide which Pagri is being given to Sukhdev Dass. The photographs have been produced on file

Ex.D4 to Ex.D38 and plaintiff is also visible in the photographs. Even video cassette has been produced on the file and negatives of the photographs have also been produced on record. Panchayat has also made resolution in the book copy of which is placed on the record as Ex.D1 about the appointment of Sukhdev Dass as Mahant. The lower court concluded that plaintiff has not concealed any fact from the court with the observation that defendants have not led any evidence. Plaint has been drafted on 14.2.2003 and presented in the court on 17.2.2003. When the plaintiff himself was present in the gathering on 8.2.2003 and he has admitted his presence and photographs in the cross examination, what more could be unclear hands of the plaintiff when he being member in the gathering on 8.2.2003 when concealing everything in the plaint regarding appointment of Sukhdev Singh as Mohitmim of the Dera, he has drafted the plaint in ambiguous manner has come to the court with unclean hands by suppressing the material facts of appointment of Sukhdev Singh as Mohatmim on 8.2.2003.”

It was incumbent upon the appellant-plaintiff to prove that prior to the filing of the suit, he was performing the duties of the Mahant. No documentary evidence has been brought on record in this regard, except bald statements of the witnesses. Photographs Ex.D4 to Ex.D38 and the negatives have been proved on record to show that the ceremony, before the filing of the suit, appointing defendant No.2 as Mahant was performed. It is a matter of record that the appellant-plaintiff has not challenged the ceremony. The factum of performance of the ceremony was pleaded in the written statement, but the remedy, if any, for the appellant-plaintiff was either to amend the suit or withdraw or file a fresh suit after seeking

permission of the Court. The appellant-plaintiff has miserably failed to prove on record the basic ingredients of injunction and, thus, the Lower appellate Court, after examining the oral and documentary evidence, rightly set-aside the judgment and decree of the trial Court. The appellant-plaintiff did not claim the declaration of Mahantship nor led any evidence as to how and in what manner he was appointed as Mahant.

In view of what has been observed above, there is no merit in the appeal as the judgment and decree of the Lower Appellate Court is based on the appreciation of oral and documentary evidence, whereas the trial Court pondered upon the evidence examined by the Lower Appellate Court being the last Court of fact and law. There is no illegality and perversity in the findings rendered by the Lower Appellate Court, much less no substantial question of law arises for adjudication of this Court.

Accordingly, the appeal is dismissed.

February 26, 2015
ramesh

(AMIT RAWAL)
JUDGE