

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 3753 of 2009 (O&M)

Date of decision : September 03, 2015

Bharat Bone and Fertilizer Mills

... Appellant

vs.

Dera Situated in the area of village Sekhwan

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.K. Arora, Advocate
for the appellant.

Mr. K.R. Dhawan, Advocate
for the respondent.

Surinder Gupta, J

This regular second appeal has been filed against the concurrent judgment and decree passed by the courts below decreeing the suit filed by *Dera* situated in the area of village Sekhwan, Tehsil Zira, seeking declaration that the registered lease deed dated 30.12.1976 in favour of defendant-appellant with respect to land measuring 7 kanal 7 marla bearing khewat no.161, khatoni no.408 and khasra no.14M//4 (7-7) situated in village Sekhwan as described in the *jamabandi* for the year 1993-94 is illegal against law and fact and without consideration and is liable to be set aside with consequential relief of possession of the aforesaid land.

In the subsequent paras of this judgment, the parties will be referred as plaintiff and defendant as mentioned in the civil suit.

A registered lease deed dated 30.12.1976 was executed in favour of defendant with regard to suit land creating lease in his favour for a period of 99 years. The plaintiff alleged that defendant used to take land on lease from plaintiff on year to year basis. In the year 1976, both the parties

came to tehsil complex Zira and arrived at agreement to give the disputed land on lease to defendant for one year. The defendant obtained thumb impression of Jaila Ram on blank documents for execution of the lease deed and thereafter kept on paying the lease money to the plaintiff but did not vacate the possession. On enquiry, the plaintiff came to know that the defendant had got executed the lease in his favour for 99 years. *Dera Sekhwan* is a religious place and the alleged lease deed is not in the benefit of *dera*.

In written statement, the defendant denied the averments of plaintiff, *inter-alia*, pleading that the land is owned by the *dera* and was under the management of Jaila Ram, who had filed this suit on behalf of *dera*. The lease deed of the suit land for a period of 99 years was executed by Jaila Ram before Sub-Registrar, Zira and there was no fraud or misrepresentation on the part of defendant. Preliminary objections were raised regarding maintainability of the suit; plaintiff was estopped by his own act and conduct from filing the suit which was pre-mature; and bad for non joinder of necessary parties.

The suit was decreed by the learned Additional Civil Judge (Sr. Division), Zira with the observations that “*long term lease of religious and charitable property is impermissible unless it is justified in law. No justification is forthcoming in the instant case*”. It was also observed that “*the creation of 99 years of lease by Jaila Ram was not a good act of the management and the defendant has failed to lead any substantive evidence to prove that the creation of the lease for a period of 99 years was in the interest of the Dera*”. As such, the lease was a void document and confer

observed in para 16 of judgment which reads as follows :-

“16. Onus to prove this issue was upon the defendant. The plea of defendant is that the plaintiff has filed the present suit after a lapse of 25 years, which is not permissible and the suit has become time barred. But this plea of the defendant is not sustainable. Jaila Ram on behalf of the plaintiff had executed pattanama in favour of defendant for 99 years but it was not for the benefit of the Dera and in this way said pattanma is not binding upon the Dera. The bar of limitation would not come in setting aside any void act and since the said lease deed is not having any binding effect upon the party, so the plaintiff could have challenged the same, when he felt aggrieved from the said void act. Hence this issue is held against the defendant.”

Not satisfied the defendant filed appeal which was also dismissed by the learned Additional District Judge, Ferozepur.

Learned counsel for appellant, at the very outset, has fairly conceded the findings of the courts below setting aside the lease of 99 years created in favour of appellant by Jaila Ram Manager of *dera*. He has only raised the issue of limitation and has argued that for seeking cancellation of the lease deed the limitation provided is three years under Article 56/58 of Limitation Act.

This suit had been filed seeking declaration that the deed creating lease of the land of plaintiff-*dera* in favour of defendant-appellant for a period of 99 years is illegal and void. Both the courts below have returned the findings that this lease deed was void, as such, confer no right,

title or interest in the defendant to remain in possession of the suit land. Once the lease deed is declared as void and that finding is not challenged by the defendant-appellant, his possession over the suit land is unauthorized, illegal and as that of tress-passer. This being so, the suit of plaintiff seeking possession of the suit land is not barred by limitation, as under Article 65 of Limitation Act, the suit for possession of immovable property is barred after 12 years from the date, possession of defendant become adverse to the plaintiff. In the instant case, the defendant has never claimed adverse possession over the suit land.

Even otherwise, the illegal possession over the suit land is a continuing wrong for which the cause of action accrues to the plaintiff on daily basis. As such, the relief of seeking possession of suit land cannot be declined to the plaintiff on the ground that it has become barred by limitation.

On perusal of the paper book and judgment and decree of courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits and is dismissed.

(Surinder Gupta)
Judge

September 03, 2015

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