

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: September 4th, 2015

1. R.S.A.No.19 of 2010 (O&M)

Laj Dass (deceased) through L.Rs. & others

...Appellants

Versus

Jethu & others

...Respondents

2. R.S.A.No.18 of 2010 (O&M)

Laj Dass (deceased) through L.Rs. & others

...Appellants

Versus

Jethu & others

...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.O.P.Goel, Senior Advocate with
Mr.Randeep Singh, Advocate,
for the appellants in both the appeals.

Mr.V.K.Jindal, Senior Advocate with
Mr.Akshay Jindal, Advocate,
for respondent No.1 in both the appeals.

Mr.Deepak Kundu, Advocate,
for respondent Nos.2 & 3 in both the appeals.

AMIT RAWAL, J.

By this order, I intend to dispose of two Regular Second
Appeal Nos.19 and 18 of 2010 as the common questions of law and facts

are the same in both the appeals.

It would be apt to refer few facts before addressing to the submissions of the learned counsel for the parties to the lis.

Civil Suit No.348 dated 13.6.1985 titled as “Parkash Mani Versus Har Swaroop Brahamoharje, Lal Dass and Krishan Kumari & others came to be filed for declaration that the plaintiff, being the Chela of Swami Shankra Nand Ji, inherited the suit property described in the suit, in all land measuring 68 kanals 19 marlas, as per jamabandi for the year 1979-80, situated in Village Latala, Tehsil and District Ludhiana and as well as the Dera built on the aforementioned land and the mutation sanctioned in favour of defendant Nos.2 to 5 by the Assistant Collector Ist Grade, Ludhiana vide order dated 6.2.1985 be declared as illegal, in effective and as well as suit for permanent injunction restraining the defendants from alienating any portion of the property in any manner whatsoever.

Another Civil Suit bearing No.434 dated 10.9.1985 titled as “Laj Das & Sukhdev Das Versus Jethu son of Inder Das, proclaiming himself as Parkash Muni alleging Chela of Mehant Shankra Nand and Krishna Kumari and another for declaration to the effect that the plaintiffs Laj Das and Sukhdev Das and defendants Krishna Kumari and Surjit Kaur are owners in equal shares, i.e., 1/4th share each with all rights of Khal Path Bari Chah etc. appurtenant thereto of land measuring 77 kanals 16 marlas, as per entries made in the jamabandi for the year 1979-80, situated at Village Latala, H.B.No.378, Tehsil and District Ludhiana and for permanent injunction that the possession of the land of plaintiff Laj Das be not disturbed by defendant, namely, Jethu alias Parkash Muni in any manner as the land is being

cultivated by Laj Das in the capacity of a tenant since Kharif 1982.

Both the civil suits, aforementioned, were consolidated by the trial Court vide order dated 17.7.1989. Thus, the evidence led by the parties to the lis, i.e., plaintiffs and defendants was common. In essence, all the defendants in both the suits were treated as plaintiffs and plaintiffs as defendants.

The trial Court, vide judgment and decree dated 9.6.2005, decreed the Civil Suit No.348 of 1985 by rendering the findings on issues No.1, 2 and 5-A by granting declaration, permanent injunction and as well as possession and dismissed the Civil Suit No.438 of 1985, aforementioned.

Feeling aggrieved against the aforementioned judgment and decree, the appellants herein, i.e., Laj Dass and others filed two appeals before the Lower Appellate Court. Both the appeals have been dismissed and as such the aforementioned Regular Second Appeal Nos.18 and 19 of 2010 have been filed.

Mr.O.P.Goel, learned Senior Advocate assisted by Mr.Randeep Singh, Advocate appearing for the appellants submitted that both the Courts below have committed an illegality and perversity in decreeing the suit filed by Parkash Muni by holding that the suit property was dedicated for religious purposes, thus, belongs to Udasi Sect., whereas umpteen number of documentary evidence proved otherwise. In essence, the appellants, being the collaterals of Shankra Nand @ Baldev Dass, are entitled to inherit the property on the basis of Hindu Succession Act. He further submitted that the Courts below have wrongly arrived at a conclusion that the property being religious and charitable remained in the

exclusive ownership of Shankra Nand @ Baldev Dass, who died unmarried and issueless and the appellants, being the brothers and sisters, are his only legal representatives and heirs, whereas Parkash Muni was not related to him and the property was a private property, which was acquired by Shankra Nand through a gift deed executed by one Ram Sarup. He further submitted that on the basis of the gift deed, the mutation was entered and sanctioned in favour of Shankra Nand @ Baldev Dass and no religious congregation was ever held over the property nor any replica or idol was ever installed. The Courts below have committed illegality and perversity in not addressing to the oral and documentary evidence, which proved on the file to show that the property remained absolute ownership of Shankra Nand @ Baldev Dass and the possession of Laj Dass over the suit property had been established on file, as during the life time of Shankra Nand, Laj Dass had been inducted as tenant. He further submitted that the following substantial questions of law arise for determination by this Court:-

- 1) Whether on pleadings and evidence is it established that the property is religious, endowment dedicated property?
- 2) Whether a member of Udasi Sect can acquire property as his personal and individual property?
- 3) Whether there is non consideration, non reading and misreading of evidence led by the parties as regards to the property being personal, individual property of Baldev Dass @ Shankra Nand based on entries in the revenue record also?
- 4) Whether there is proof of Parkash Muni being appointed as chela except recital in trust deeds and sale deeds?

- 5) Whether property given by way of Gift deed by Ram Sarup to Baldev Dass @ Shankra Nand is individual or personal property and not for acceleration of the office of Chela?
- 6) Whether the name of Parkash Muni find mention in any record pertaining to the property?
- 7) Whether the object of worship/idol was ever installed nor was it pleaded so in the case of building of Dera?
- 8) Whether the evidence led by the plaintiff in civil suit No.348 dt.13.6.85 is in conformity with the pleadings of this suit?

In support of his aforementioned submissions, he has relied upon the judgments rendered in **Lachhman Das Versus Arya Prithnidhi Sabha, Punjab, Lahore and others**, AIR 1932 Lahore 603, **Pandit Parma Nand Versus Nihal Chand and another**, AIR 1938 Privy Council 195, **Committee of Management of Gurdwara Penja Sahib and another Versus Lieutenant Sardar Mohammad Nawaz Khan and others**, (28) AIR 1941 Privy Council 56, **Puj Maya Rishi and others Versus L.Ram Chand and others**, A.I.R. (33) 1946 Lahore 31, **Ram Lal s/o Kotu Mal and others Versus Khushi Ram and others**, AIR (36) 1949 East Punjab 233 to contend that the acts of the parties can not alter real nature of property attached to the temple. The temple would remain temple even in case the idol is thrown away. The use of the property as private property cannot in any way detract from the character as dedicated property. As per Hindu Law, the property acquired by mahant can not be of secular nature

and would not change the character of the property as religious. In other words, descent of property from guru to chela does not warrant presumption that property is religious. He further submitted that as per the judgment rendered by the Privy Council in **Committee of Management of Gurdwara Penja Sahib's case (supra)**, there is no general rule that the property acquired by individual members of a religious fraternity belongs to religious institution. Mere existence of Shiwala does not show that the Shiwala and land found around it would be a religious institution, much less, dedicated for religious purposes. There has to be direct and cogent evidence to show that the property was not belonging to public trust for religious or charitable purposes.

He has also submitted that documents (Ex.P1 to Ex.P4) tendered in the statement of Parkash Muni, alleging himself to be Chela of Swami Shankra Nand, are the photocopies and their exhibition was seriously objected and the said objection has not been cleared by the plaintiffs by bringing on record the original documents, whereas on the contrary, Laj Dass, when appeared as DW-1, categorically stated in the cross-examination that he is sitting in this property as owner and as well as tenant since 1982 and prior thereto, Shankra Nand was in possession of the property as he was the owner and Ram Sarup had never appointed Shankra Nand @ Baldev Dass as his Chela. He further submitted that though the Assistant Collector Ist Grade, vide order dated 6.2.1985, had entered the mutation in favour of the collaterals of Shankra Nand, but in appeal, the order of the Assistant Collector Ist Grade was set-aside and the matter was taken in revision before the Commissioner and the Commissioner held that since the matter is

subjudice before the Civil Court, therefore, the revenue Court did not adjudicate about the title of the property.

On the other hand, Mr.V.K.Jindal, learned Senior Advocate assisted by Mr.Akshay Jindal, Advocate, appearing for the respondents submitted that there is no illegality and perversity in the impugned judgment and decree. There is umpteen number of documents, much less, candid admissions of the witnesses and even from perusal of the cross-examination of plaintiff-Laj Dass, it has revealed that the property was given by Daya Ram to Bishan Dass and from Bishan Dass to Shankra Nand. The revenue record reveals that the property has been dedicated for religious purposes and, thus, belongs to Udasi Sect. and, therefore, no substantial question of law arises for determination by this Court.

In support of his aforementioned submissions, he has relied upon the judgments rendered in **Tek Ram Versus Mange Gir Mahant**, 1992 (1) R.R.R. 235, **Raghunath Das Versus Gajpat Rai and Ors.**, 1934 AIR (Lah) 449, **Divisional Manager, United India Insurance Co.Ltd., and another Versus Samir Chandra Chaudhary**, 2005 (6) JT 289, **Avadh Kishore Dass Versus Ram Gopal and others**, AIR 1979 (SC) 861 and **Jagjit Singh Versus Financial Commissioner, Haryana and others**, 1981 PLJ 367 to contend that if the property has been devolved from Guru to Chela, inference can be drawn that the property was dedicated for religious and charitable purposes and had nothing to do with the personal capacity of the Mahant. Mere admissions made by the parties are the best piece of evidence to decide the matter in dispute. It is not expected to have a direct evidence on record, where the trust was established centuries ago. As

per Section 31 of the Indian Evidence Act, where a fact has been admitted, this admission is a good piece of evidence against a person admitting the same, unless it is legally explained away to be made under a bona fide mistake and the burden of proving, shifted upon the person making it.

He further submitted that the proprietors of Village Latala donated the property about a century ago to Udasi Sect. Daya Ram was holding the property as owner on behalf of Udasi Sect. He died in the year 1912 and the property was succeeded by Bishan Dass being Chela and spiritual son of Daya Ram by way of inheritance on 20.8.1912. Bishan Dass executed a gift deed dated 2.1.1918 in favour of Ram Sawroop being Chela and his spiritual son with the sole purpose of accelerating the succession in his favour. Ram Sawroop executed a gift deed dated 13.11.1946 in favour of his Chela and spiritual son of Shankra Nand, which was entered on 6.3.1948. Shankra Nand Ji died on 17.12.1983 at Calcutta and was brought to Haridwar. Parkash Muni was appointed by Shankra Nand as his Chela as per the prevalent religious rights Hindu Udisis. The trust deed was executed by Shankra Nand, wherein it has been mentioned that Parkash Muni @ Jethu was his Chela. The claim of defendant No.1 and 2 to 5, i.e., Harsawroop Bramchari and Laj Dass and others was on the basis of the Will dated 6.4.1983 allegedly executed by late Shri Shankra Nand Ji claiming to be the son of Bachan Dass. Laj Dass admitted in his cross-examination that the property was previously owned by Daya Ram. Thereafter, it came to Bishan Dass and Daya Ram was following the Udasi Sect. In essence, he did not deny the religious nature of the property. He has further admitted that he had heard that the body of Shankra Nand was given to Jal Parvah in

Ganga River and Parkash Muni is a Chela of Shankra Nand Ji. To a specific question in the cross-examination, he stated regarding the purchase of property by Shankra Nand in Jwalapur in District Haridwar. Even the succession certificate was obtained by Parkash Muni regarding the estate of Shankra Nand Ji. Appointment of Parkash Muni as Chela of Shankra Nand Ji has been recorded on the basis of document Ex.P4, which has been admitted by Laj Dass while putting a question to Mahant Sadhu Ram Ji Chela Mahant Charan Dass Ji (PW-3), who made a statement that Ex.P4 has been signed by defendant No.1 Har Swaroop. He submitted that there is no illegality and perversity in the impugned judgment and decree, much less, no substantial question of law arises for determination by this Court.

I have heard the learned counsel for the parties, appraised the paper book and the records of the courts below and as well as the judgments cited at bar.

While noticing the aforementioned rival contentions of the parties to the lis, it has to be seen whether the trial Court has misread the evidence enabling the appellants to urge that the misreading of the evidence amounts to perversity and, therefore, involves the substantial questions of law.

I would be committing a fallacy in case I do not refer to the cross-examination of PW-4 Swami Sham Sunder Ji, who, to a specific question, admitted that the land entered in the name of Swami Shankra Nand Ji as per Guru's Parampara and Swami Ram Saroop was of Guru of Swami Shankra Nand Ji. He had seen him, who died in the year 1956. He had signed the Mazharnama Ex.P2/1 and the ceremony, which was performed at that time, was of giving Pagri and entry in the Mazharnama, much less, Tilak

ceremony was also performed. In the Mazharnama, it has been mentioned that Mahant Parkash Muni will be the Mahant of both the Dera of Village Latala and Haridwar. He succeeded the entire estate of Swami Shankra Nand Ji. The relevant portion of the cross-examination reads thus:-

“It is correct that the land in suit is entered in the name of Swami Shankra Nand Ji but the same is entered as per Guru’s Parampara. Swami Ram Saroop Ji was the guru of Swami Shankra Nand Ji. I had seen him. He died approximately in the year 1956. It is wrong to suggest that property in dispute was gifted away to Swami Shankra Nand Ji by someone. I do not know if Swami Ram Saroop was the Jat of Village Latala. I had signed the Mazharnama Ex.P2/1. The ceremony which was performed at that time was of giving pagri and entry in the Mazharnama of the ceremony and tilak ceremony also performed. In that Mazharnama, it was mentioned that Mahant Parkash Muni will be the Mahant of both the Dera of village Latala and Haridwar, and he succeed the entire estate of Swami Shankra Nand Ji. Plaintiff is the owner of the property of village Latala also being a Mahant. It is wrong to suggest that Mahant is never owner of the Dera Property or the property appertinent to Dera. Mahant Parkash Muni is the owner of the property which is subject matter of the suit, can alienate the property of Dera Latala again said he cannot alienate the property, he can only give it to his Chela in succession. It is wrong to suggest that I have deposed falsely.”

DW-1 Laj Dass plaintiff in Civil Suit No.434 of 1985 and defendant in Civil Suit No.348 of 1985 had admitted that he is sitting in the property as a tenant and prior thereto, Shankra Nand Ji was in possession of the property in dispute, who was the owner. Shankra Nand had another name Baldev Dass. To a specific question, he admitted that Ram Sarup

executed a gift deed dated 13.11.1946 in favour of Shankra Nand and on 6.3.1948, a mutation in favour of Shankra Nand was entered on the basis of the gift deed. Shankra Nand died on 17.12.1983 at Calcutta and he had heard that his body was given to Jal Parvah in Ganga River by his Sewaks and he feigned ignorance when he was asked whether Parkash Muni plaintiff is a Chela of Shankra Nand. He had seen the entries in the revenue record, which were entered in the column of ownership as Shankra Nand, but he did not see whether Shankra Nand was Chela of Ram Sarup. He did not pay any chukota or batai to Shankra Nand till date. He further admitted that there were several bank accounts of Shankra Nand, but he never made any effort to receive the amount lying in the accounts of Shankra Nand. Parkash Muni had withdrawn the amount, receipts of which were lying with him, which were four in number and are of ₹25,000/- each and these receipts pertained to the money belonging to Shankra Nand. He did not make any complaint with regard to the withdrawal of money by Parkash Muni. The aforementioned facts would reveal that Parkash Muni was Chela of Shankra Nand and the property devolved from Mahant to Chela, who become Mahant and then again from Mahant to Chela and so on so forth.

From the aforementioned evidence, i.e., candid admissions of Laj Dass and the cross-examination conducted on behalf of Laj Dass to the witnesses of Parkash Muni, it irresistibly proved that the property was dedicated to religion, much less, it was a Udasi Sect. No receipts of rent or any documentary evidence has been proved on record to show that Laj Dass was ever tenant of Shankra Nand, whereas on the contrary, Mazharnama Ex.P4/Ex.P2/1 has been put to Swami Sham Sunder Ji in the cross-

examination. Laj Dass has himself admitted that the property was inherited from Chela to Guru and Swami Shankra Nand had executed a trust deed Ex.P1. Laj Dass, to a specific question in the cross-examination, feigned ignorance about the source from where Ram Sarup got the land in dispute, when he admitted that Ram Sarup was having a house in the land in dispute and outside the land in dispute as well. He also admitted that Shankra Nand constructed some rooms in the property and did not deny the fact that previously the property was owned by Daya Ram and thereafter it came to Bishan Dass and Daya Ram was following the Udasi Sect. Had Laj Dass been a collateral of Swami Shankra Nand, he would have definitely participated in cremation/Jal Parvah of the body of Swami Shankra Nand. Since Shankra Nand had received the property being a Chela, the property kept on exchanging hands in favour of Mahants, who have been appointed as successors of Mahants from time to time. He did not deny that Parkash Muni was Chela of Swami Shankra Nand Ji. The aforementioned admission of Laj Dass has totally demolished his case and rather proved the case of Parkash Muni.

It has been proved on record that there was one Dera at Village Latala, which fact has been reflected from the perusal of Ex.PX, Ex.PX1, Ex.PX2 and the defendants in the written statement though have made a specific denial regarding the same, but in view of aforesaid observations, the truth has surfaced from the documentary evidence.

It is well known principle that a person may tell lie but the documents speak otherwise.

There is no dispute to the ratio decidendi culled out in the

aforementioned judgments cited on behalf of Mr.Goel, but the fact remains that for arriving at a finding whether the property was secular or a private property, the documentary evidence led and proved on record coupled with the admission has individually to be seen. Since the aforementioned unclenching evidence proved that the property at the hands of Shankra Nand was not a personal property, but was inherited from Mahant to Chela, who become Mahant and then again from Mahant to Chela and so on so forth, therefore, it was dedicated for religious purposes and cannot be said to be a private property of Shankra Nand Ji, therefore, Laj Dass and another cannot claim the title/declaration, vis-à-vis the property of Shankra Nand Ji being collaterals.

On the other hand, the judgments relied upon by Mr.Jindal are squarely applicable to the facts and circumstances of the case. In essence, it has been proved on record that the property has fallen at the hands of Parkash Muni from Shankra Nand, who had inherited from Ram Sarup and then Ram Sarup from Daya Nand. Thus, the ratio decidendi culled out in the judgment rendered in **Tek Ram (supra)** is squarely applicable to the facts and circumstances of the case.

In view of what has been observed above, the questions of law are, thus, answered against the appellant-plaintiffs in Civil Suit No.434 dated 10.9.1985 and in favour of the defendants in the aforementioned suit and plaintiffs in Civil Suit No.348 dated 13.6.1985. In essence, the judgment and decree rendered by the trial Court in Civil Suit No.348 dated 13.6.1985 is upheld. Both the Courts below have rendered a finding of fact and law, based on appreciation of oral and documentary evidence.

The appeals are accordingly dismissed.

September 4th, 2015
ramesh

(AMIT RAWAL)
JUDGE