

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

**RSA No.3559 of 2010 (O&M)
Date of decision: 19.11.2015.**

Smt. Nasib Kaur @ Seebo

..... Appellant

Versus

Mohinder Lal and others

..... Respondents

2nd

**RSA No.3560 of 2010 (O&M)
Date of decision: 19.11.2015.**

Smt. Nasib Kaur @ Seebo

..... Appellant

Versus

Mohinder Lal and another

..... Respondents

3rd

**RSA No.3655 of 2010 (O&M)
Date of decision: 19.11.2015.**

Smt. Nasib Kaur @ Seebo

..... Appellant

Versus

Mohinder Lal

..... Respondent

4th

**RSA No.3656 of 2010 (O&M)
Date of decision: 19.11.2015.**

Smt. Nasib Kaur @ Seebo

..... Appellant

Versus

Mohinder Lal and others

..... Respondents

5th

**RSA No.3676 of 2010 (O&M)
Date of decision: 19.11.2015.**

Smt. Nasib Kaur @ Seebo

..... Appellant

Versus

Mohinder Lal and others

..... Respondents

6th

**RSA No.3677 of 2010 (O&M)
Date of decision: 19.11.2015.**

Smt. Nasib Kaur @ Seebo

..... Appellant

Versus

Mohinder Lal and others

..... Respondents

7th

**RSA No.3248 of 2011 (O&M)
Date of decision: 19.11.2015.**

Smt. Nasib Kaur @ Seebo

..... Appellant

Versus

Mohinder Lal and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

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

Present : Mr. Ish Puneet Singh, Advocate for the appellant.

**Mr. Rajiv Sharma, Advocate for
Mr. K.D.S.Sodhi, Advocate for respondent No.1.**

ARUN PALLI, J. (Oral)

This order shall decide seven appeals i.e. RSA Nos. 3559, 3560, 3655, 3656, 3676 and 3677, of 2010 and 3248 of 2011. A common judgment rendered by the Appellate Court, dated 13.02.2010, is being assailed in RSA Nos.3559, 3655, 3656 and 3676 of 2010. Likewise, a judgment of an even date i.e. 13.02.2010, is under challenge in RSA Nos.3560, and 3677 of 2010. And the judgment under challenge in RSA No. 3248 of 2011, though of an even date, but was rendered separately.

In fact, all these appeals arise out of seven separate suits, of which six were filed by respondent No.1 Mohinder Lal and the 7th suit i.e. 158/07 dated 2.12.2005, actually instituted on 10.01.1991, was filed by Sain Ujagar Shah, which, post his death, was also pursued by respondent No.1- Mohinder Lal. All the seven suits were decreed by the trial Court. And appeals preferred against the said decrees failed and were dismissed, except that vide judgments rendered by the first Appellate Court, dated 13.02.2010, under challenge in RSA Nos.3559, 3560 and 3677 of 2010, appeals preferred by the appellants were partly accepted and the finding qua title of the suit property, that was recorded in favour of Mohinder Lal (respondent No.1), was set aside. However, a decree for injunction, restraining the appellant from causing any interference in the occupation and possession of plaintiff Mohinder Lal over the Dera and properties attached thereto was affirmed. This is how, appellant-defendant No.2 Nasib Kaur is before this Court vide these seven appeals. But, plaintiff (Mohinder Lal) has not chosen to prefer any appeal against the finding recorded by the Ist Appellate Court against him.

The facts involved in all these appeals being similar and the question involved for consideration being common, the facts are being culled out from RSA No.3559 of 2010.

Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff-Mohinder Lal/respondent No.1 filed a suit for injunction restraining the defendants from interfering in his peaceful possession over the Dera i.e. Darbar of Sain Ujagar Shah, situated at village Khurla, Tehsil and District Jalandhar and from raising any type of construction in the property shown in red colour in the site plan appended with the plaint. It was maintained that originally the suit property belonged to Sain Ujjgar Shah son of Ralla Ram and during his life time, he had executed a registered Will dated 12.4.1993 in favour of Mohinder Lal. Post his death, respondent No.1-Mohinder Lal became the owner in possession of the properties of the testator, including the suit property. Further, he also being the Sanchalak of the Dera/Darbar was in possession, management and control of the institution. People from different areas would come to offer prayers to the Darbar of Sain Ujagar Shah. Defendant No.1, who had started proclaiming himself to be the Chela of Sain Ujagar Shah, was interfering in his possession/management and control over the institution and properties attached thereto. Thus, the suit.

In defence, it was pleaded *inter alia* by the defendant No.1, Ginde Shah, that Sain Ujagar Shah was not the owner of the suit property, for the suit property was *a Takia*. Therefore, Sain Ujagar Shah had no authority to execute a Will qua the suit property in favour of the plaintiff. It

was also denied that plaintiff happened to be a Sanchalak of the institution and in fact, he i.e. Ginde Shah, was managing and looking after the affairs of *Takia*. Post death of Sain Ujagar Shah, he was in possession of the Dera and its property, being a Sanchalak.

Appellant (defendant No.2) and her mother Karmi (defendant No.3), who happened to be the daughter and widow of Sain Ujagar Shah, respectively, filed a joint written statement and admitted that Sain Ujagar Shah was the owner of the suit property. Execution and validity of the Will dated 12.04.1993, propounded by Mohinder Lal, was denied and disputed. It was also denied that plaintiff was the Sanchalak of the Dera. And as, Sain Ujagar Shah died intestate, post his death, his widow-Karmi and daughter-Nasib Kaur succeeded to his entire estate in equal shares. Therefore, claimed themselves to be the owners in possession of the suit property.

On a consideration of the matter in issue, and the evidence on record, it was concluded by the trial Court that the sale deeds Ex. P11, Ex.P12 and Ex.P13 proved that properties indicated therein were owned by Sain Ujagar Shah. Plaintiff-Mohinder Lal had duly proved the execution and authenticity of the Will dated 12.04.1993 by examining the scribe and one of the attesting witnesses. In any case, validity of the Will had already been upheld in civil suit No.192 of 1995 titled as Mohinder Lal Vs. Smt. Karmi and others and Civil Suit No.382 of 2.6.1998, titled as Smt. Karmi and Nasib Kaur Vs. Mohinder Lal. Further, evidence on record proved that Sain Ujagar Shah had already disinherited his wife and daughter, for he had strained relations with them. Plaintiff-Mohinder Lal had proved himself to be a chela/Sanchalak of the Dera and was managing its affairs. Though,

Ginde Shah (defendant No.1) had also claimed himself to be the Sanchalak of the institution, but he failed to lead, any cogent evidence to substantiate his claim. Accordingly, it was concluded that the plaintiff was the owner in possession of the suit property. Consequently, defendants were restrained from causing any interference in his peaceful possession over the Dera/Darbar of Sain Ujagar Shah and also from raising any sort of construction in the suit property, vide judgment and decree dated 24.12.2007.

Being aggrieved against the said decree, appellant (defendant No.2) and her mother Karmi (defendant No.3) preferred an appeal. It would be significant to point out at this juncture that Ginde Shah (defendant No.1) did not choose to assail the decree dated 24.12.2007 or filed an appeal.

However, learned Ist Appellate Court, on a consideration of the matter in issue, concluded that insofar as the ownership/title, nothing was brought on record by the plaintiff-Mohinder Lal to show that Sain Ujagar Shah was the exclusive and the absolute owner of the Dera and the properties attached thereto. In fact, the suit property belonged to the institution i.e. Dera. Therefore, property of the Dera could not be claimed, either by Sain Ujagar Shah or even by the plaintiff, to be his personal property. Thus, Sain Ujagar Shah could not bequeath the suit property in favour of Mohinder Lal vide a Will dated 12.04.1993. Accordingly, the decree rendered by the trial Court holding plaintiff-Mohinder Lal to be the owner of the suit property, was set aside. This is how, only Nasib Kaur (defendant No.2) is before this Court vide these appeals.

I have heard learned counsel for the parties and perused the records.

Concededly, Sain Ujagar Shah was the Mahant/incharge/Sanchalak of the Dera i.e. Darbar of Sain Ujagar Shah, situated at village Khurla. Evidence on record proved that the institution had a large following and lot of worshipers/devotees would visit the Dera to pay obeisance and make offerings. Nothing was brought on record to show that Sain Ujagar Shah had any independent source of income. Therefore, even if, he had acquired any movable or immovable property in his name, was notwithstanding as it indeed belonged to the Dera. Therefore, he had no right/power or authority to bequeath the property of the institution in favour of plaintiff-Mohinder Lal, vide a Will dated 12.04.1993. Thus, Ist Appellate Court rightly set aside the decree granted by the trial Court to that extent. In any case, plaintiff-Mohinder Lal never chose to file an appeal against the decree dated 13.02.2010, rendered by the Ist Appellate Court. In fact, the pleadings set out in the plaint itself reveal that plaintiff himself had conceded the suit property to be the property of the Dera/institution. Appellant/defendant No.2 happened to be the daughter of Sain Ujagar Shah. However, the evidence on record reveals that Sain Ujagar Shah had entered a spiritual world and consequently, severed his ties with his natural family and heirs. In any case, for the property belonged to the institution, the natural heirs of Sain Ujagar Shah could not succeed thereto. Even otherwise, enormous evidence that has been brought on record shows that Sain Ujagar Shah disinherited his wife and daughter as they had strained relations. The publication in the newspaper i.e. Hind Samachar, and news

clippings were proved on record in this regard. Insofar as, the claim set out by Ginde Shah (defendant No.1) that he was the incharge of the institution, remained unproved on record for lack of cogent evidence. In any case, Ginde Shah did not choose to prefer an appeal against the decree rendered by the trial Court as also the Appellate Court. As indicated above, Sain Ujagar Shah was the incharge/Mahant of the institution in question. Evidence on record shows that plaintiff-Mohinder Lal happened to be his Chela and, post death of Sain Ujagar Shah, he has been managing the affairs of the institution. Ex.P26 to Ex.P36 are the electricity bills of the institution or the property attached thereto, which were issued in the name of plaintiff-Mohinder Lal. Nothing was brought on record, least any cogent or credible evidence by the appellant to show that either during life time of Sain Ujagar Shah or post his death, she and her mother-Karmi were ever in possession of the institution or the properties attached thereto, except the property that is a subject matter of RSA No.3248 of 2011, in which, a decree for possession was granted in favour of plaintiff-Mohinder Lal and the appeal preferred against the said decree failed. Even if, the said property was not the personal property of Sain Ujagar Shah or the plaintiff, but still being incharge/Sanchalak of the institution, they could always claim possession from the appellant on behalf of the institution. Evidence on record, rather showed that he had disinherited the appellant and his wife. That being so, there could hardly been any occasion for the appellant to be either in possession of the institution or in occupation of its properties. In short, the Dera/Darbar of Sain Ujagar Shah, is the owner of the properties attached thereto as also the properties that were acquired by Sain Ujagar Shah in his

name. And the institution is in possession of itself as also it's properties through its incharge/Sanchalak i.e. plaintiff. No other issue arises for consideration in all these appeals except those that have already been determined herein before.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration in the present appeals. Appeals being devoid of merits are accordingly dismissed.

November 19, 2015

Manoj Bhutani

**(ARUN PALLI)
JUDGE**