

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

RSA No. 4516 of 2010 (O&M)

Date of decision : 5.10.2015

Mahant Prem Dass Chela Mahant Arjan Dass son and Chela of Mahant
Braham Das Mohitmim/ Mahant Samadh Mai Taran and others

... Appellants

versus

Charan Dass and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. K. S. Kang, Advocate, for the appellants
in RSA No. 4516 of 2010

Mr. Suvineet Sharma, Advocate, for the appellants
in RSA No. 2376 of 2011.

Rajesh Bindal, J.

This order will dispose of RSA Nos. 4516 of 2010 and 2376 of 2011, as the same arise out of common judgment and decree of the learned Courts below.

The plaintiffs filed the suit for declaration that plaintiff Arjan Dass is Mohatmim/ Mahant of Samadh Mai Taran, Village Behru, Tehsil and District Patiala, and for permanent injunction regarding the suit land.

Briefly, the facts of the case as pleaded by the plaintiffs are that the suit land belongs to Samadh Mai Taran, situated in village Behru, Tehsil and District Patiala. It was under the Mohatmimship of Braham Dass, Chela Kahan Dass and as such he was managing the land, belonging to the said Samadh. Braham Dass died on 4.6.1979. In the revenue record also Biram Dass was recorded as Mohtmim of Samadh Mai Taran. After his death, his son/ chela Kahan Dass, became the Mohtmim and after the death of Kahan Dass, his son/ chela Braham Dass became the Mohtmim of Samadh in dispute. As per the custom of the Samadh, the chela, who is also his son, was appointed as Mohatmim of Samadh. Braham Dass had executed a

registered Will No. 106 dated 30.1.1968, according to which, Plaintiff No. 1, who was the Chela of Mahant Braham Dass along with Gian Dass, defendant no.2, were appointed as Mohatmim. Plaintiff No.1 is the elder son and elder Chela of Mahant Braham Dass. He was appointed Mahant of Samadh in dispute in the gathering of Bhekh Mahants and village inhabitants on 20.6.1979 and he was accepted as Mahant of the Samadh in dispute. Mahantship of plaintiff no.1 was disputed by defendant nos.1, 2 and 7 and his right to manage the suit land. Plaintiff nos. 2 to 5 are the sons of plaintiff no.1. They are in possession of some part of the land as mentioned in the plaint as licensee of plaintiff no.1. Defendant nos. 3, 4 and 6 are also in possession of some part of the land as mentioned in the plaint, without any right and as such plaintiffs are entitled to decree for possession against defendant nos. 3 to 6. Defendant no.2 Gian Dass is real brother and defendant no.7 is in near relation of plaintiff no.1. They are also in possession of some part of the suit land. The suit was filed by the plaintiffs as the defendants threatened to interfere in the possession of the land and refused to hand over the possession of the land with them.

Pursuant to the notice, defendants filed separate replies denying all the allegations made in the plaint. It was admitted that the land in dispute belongs to Samadh Mai Taran, however, denied the fact that it had been the custom of the Samadh to always have the sons of the Mohatimim to be Mohatmim of Samadh after his death.

After considering the evidence led by the parties, the trial Court dismissed the suit. Appeal filed against the judgment and decree of the trial court was also dismissed by the learned Lower Appellate Court. The plaintiffs have now impugned the judgments and decrees of both the Courts below by filing the aforesaid two appeals.

The trial court dismissed the suit of the plaintiffs mainly on two counts, firstly, the plaintiff failed to prove execution of Will dated 30.1.1968 by Mahant Braham Dass. As per Will, plaintiff Arjan Dass, who was the Chela of Mahant Braham Dass along with Gian Dass, defendant no.2, were appointed as Mohatmim. Plaintiff No.1 is the elder son and elder Chela of Mahant Braham Dass. He was appointed Mahant of Samadh in dispute in the gathering of Bhekh Mahants and village inhabitants and he

was accepted as Mahant of the Samadh in dispute. However, in his cross-examination, he failed to give the date and year when the Bhekh was conducted. He deposed that when Bhekh was conducted, Udham Singh was Sarpanch but he stated that there was no need for the presence of the Sarpanch in the said gathering. He also deposed that after the death of his Guru, on 17th day Bhekh and Rasam Pagri was conducted in which, he was appointed as Mahant of the Dera. As has been observed by the learned Trial Court, the date of death was given as 4.6.1979 and the gathering in which, Arjan Dass was appointed as Mahant was conducted on 20.6.1979. Whereas as per the defendants, Braham Dass died on 16.6.1979 and the mutation was entered on the basis of Will in favour of Arjan Dass and Gian Dass.

The plaintiff stated that the Will was produced in the mutation case before the AC 1st Grade and Harcharan Singh Lambardar and Inder Singh were the attesting witnesses of the said Will. However, in his cross-examination, he could not tell the date of ceremony. He further stated that the original Will was produced before the SDM in a case filed by the Gram Panchayat. He also failed to tell the date of death of Harcharan Singh and Inder Singh, the witnesses of the Will. He also stated that he does not know if the Will had been disbelieved by the Revenue Authorities or not, whereas as per judgments of both the Courts below, the mutation was not sanctioned by the revenue authorities vide orders dated 17.1.1989 and 29.11.1992 passed by the Commissioner (Appeals) and Financial Commissioner, respectively. The plaintiffs did not challenge the order any further. Moreover, the witnesses produced by the plaintiffs failed to support their case. PW4 Gurnam Singh in his cross-examination stated that Arjan Dass was appointed Chela in the year 1982-83 and a writing was entered in a bahi, when 100-125 persons were present, who had signed the said bahi. PW5 Kartar Singh stated that he does not know that on 20.6.1979 Arjan Dass was appointed as Mahant. Arjan Dass also failed to prove that on what basis entries were made in the jamabandi.

The plaintiffs have not proved the custom of the Samadh whether the marriage was allowed in the Udasi sect and whether Arjan Dass was appointed Mahant in the gathering of Bekh of Mahants. On the one hand, the case of the plaintiffs is that Arjan Dass was appointed as Mahant

in the presence of gathering of Bekh of Mahants, and on the other hand, it has been stated that as per the custom of the Samadh, the Chela and who is also the son had been the Mohatmim of Samadh.

The case of the plaintiffs is on the basis of Will and customs, which they could not prove, and thus, the findings of both the Courts below cannot be said to be perverse.

Learned counsel for the appellants had not been able to refer to any evidence produced by the appellants, which has either been misread or not considered.

No substantial question of law arises. Both the appeals are accordingly dismissed.

This Court in LPA No. 541 of 1994 State of Punjab and others vs Mahant Jatinder Dass Chela Mahant Narotam Dass, Mahant Mandir Dun, Patiala decided on 10.4.2015, had issued certain directions in the cases of Mahants-cum-Mohtmims of the dera/ religious sects, which need to be taken care of even in this case.

A copy of the order be sent to Deputy Commissioner, Patiala.

5.10.2015
vs

(Rajesh Bindal)
Judge