

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

Date of Decision: 28th August, 2015

(1) RSA No.1579 of 2011 (O&M)

Surjit Kaur ... Appellant

Versus

Gurdwara Parbandhak Committee ... Respondent

(2) RSA No.4331 of 2014 (O&M)

Gurdwara Deh/Gurdwara Sahib of vill. Gambowal through
Nirmal Singh and others ... Appellants

Versus

Surjit Kaur ... Respondent

(3) COCF No.1806 of 2014 (O&M)

Surjit Kaur ... Petitioner

Versus

Bishan Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mohit Jaggi, Advocate

for the appellant(s) in RSA No.1579 of 2011 and
COCF No.1806 of 2014 and for the respondent(s)
in RSA No.4331 of 2014.

Mr. Rakesh Gupta, Advocate

for the appellant(s) in RSA No.4331 of 2014 and
for the respondent(s) in RSA No.1579 of 2011 and
COCF No.1806 of 2014.

RAJ MOHAN SINGH, J.

[1.] By this judgment the above mentioned three cases are being disposed of. Facts are being taken from RSA No.1579 of 2011.

[2.] Plaintiff Surjit Kaur is in appeal against judgment and decree dated 16.03.2011 passed by Additional District Judge, Hoshiarpur, whereby judgment and decree dated 17.11.2005 passed by Additional Civil Judge Senior Division, Dasuya has been reversed. Plaintiff filed suit for possession of land measuring 1 kanal 17 marlas comprised in Khewat No.109, Khatauni No.136, Khasra No.339 (1-17) situated in village Gambowal Tehsil Dasuya, District Hoshiarpur. Further the plaintiff has prayed for permanent injunction restraining the defendant from changing the nature of the suit property.

[3.] Plaintiff has pleaded that she is the owner of suit land. She appointed her husband Harbans Singh as power of attorney to file the present suit. Defendant-respondent has no concern with the land in question. Defendant-respondent by taking benefit of absence of the plaintiff, got made illegal entries in the revenue record and

forcibly occupied the suit land in November 1996. Gurdwara Sahib of the village Gambowal is constructed in Khasra No.308 which is situated opposite to the suit land after crossing a passage. The suit land is lying vacant. Respondent occupied the suit land illegally and has refused to vacate it. Hence, the suit.

[4.] The defendant-respondent contested the suit pleading that suit itself is not maintainable against Gurdwara Parbandhak Committee. Besides, taking other pleas, it has been urged that the suit is not maintainable in the present form. On merits the defendant denied the allegations of the plaintiff and stated that Smt. Piar Kaur was the original owner of the suit land. She donated the suit land for religious purposes in the year 1960. The plaintiff has no right in the suit land as vendor of the appellant was not the owner of the suit land at the time of alienation made on behalf of Smt. Piar Kaur. Smt. Piar Kaur ceased to be owner of the land when she donated the same in favour of respondent. The sale in favour of plaintiff/appellant is claimed to be bogus, null and void and without consideration. Smt. Piar Kaur donated the land along with land in Khasra No.308 to Gurdwara Sahib in the year 1960 as '*Dharam Arth*' and during the

consolidation in the village the suit land was allotted in the name of Gurdwara Sahib. Khatauni Pamaish was prepared according to which Khasra No.308 along with land in question have been shown as '*Bila Lagan Bawja*' '*Dharam Arth*'. Suit land is being used for Langar Sahib and other religious functions of Gurdwara Sahib since the year 1961. Sri Guru Granth Sahib of Gurdwara Sahib is recorded to be in possession of the suit land adversely to the vendor of the plaintiff since the year 1960-61. Defendant further alleged that keeping in view the possession of the defendant, defendant has perfected its title by way of adverse possession also. After filing of replication, following issues were framed:-

*"1. Whether the plaintiff is owner of the suit land?
OPP.*

*2. Whether the plaintiff is entitled to recovery of
possession of the suit land and permanent injunction
as prayed for? OPP*

*3. Whether the plaintiff has got no locus standi to file
this suit? OPP*

*4. Whether the suit of the plaintiff is not
maintainable? OPD*

5. Whether the suit of the plaintiff is time barred?

OPD

6. Whether the suit is bad for non-joinder of necessary parties? OPD

7. Relief”.

[5.] Issues No.1 and 2 are of paramount consideration in the helm of affairs. Onus to prove both these issues was on the plaintiff. The suit of the plaintiff is based on title, on the plea that in her absence, defendant has occupied the suit land forcibly in the year 1996, whereas plea of defendant is that earlier owner of suit land Smt. Piar Kaur donated the same along with Khasra No.308 in favour of Gurdwara Sahib as '*Dharam Arth*' in the year 1960 during consolidation proceedings. Since the property is being used for Langar and other religious purposes of Gurdwara Sahib, therefore, possession of defendant is peaceful, continuous and hostile and defendant has become owner by way of adverse possession.

[6.] The evidence led by plaintiff is to the effect that suit property bearing Khasra No.339 was never donated by Smt. Piar Kaur to Gurdwara Parbandhak Committee. PW-1 Dharam Singh, Lambardar of village Gambowal has stated that he knows the parties and has also seen the suit land. He is Lambardar of the

village since 1970 and suit land was never donated by Smt. Piar Kaur in favour of Gurdwara Parbandhak Committee, nor the land was never remained in use of Gurdwara Sahib. Land was never used for Langar purposes. The building of Gurdwara Sahib is just opposite to the suit property after crossing a passage. The suit land was earlier lying vacant in the shape of Taur. Approximately, one half portion out of the disputed Khasra number has been brought under construction by defendant on 24.12.2000 in spite of strong protest by plaintiff. Defendant has raised only a boundary wall approximately to the height of 5 feet, but the building has not yet been completed.

[7.] The suit land never remained in possession of Gurdwara Sahib except the aforesaid construction. The witness has pleaded that suit land is still lying vacant. Similarly, Harbans Singh has appeared as PW-2, who is husband of plaintiff as well as her attorney. He stated that land was owned by Smt. Piar Kaur. She appointed him as power of attorney (Exhibit P-2). He sold the property on the basis of attorney in favour of plaintiff vide registered sale deed dated 09.08.1996 (Ex. P-3). He further stated that land

was never gifted by Smt. Piar Kaur in favour of defendant. Possession of defendant was alleged by the witness. He further stated that Gurdwara Sahib is installed in Khasra No.311 and Khasra No.308. A passage exists in between Gurdwara Sahib and the suit land. The suit land never remained in use for Langar purposes. The defendant has no right in the suit land. He further stated that on 24.12.2000, the defendant occupied some portion i.e. 1 ¼ kanals and started digging foundations and raised boundary wall upto the height of 5 feet. One ASI Sangat Singh went to the spot and Police stopped the construction. He further stated that defendant has raised the construction without any right and that too, forcibly during the pendency of the suit.

[8.] Defendant contested the suit and placed on record photographs Ex.D1 and Ex. D2 and with their negatives Ex.D3 and Ex. D4. Photographer, Nirjit Singh has been examined. He pleaded that suit land is in possession of Gurdwara Sahib since the consolidation period and same is being managed by Managing Committee. Smt. Piar Kaur donated the suit land as '*Dharam Arth*' in favour of Gurdwara Sahib of the village. The land in question is

being used for Langar purposes. Hand pump with electric motor was also installed. Barbed wire was also affixed around the suit property supported by pillars. Suit land is being used for holding Diwans and for serving Langar to the Sangat. In cross examination this witness admitted that Langar Hall was constructed about 8-9 years back. Shed and pillars were got constructed on the suit land. The witness has admitted that Gurdwara Sahib is in existence just opposite to the suit land after crossing 4 Karam road from the suit land. The witness does not know about the dedication of the suit land. Rather, he has stated that his father told him that the suit land was given by Smt. Piar Kaur to Gurdwara Sahib. He has admitted that earlier to the construction, the suit land was lying vacant.

[9.] Similarly, Ram Parkash Assistant Office Kunungo has appeared as DW-2. He has brought on record consolidation of village Gambowal with regard to Scheme of Consolidation/Istemaal, Khatauni Paimash and Misal Haqiat.

[10.] Gurmail Singh DW 3 appeared and stated that he is retired from the Revenue Department as Assistant Office Kunungo. He also knows Urdu language. After seeing the record brought by DW -2, he

stated that copy of scheme of Istmal, Misal Haqiat and Khatauni Paimash i.e. Exhibits D1, D2 and D3 are correct as per record. He was known to Smt. Piar Kaur. He further stated that during consolidation, she donated one kanal standard area out of her ownership for Gurdwara Sahib of village Gambowal and in lieu of said donation, land measuring 2 kanals 5 marlas was allotted to Gurdwara Sahib during consolidation. In this way, Gurdwara Sahib came in possession of suit land.

[11.] The suit land is being managed and controlled by the Committee of Gurdwara Sahib. Defendant had installed barbed wire and boundary wall and also installed gate and foundation of the Langar Hall. Possession of Gurdwara over the suit land is claimed to be since the time of consolidation. The witness has admitted that he did not know whether any writing regarding donation of the suit land was made or not. He has admitted in his cross examination that foundation of Langar Hall was constructed about 8/10 years back. Though the record produced did not bear his signatures, nor the certified copies were prepared by him. He has admitted that before the foundation, suit land was lying vacant. Possession of Gurdwara

Sahib Committee is legal, lawful and is not forcible.

[12.] Similarly, Bishan Singh appeared as DW-4 and stated that Gurdwara Sahib of the village was constructed since consolidation. The management and control of the same is in the hands of Gurdwara Parbandhak Committee. The witness is the President of the same. Smt. Piar Kaur donated one kanal standard area in the year 1960 and in consolidation in lieu of one standard kanal, land measuring 2 kanal 5 marlas was allotted to Gurdwara Sahib. Since then, Gurdwara Sahib is owner in possession of the said land. Entries regarding donation were made during the scheme of consolidation. Some other persons of the village also donated the land during consolidation. The land is being used for Langar purposes and for other religious functions.

[13.] The sale deed prepared by the plaintiff is claimed to be false and he has no right to obtain the possession from Gurdwara Sahib. The witness in his cross examination stated that donation was made in the year 1960. Regarding said donation, writing was made but he did not remember its date. Said writing was made in the consolidation record. He has admitted that he has no document

in his possession regarding signatures of Smt. Piar Kaur regarding donation of land. He further stated that Piar Kaur did not make any document in favour of defendant.

[14.] The dispute arose regarding mutation of land between the parties but the Collector Hoshiarpur decided the same in favour of Gurdwara Sahib. The construction of the foundation of Langar Hall was made about 8-9 years back. The official of the Court DW 5 produced the record i.e. file of **Civil Suit No.304** of 21.09.2005 titled as **Gurdwara Sahib Gambowal Vs. Surjit Kaur etc.** Dildar Singh appeared as DW 6. He stated that he is original resident of village Gambowal. He has faith in Gurdwara Sahib and Sri Guru Granth Sahib. Suit land measuring 1 kanal 17 marlas is in possession of Gurdwara Sahib and the same is being used for religious purposes since 1960-61. The land was given to Gurdwara Sahib by Smt. Piar Kaur in donation. The building of Langar Hall is incomplete. In the land, barbed wire has already been fixed along with pillars and Nishan Sahib has been installed in the suit land. Hand pump along with electric motor has been installed. Sangat used to take Langar and attend religious functions in the suit land. The witness stated

that plaintiff has no concern with the suit land.

[15.] Civil Suit No.304 of 21.09.2005 is Exhibit D-1. In cross examination, witness stated that he does not know whether any dispute regarding mutation arose in between the parties. He stated that building of Gurdwara Sahib is situated in the land measuring 1 ½ kanal to 2 kanals. The witness has further stated that regarding donation of the suit land writing was made but the same is not in his possession. He was present at the time of donation and persons like Beant Singh, Gurmail Singh, Pritam Singh etc were also present at that time.

[16.] Trial court after examining the evidence on record held that as per revenue record from the year 1960-61 of consolidation period i.e. copy of Jamabandi Ex.D2 for the year 1960-61, Jamabandi EX.D4 for the year 1967-68, Jamabandi for the year 1972-73 Ex.D5, Jamabandi for the year 1983-84 Ex.D6, Jamabandi for the year 1988-89 Ex.D7, Jamabandi for the year 1993-94 Ex.D8 and Jamabandi for the year 1998-99 Ex.D9 proved Smt. Piar Kaur to be recorded owner of the suit land and possession has been shown to be of Gurdwara Sahib of the village. No entry to this effect

has been made that on the basis of donation made by Smt. Piar Kaur, possession of Gurdwara Sahib came to be recorded. Only simple possession of Gurdwara Sahib has been recorded.

[17.] The document Ex.D3 Khatauni Paimash shows that in the column of ownership, Smt. Piar Kaur has recorded to be owner pertaining to Khasra No.308. Possession of Gurdwara Sahib has been recorded. In respect of Khasra No.339 regarding land measuring 1 kanal 17 marlas (land in dispute), '*Gair Mumkin Abadi*' has been mentioned and possession of Gurdwara Sahib has not been shown regarding this khasra number.

[18.] Misal Haqiat i.e. copy of Jamabandi for the year 1960-61 which was prepared on the basis of Khatauni Istmal Ex.D-3. In this document also Smt. Piar Kaur has been described to be owner of the land. The documentary evidence as well as oral evidence on record showed that Smt. Piar Kaur was recorded owner of the suit land and possession of Gurdwara was depicted in Khasra No.308.

[19.] According to trial Court, the plea of defendant that Smt. Piar Kaur gave the suit land by way of donation to Gurdwara Sahib

has not been proved by way of any evidence on record. No gift deed

has come forward in respect of immovable property. No gift can be permitted without there being any registered document as per provision of Transfer of Property Act and Indian Registration Act. In the year 1960, Section 123 of Transfer of Property Act in respect of gifts was applicable as the same was made applicable in the month of April 1955. Consolidation record does not prove that land in question was gifted by Smt. Piar Kaur by way of any written document, nor the same has been produced on record.

[20.] Trial Court held that plaintiff is owner having valid title of the suit land. The plea of adverse possession was raised by defendant in the written statement to the effect that since 1960, the possession of the defendant is continuous, hostile, open and adverse to the very knowledge of the true owner. The scrutiny of evidence proved that none of the witness has deposed on the factum of fulfilment of necessary ingredients of adverse possession. There is no entry of possession in favour of Gurdwara in terms of Jamabandi for the year 1960-61 till 2002-04. The revenue records viz. Ex. D2, Ex.D4 to Ex. D10 establish that there is no single entry in favour of Gurdwara Sahib in respect of possession of the suit

land. Mere long possession is not sufficient to infer adverse possession unless and until ingredients of adverse possession are fulfilled.

[21.] The objection regarding maintainability of suit in the absence of impleading of Gurdwara Sahib as legal entity has also been decided against the defendant by trial Court. Under the law, even otherwise, Gurdwara Sahib in which Shri Guru Granth Sahib is established for worship would amount to an institution having the same character as a temple and would be a juristic person. There is no evidence on record to show that as to which part of suit land any such type of construction is exists in which Sri Guru Granth Sahib has been installed. In the absence of installation of Sri Guru Granth Sahib, the property in question cannot be termed to be a property belonging to Gurdwara Sahib or would bring it in the ambit of juristic person. Rather, it is established on record that Gurdwara Sahib is in existence and situated beyond the passage in between the suit land and land of Gurdwara. Therefore, trial Court disbelieved the stand of defendant on this score.

[22.] Trial Court further held that there is no evidence by the

defendant to the effect that Sri Guru Granth Sahib has been installed in the suit land, therefore, suit of the plaintiff cannot be held to be not maintainable without joining Gurdwara Sahib, as the suit land is being occupied by defendant forcibly. The plaintiff has been held to be having locus standi to file the present suit. The objection qua limitation has been held to be against the defendant. The defendant has raised the objection that since 1960, Gurdwara Sahib is in possession and therefore, the suit filed in the year 1970 is barred by limitation.

[23.] According to plaintiff, since the defendant has taken the plea of adverse possession, therefore, onus was heavily rested upon defendant to prove that by way of adverse possession for more than statutory period defendant has become owner thereof by way of extinguishing the right of the plaintiff. The suit of the plaintiff on the basis of title is maintainable and cannot be held to be barred by limitation. Such suit is governed by Article 61 of Limitation Act. Reliance can be placed on **1995 PIJ page 82 and 1997(2) Civil Court cases page 416**. In view of aforesaid, trial Court decreed the suit and plaintiff was held entitled to recover the possession in

accordance with law and defendant has been restrained from changing the nature of the suit property.

[24.]. In appeal before Lower Appellate Court, findings of trial Court have been reversed. The Lower Appellate Court by referring the scheme of consolidation Ex. D1 pointed out that on page 7 of the scheme, para 35 referred to properties which the proprietors of the village gave to the non-proprietors as '*Gair Marusi*' in the shape of sale. Sub-para 12 showed that Smt. Piar Kaur gave one kanal of land for Gurdwara Deh. One kanal referred in the scheme is the standard kanal which on calculation came out to be 1 kanal 17 marlas. It is not disputed that area was comprised in Khasra No.339 after consolidation. The Jamabandi which was prepared immediately after consolidation i.e. Ex. D2 related to the year 1960-61, wherein name of Smt. Piar Kaur appeared in column No.4, while it is '*Gurdwara Deh Gair Marusi*' which is stated to be in possession of land bearing Khasra No.308 (0-8), 339 (1-17). The nature of land bearing Khasra No.308 has been shown to be '*Gair Mumkin Gurdwara*', whereas, Khasra No.339 has been shown to be '*Gair Mumkin Abadi*'. In column No.9, possession has been shown to be

'Bila Lagan Bawajah Dharam Arth'. Defendant asserted that there is no dispute that Gurdwara Sahib is existing in Khasra No.308 which is on the other side of the road. Khasra No.339 is situated in front of Gurdwara Sahib across the road. The earlier testimonies of plaintiff witnesses have shown that the land was lying vacant as Taur and one half of the portion was brought under construction by the defendant on 24.12.2000 despite protest by the plaintiff. The defendant has raised boundary wall approximately to the height of 5 feet. In cross examination, witness stated that Gurdwara Sahib is in existence since the year 1942-43 and land in question is being used for Langar purposes. Installation of hand pump and electric motor has been admitted but that was installed after 24.12.2000.

[25.] Lower Appellate Court also held that sale deed in favour of plaintiff was executed on 09.08.1996 (Ex.P-3) and there is a recital that entire sale consideration stands paid to the vendor at her house. The sale deed was executed by PW-2 Harbans Singh as power of attorney of Smt. Piar Kaur Ex.P2. Smt. Piar Kaur has not appeared in the witness box to state whether she has received the sale consideration. No marginal witness has been examined to prove the

payment of sale consideration. The deed writer who scribed the sale deed has also not been examined. Smt. Surjit Kaur in whose favour the sale deed was executed has also not stepped into the witness box. She could have stated that she paid amount of sale consideration to Smt. Piar Kaur, had she appeared in the witness box. PW-2 Harbans Singh came to be appointed as power of attorney of plaintiff Surjit Kaur after due execution of sale deed. The copy of power of attorney executed by plaintiff in favour of her husband is dated 12.09.1996. The fact of payment of amount of sale consideration was within the personal knowledge of plaintiff Surjit Kaur. PW 2 in his cross examination stated that sale consideration of Rs.71,500/- was paid before the Sub Registrar which was received by Smt. Piar Kaur herself. The statement made by PW 2 appears to be wrong. If Smt. Piar Kaur herself was present before the Sub Registrar, there was no reason for Harbans Singh-PW 2 to execute the sale deed as power of attorney of Smt. Piar Kaur. Moreover, sale deed does not bear signatures of Smt. Piar Kaur. The statement of PW-2 Harbans Singh also contradicts the recital contained in the sale deed, where it has been stated that sale consideration stands already paid at the house. The fact that no sale

consideration was paid, coupled with the powers given to Harbans Singh vide power of attorney Ex.P2 go in a wrong way to show that Smt. Piar Kaur never intended to assert her title in the suit land. The power of attorney is silent about the property owned and possessed by Smt. Piar Kaur. This property has not been described in the power of attorney.

[26.] The suit against the Gurdwara Parbandhak Committee was held not maintainable as it is not a juristic person. The application for additional evidence filed by plaintiff was held to be without merits, because it was filed after conclusion of arguments. The pendency of other appeal arising out of other suit was not considered to be just and appropriate for pronouncement of judgment in present appeal. No ingredients in terms of Order 41 Rule 27 CPC were made out for allowing the additional evidence. In the light of interpretation attached to power of attorney given to PW 2 Harbans Singh for executing the sale deed, the findings of trial Court on issues No.1, 2 and 4 were reversed by the Appellate Court.

[27.] I have considered the rival arguments of both the sides.

[28.] As per appeal, following substantial questions of law has

been impleaded by the appellant:-

“a) Whether the impugned judgment and decree dated 16.03.2011 is liable to be set aside being untenable and unsustainable in the eyes of law and suit deserves to be allowed?

b) Whether the respondent was not required to prove their defence i.e the suit land was allegedly gifted to them by Piar Kaur, original owner by leading cogent documentary evidence?

c) Whether the gift of immovable property can be made without executing any registered document?

d) Whether the Scheme of Consolidation has not duly been proved on the record as per law?

e) Whether the alleged Scheme of Consolidation does not affect the rights of the appellant in the suit property in any manner and the present case is maintainable against the defendant?

f) Whether the appellant has purchased the suit land from the original owner Piar Kaur through her attorney through a valid registered Sale Deed?

g) Whether the learned First Appellate Court was wrong in going beyond the pleadings of the parties?

h) Whether the learned First Appellant Court was wrong in

dismissing the application for additional evidence by the appellant?"

[29.] The plaintiff in order to bring the suit in question has to show its ownership qua the property in question. The property is alleged to have been purchased from Piar Kaur by virtue of sale deed dated 09.08.1996 executed by PW 2 Harbans Singh. Apparently, power of attorney in favour of PW 2 Harbans Singh was executed by plaintiff on 12.09.1996. The factum of payment of sale consideration was in personal knowledge of plaintiff. The statement of PW 2 Harbans Singh that sale consideration was paid before the Sub Registrar and was received by Smt. Piar Kaur herself shows that Smt. Piar Kaur was present before the Sub Registrar. There was no reason for PW 2 to execute the sale deed as power of attorney of Smt. Piar Kaur. The sale deed did not bear the signature of Piar Kaur in any case. Even the statement of power of attorney PW 2 Harbans Singh is at variance in terms of recital in sale deed, where it has been stated that sale consideration was paid at the house.

[30.] In view of aforesaid reasoning it could not be brought on record as to whether the sale was preceded by payment of

consideration or not. Sale without consideration has no legal force. Plaintiff has to prove her title on the basis of sale in question. Power of attorney Ex. P2 go in a long way to show that Smt. Piar Kaur never intended to assert her title in the suit land. The power of attorney is silent about the property owned and possessed by Smt. Piar Kaur. The suit property was nowhere described in the power of attorney as well.

[31.] Secondly, one kanal referred to in the scheme is the standard kanal, which after calculation comes out to be area of 1 kanal 17 marlas. It is not disputed that this area is in respect of Khasra No.339. Even if the area of Khasra No. 339 is shown to be '*Gair Mumkin Abadi*' in the Jamabandi prepared immediately after consolidation i.e. Ex. D2 for the year 1960-61, name of Smt. Piar Kaur appeared in column No.4, whereas, '*Gurdwara Deh Gair Marusi*' was recorded to be in possession of land bearing Khasra No.308(0-8) and 339 (1-17). It is only the nature of land which made the description vis-a-vis '*Gair Mumkin Gurdwara*' in Khasra No.308 and '*Gair Mumkin Abadi*' in Khasra No.339. The column No.9 shows the nature of possession as '*Bila Lagan Bawajah Dharam Arth*'.

[32.] In view of aforesaid, the transfer which was not strictly in terms of any gift or otherwise but the same was given effect in the revenue record after consolidation and the same existed in the revenue record, continuously coupled with the construction on 24.12.2000, where half of the property was constructed despite protest by the plaintiff, it has come on record that property in question is being used for Langar purposes.

[33.] The suit has been filed against the Gurdwara Parbandhak Committee which is not a juristic person. Gurdwara Sahib has not been impleaded as a party to the suit. The filing of suit in the year 1997 in respect of entries of 1960 is held to be barred by limitation, particularly when the plaintiff cannot prove her ownership/title on the basis of alleged sale deed dated 12.09.1996 as the same was not found to be based on passing of consideration.

[34.] Interpretation of power of attorney in favour of PW 2 Harbans Singh on both counts has questionable interpretation and in considered opinion of this Court, the same is a farce. Since the plaintiff has not been able to prove the title over the suit land, therefore, the findings recorded by the Lower Appellate Court in the

impugned judgment and decree cannot be held to be on account of misreading of evidence.

[35.] The substantial questions of law as framed needs to be negated. The question No.(a) is not involved in the case. Question No.(b) is based upon the interpretation that plaintiff has to stand on her own legs in proving the title to the property and only then, the factum of gift or otherwise by Smt Piar Kaur in favour of Gurdwara Sahib could be appreciated. Question No.(c) is also depending upon the fact that the title in favour of plaintiff was of foremost consideration for maintaining the suit. Even if gift in favour of Gurdwara is not forthcoming that itself is not sufficient to absolve the plaintiff from proving her title to the land in order to maintain the suit. Questions No.(d) and (e) are germane to the Consolidation Scheme. These questions are also not to be formulated for want of title in favour of plaintiff. Question No.(f) arises in the present case. The interpretation discussed by the Lower Appellate Court vis-a-vis the date of sale deed in favour of plaintiff and the attorney holder PW 2 Harbans Singh on the factum of consideration, make the entire suit not maintainable as passing of consideration is not proved on

record. Question No. (g) does not arise. Question No.(h) does not arise inasmuch as that application filed for bringing additional evidence on the factum of other suit was not legally required in the decision of present appeal. The consideration of matter in entirety makes out a case that plaintiff has filed the suit on the basis of alleged title, but the title in favour of plaintiff is not proved on record in view of detailed reasoning given by the Lower Appellate Court.

[36.] In view of aforesaid, findings recorded by the Lower Appellate Court are not said to be perverse or on account of misreading of evidence. Looking to the entirety of facts and circumstances, this appeal is found to be devoid of merits and same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

28th August, 2015

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