

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

I.

Regular Second Appeal No.126 of 2013 (O&M)

Date of decision: 7.7.2015

Ram Kumar

... Appellant

Versus

Samadh Baba Daulat Giri and others

... Respondents

II.

Regular Second Appeal No.3345 of 2011 (O&M)

Samadh Baba Daulat Giri and another

... Appellants

Versus

Siri Chand (deceased) through LRs and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.A.P.Bhandari, Advocate,
for the appellant.

Mr.S.K.Garg Narwana, Sr. Advocate with
Mr.Abhishek Vig, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. This order will dispose of two appeals, i.e., RSA No. 126 of 2013 and RSA No. 3345 of 2011 as common questions of law and fact arise

in both the appeals. The facts are taken from RSA No. 126 of 2013 for convenience and the parties would be referred by their status in this appeal.

2. The legal position holding ground in past precedents is that the property belonging to a religious institution cannot be permanently alienated by a Mahant except for legal necessity. The transfer of property or transfer of interest in the property by a Mohtamim or Mahant of a Samadh or Dera is not valid if the transaction was not for legal necessity and for the benefit of the estate. This has been the view of this Court as well in **Iqbal Singh v. Santokh Singh and another**; AIR 1984 P&H 366 that when a challenge is brought to a transaction of sale for want of legal necessity, it is for the alienee to prove that the alienation by the alienor was for legal necessity. Where there are numerous alienations, inference of necessity cannot arise by a generalization and each alienation is required to be proved by the alienor by evidence that it was for legal necessity and therefore valid. The Court held that in a suit for possession by lessor where the validity of the lease granted by the predecessor-in-title of lessee is challenged by the lessor, a suit for possession is maintainable without asking for declaration of validity of the sale. The powers of a Mahant regarding alienation of property of a Dera are similar to those of a Hindu widow whose interest in the property cannot be taken away except for legal necessity.

3. In **Bachint Singh and another v. Ganpat Rai and others**; AIR 1937 Lahore 660, duly noticed by the appeal court, the Lahore High Court held while discussing the powers of a Mahant to alienate debutter property that he acts like a manager for an infant heir and can alienate the property only in case of unavoidable necessity. If legal necessity is not

proved in all its probabilities, then the sale, mortgage or lease is void.

4. The necessary facts for determination of this appeal lie in a narrow compass. Samadh Baba Daulat Giri and its Mohtamim/Mahant Shambhu Giri, Chela Narain Giri brought civil suit in the Civil Court at Kaithal on 26th May, 2003 challenging a lease deed dated 24th May, 1973 whereby the predecessor Mahant had leased out suit land to the defendants vide registered lease deed bearing No. 285 dated 24th May, 1973 and it was claimed in the suit filed for declaration and possession of suit land to the effect that the lease was void and in abuse of powers and authority of the Mohtamim/Mahant Santosh Giri, Chela Narain Giri. On the death of Santosh Giri, he was succeeded by Narain Giri, Chela Santosh Giri. After the death of Narain Giri on 1st January, 2000, plaintiff No.1 Mahant Shambu Giri was installed at the Mohtamim by a *Bhek* which had gathered on 15th January, 2000 in the wake of the passing away of the Mohtamim Narain Giri. It was pleaded that there was no legal necessity much less present one with the then Mohtamim/Manager to lease out the suit land along with other land to different persons at nominal rates. The lease was created by late Santosh Giri in favour of the defendants for a period of 30 days against lease money amounting to ₹ 88/- per annum in lump sum while prevailing rate of leasing the land in the revenue estate of village Dhundheri, Tehsil and District Kaithal was ₹ 5,000/- to ₹ 12,000/- per year per acres. The suit was brought on the expiration of the lease period.

5. On notice issued in the suit, the defendants appeared and took the preliminary objection that the suit is time barred citing article 59 of the Limitation Act. They questioned the locus standi of the plaintiffs to file the

suit. It was averred that a dispute of succession had arisen in plaintiff No.1-Samadh and war of succession was going on between Mahant Shambhu Giri Chela Narain Giri and one Harnand Giri, Chela Narain Giri and the mutation in respect of the suit land stood entered in the name of Harnand Giri on the basis of a testamentary Will dated 31st January, 1991. Plaintiff-2 challenged the validity of the Will and claimed that the respectable people of the village, that is, the *Bhek* had appointed him as a Mahant of the Samadh. The dispute was pending before the Commissioner at Ambala. Another preliminary objection was taken by the defendants for stay of suit pending decision of succession to the Samadh. The defendants urged that the lease for 30 years was given at a time when the land was not fertile or fit for cultivation nor was the income from the lease required to improve the Samadh.

6. On the pleadings of the parties, the following issues were struck in the case : -

1. Whether the plaintiff is owner of agricultural land mentioned in para no.1 of plaint? OPP
2. Whether plaintiffs is entitled to a decree for declaration to the effect that the impugned lease deed mentioned in para no.6 of the plaint in respect of the suit land detailed in para no.1 is illegal null and void and not binding on the rights of the plaintiff? OPP
3. Whether the plaintiffs are entitled to a decree for possession of the suit land? OPP
4. Whether the suit of the plaintiffs is time barred? OPD
5. Whether plaintiff no.2 has no locus standi to file the

present suit on behalf of the plaintiff no.1? OPD

6. Whether the case is liable to be stayed till the decision of succession of plaintiff no.1 OPD

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

8. Whether principle of estoppel waiver and acquiescence applies to the facts of present case? OPD

9. Whether suit is not maintainable in law? OPD

10. Whether proper court fee has not been paid in the suit as such suit is liable to be dismissed on this score alone? OPD

11. Whether Mahant Santosh Giri acted in the interest of Samadh and was entitled to create lease deed for 30 years? OPD

12. Whether lease deed in question was executed for legal necessity for the benefit of plaintiff no.1? OPD

13. Relief.

7. The court of first instance dealt with issue of necessity in Mahant Sunder Giri leasing out the suit land to the defendants. The Court read the lease deed but found no recital therein as to the purpose for which money was required by the Mahant. The onus to prove legal necessity was to be discharged by the defendants. The defendants did not lead any evidence to show that the Mahant was in need of the money at the time of letting out the property of the Samadh. The only witness produced by the defendants to depose as to necessity was Ram Kumar whose evidence could not be relied upon since he was not present nor was born at the time of

execution of the lease deed in 1973. The learned trial Court consulted W.H. Rattigan's Digest of Customary Law of the Punjab to cull out the meaning of legal necessity and wrote that it means defraying proper expenses of keeping up religious worship, regarding temples or other buildings connected with the institution, defending hostile litigious attacks and paying revenue and other charges on the land attached to the institution. Learned trial court has returned a positive finding that there was not even an iota of evidence on record to show that the Mahant Sunder Giri required the money for any of the above purposes to justify transfer of rights. The defendants failed to prove that the lease was for legal necessity. The lease deed was null and void and was not binding on the rights of the plaintiffs and it was so declared.

8. On the question of limitation and whether it was hit by article 59 of the Limitation Act, the learned trial court reasoned that alienation took place in the year 1973 while the suit was brought in the year 2003 and merely because Mahant Santosh Giri or Mahant Narain Giri did not challenge the sale deed would not deny to the plaintiffs to act through newly appointed *Mahant* in the year 2000, i.e., plaintiff-2 who could only then lay challenge to the alienation after being appointed Mahant. The suit was thus held to be within the limitation. The findings on other technical issues with respect to locus standi, non-joinder of necessary parties, under valuation for purposes of court fee inasmuch as all legal heirs of Ronki who were not made party were decided in favour of the plaintiffs and against the defendants therefore need not detain us any longer. Suffice it to say that the suit was rightly decreed.

9. In appeal, the defendants remained unsuccessful when the appeal failed on 17th December, 2012 before the learned Additional District Judge, Kaithal.

10. Mr. S.K.Garg Narwana learned senior counsel appearing for the respondents has virtually removed the basis of the second appeal by citing the decision of the learned Single Judge of this Court in RSA No. 2730 of 2010, titled *Ram Chander and others v. Smadh Baba Daulat Giri* decided on 23rd March, 2011. Appellant Ram Chander was also a lease holder under a lease deed dated 25th May, 1973 from the same source executed for a period of 30 years by the same Mahant Santosh Giri. The issue in that case was in pari materia with this case. Ram Chander etc. had failed to prove legal necessity in Mahant Santosh Giri to lease out the property of the Samadh. Ram Chander and others and the present appellant are in same boat. It appears that Mahant Santosh Giri had executed a string of leases of the Samadh property to third parties out of the land in the same Khewat. The suit in Ram Chander's case was also filed after the expiration of the period of lease. Learned District Judge drew strength from the authority from the Division Bench ruling of this Court in **Mathra Das v. Gopal Nath and others**; AIR 1929 Lahore 816 where the Court held that lease by head of religious institutions [like Samadh in this suit] lasts till the death of the Mohtamim. Except for legal necessity, no lease can be granted by the head of a religious institution so as to continue after his death. In the face of this ruling, not much is left to adjudicate in this appeal. This Court held that Shambhu Giri plaintiff 2 in the present case was competent to challenge the lease deed executed by Santosh Giri on 25th May, 1973 by way of filing the

suit. However, the settled legal proposition does not obviate the necessity in each case to prove legal necessity by the alienee through court process.

11. All that is presently required to be examined and reviewed is whether the findings of fact recorded by both the courts below on legal necessity are in order and in tune with the evidence adduced on record. There is lack of evidence on the part of the defendants, upon whom, onus was placed but they could not dispel doubts on the proposition of legal necessity and, therefore, both the courts below were within their justified reasoning to deny a finding that the lease deed was executed for legal necessity by the then Mohtamim.

12. On the question of limitation, the learned District Judge in *Ram Chander's* case succinctly brought to bear the true legal position. It was not article 59 but article 96 of the Limitation Act which was applicable. The Court explained that as per the provisions of article 96, a suit to recover possession of moveable or immovable property comprised in the endowment which had been transferred by a previous manager for valuable consideration could be filed by the manager of such a charitable endowment within 12 years from the date of death, registration or removal of the transferor or the appointment by the endowment as a Manager of the endowment whichever is later. In the present case, there was no delay in bringing the suit on expiration of the lease period. Learned District Judge applied the ratio of the authority in **Duli Chand v. Mahabir and others;** 2001 (1) CCC 81 commending the view that when the lease of religious endowment is challenged as without any legal necessity and the same has been declared to be null and void, then certainly there is no period

prescribed for filing such a suit. The Court held the suit filed by the Samadh was within limitation.

13. As far as the issue of locus standi and succession within the Samadh is concerned, the defendants could have no say in the matter on the principle that a tenant cannot challenge the title of a landlord and is liable to be evicted after the period of lease had expired. On the expiry of the lease, the defendants became unauthorized occupants and trespassers on land belonging to the Samadh. On this point the Learned District Judge affirmed the findings of the learned trial Court in its judgment and decree dated 7th October, 2009 from where the appeal in *Ram Chander's* case [supra] arose. The judgment passed in *Ram Chander's* case [supra] was applied by the learned Single Judge with respect to other lease holders of property belonging to the same Samadh.

14. The present appeal is covered in all fours by the decision of this Court in *Ram Chander's* case [supra] involving the same Samadh and it is only the lease holder who is different but placed in an identical situation.

15. Mr. A.P.Bhandari learned counsel appearing for the appellant is not in a position to wriggle out of the judgment in *Ram Chander's* case [supra].

16. Mr. Narwana on his part has also placed reliance on a selection of several judgments for the consideration of this Court including on the view noticed above and from them he would especially point out to the decision in *Iqbal Singh's* case [supra] and in **Duli Chand v. Mahabir & others**, 2001 (1) CCC 81; **A.R.Dower v. Sohan Lal Anand and others**,

AIR 1937 Lahore 816; **Lord Thankerton and Sir Shadi Lal and Sir**

George Rankin v. Srimath Daivasikhamani Ponnambala Desikar and another, AIR 1936 Privy Council 183; **Atyam Veerraju and others v. Pechetti Venkanna and others**, AIR 1966 SC 629; **Kidar Nath Sahgal v. Emperor**, AIR 1929 Lahore 817; **Iqbal Singh v. Santokh Singh and another**, AIR 1984 P&H 366 and **Amar Singh and another v. Dalip**, 1981 PLJ 539 which all promote the view point he propounds in favour of his clients.

17. To sum up, even assuming that the lease deed is not declared void but the period of lease has run out, even then the suit is eminently maintainable for possession and such unauthorized possession cannot be resisted by the persons who cease to be protected by the lease deed. To counter this argument, Mr Bhandari relies on two decisions of this Court, firstly in **Rameshwar v. Sheo Chand and others**, 1981 Revenue Law Reporter 464 and secondly on **Ram Lal v. Darshan Lal and others**, 2008 (1) PLR 361 contending that the defendants have become tenants holding over the property after the expiration of the lease and they continue to be tenants over the suit land. Such tenants are protected by the provisions of the Punjab Security of Land Tenures Act, 1953 with special reference to Section 9 and 14-A of the Act. Learned Single Judge in *Rameshwar* case held that prior to enforcement of the Act where the tenancy was for a fixed term of contract, it did not ipso facto come to an end on the expiry period of tenancy unless the decree for ejectment was passed under the provisions of the Punjab Tenancy Act, 1887. It is urged that the defendants continued as tenants by fiction of the provisions in Section 9 of the 1953 Act. On similar lines is the decision of *Ram Lal's* case [supra] where the Court has

recognized that a tenant is a statutory tenant after expiry of the lease period and can be evicted only in terms of one or the other grounds of eviction as contemplated by the Act.

18. Even when Mr. Bhandari raised this argument, I ventured to ask him if the defendants had set up a specific defence in the written statement of the protections afforded by the provisions of the Punjab Security of Land Tenures Act, 1953. He produced a copy of the written statement from where I find no such objection taken and, thus, to my mind it should not be permitted to be raised for the first time in regular second appeal since neither an issue was framed nor evidence produced to substantiate the objection raised at the hearing. Nor have the Courts of first and second instance had an opportunity to express an opinion on the point for this court to examine or judicially review even within the restrictions in second appeal jurisdiction.

19. I would only add that all statutory protections afforded to a class or class of persons are not inalienable and much would depend on the nature of the right granted by statute. Statutory rights created in favour of the tenants are open to waiver except when such rights are either fundamental rights which cannot be parted with even by consent or waiver. There is hardly any doubt on the proposition that a directory provision can be waived. However, a mandatory provision can only be waived if it is not conceived in the public interests, but in the personal interests of the party that waives it. The legal position on the subject of waiver of directory and mandatory rights is insightful in the Supreme Court in the 5 Judge ruling in

Dhirendra Nath Gorai & Subal Chandrashaw v. Sudhir Chandra

Ghosh & Ors, AIR 1964 SC 1300- a waiver is an intentional relinquishment of a known right but obviously an objection to jurisdiction cannot be waived, for consent cannot give a court jurisdiction where there is none. Even if there is inherent jurisdiction in court, certain provisions cannot be waived. Maxwell in his book "On the Interpretation of Statutes", 11th Edn., at p. 375, (1) (1908) I.L.R. 35 Cal. 61, 72. (2) [1841] 9 Dowling Cases 487 describes the rule thus:

"Another maxim which sanctions the non- observance of a statutory provision is that cuilibet licet renuntiare juri pro se introducto. Everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy."

The same rule is restated in "Craies on Statute Law", 6th Edn., at p. 269, thus:

"As a general rule, the conditions imposed by statutes which authorise legal proceedings are treated as being indispensable to giving the court jurisdiction. But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the court."

20. The contention of Mr Bhandari based on rent protections in local laws is not acceptable since the issue cannot be raised for the first time in second appeal.

21. The appeal presents want of a substantial question of law for consideration. Fore the foregoing reasons the appeal is found without merit

and is consequently dismissed.

RSA No.3345 of 2011

22. For the foregoing reasons, this appeal is allowed and the judgment and decree of the learned trial court dated 25th August, 2008 is set aside and the appellate court decree passed by the learned Additional District Judge, Kaithal on 12th September, 2009 in Civil Suit No. RBT-369 of 2003 stands affirmed with costs in all the Courts.

(RAJIV NARAIN RAINA)
JUDGE

July 7, 2015
Paritosh Kumar