

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4612 of 2013 (O&M)

Date of Decision.08.12.2015

Asthal Tirkhu Tirath Ji Maharaj and anotherAppellants

Vs.

Tirkhu Tirath Sudhar Samiti of Village Seenk Patri and another
.....Respondents

Present: Mr. Bhupinder Singh, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 1 day in filing the appeal is condoned.
2. The suit had been instituted on behalf of Asthal Tirkhu Tirath Ji Maharaj said to be represented through the Mohatamin and by the present Mahant Rajpal Dass describing himself as Mahant for the recovery of possession. By the same cause title, a previous suit had been instituted for injunction restraining the very same defendants from interfering with possession of the property. The previous suit had been instituted on 25.07.1996 and the suit was dismissed holding that idol alone was a juristic person and that the plaintiffs were not competent to maintain the suit. It was further held that the 2nd plaintiff who is the 2nd appellant here before this Court had claimed the status as a Mahant but it was stated in defence that he had been appointed for a period of one year in the year 1984 subject to certain conditions; the conditions

being that (i) he shall not get married; (ii) he shall not take any private or public appointment and (iii) he shall render due account of the properties of the religious institution. It was stated that the 2nd plaintiff had breached the condition regarding his celibacy and he had gotten married and he had also not been properly accounting for the income from the properties. The Court found that apart from the maintainability of the suit in the manner in which the plaint had been framed, the plaintiff had also not come to the court with clean hands referring himself as a Mahant when he was not. After the dismissal of the suit for injunction, he filed the appeal and the appeal was also dismissed. It appears that after the appeal had been filed to this Court, the plaintiff had it withdrawn without securing any liberty to file a fresh suit.

3. The instant suit which is the subject of second appeal now was filed on a plea that after the institution of the suit, he was dispossessed on 4.8.1996 and he should, therefore, be allowed the benefit of recovery of possession. The defendants filed the written statement and also took an objection that the dismissal of the very same suit constituted a final adjudication between the parties and it would operate as res judicata. There was also an objection that the present suit was barred under Order 2 Rule 2 CPC. The case was taken up for consideration only on the legal objections taken by the defendants and it was found that the plaintiff's status as Mahant was itself discussed in the previous suit and found that he was not and the present suit filed for recovery of possession from the defendants was incompetent, the judgments operating against him finally. These

findings rendered by the trial Court were also confirmed in the appeal by the lower Appellate Court and the very same objections are taken in the second appeal.

4. The learned counsel appearing for the appellant states that the plaintiff was appointed by his Guru as Mohatamin and the villagers had no right to appoint him. There was a contention that the revenue records showed him to be in possession of property and that therefore, the defendants who were not entitled to any right in the property cannot dispossess him. It is also the contention that he would have no objection if the Government takes over possession of the property. None of these objections is tenable. If plaintiff's status as a Mahant was denied even in the previous suit and it was found that his religious office was not through nomination by his Guru, the plaintiff could not have maintained the suit for recovery of possession without establishing his status as such Mahant. If the previous suit for injunction were to be treated as not concluding his status, the present suit for recovery of possession cannot also secure any relief for him, for Section 110 of the Indian Evidence Act enacts an important rule of evidence that a person in possession cannot be dispossessed unless he is shown to have better right than the defendant. The plaintiff who seeks himself to be declared as Mahant cannot secure that relief without a specific relief sought for in that regard. As I have observed that the plaintiff's status was denied and the defendants were contending that the religious office to which he was appointed, was only for a period of one year subject to certain conditions and on breach of such condition, he had been removed from office. This had been accepted by Courts in the previous

round of litigation. Even apart from the above objection, if a suit is filed in respect of the very same subject matter and the appeal were withdrawn, when there were findings against him regarding his own status, it would constitute abandonment of action and the suit shall be barred under Order 23 CPC, through this ground which was not taken by the parties before the Courts below.

5. There is no merit at all in the second appeal. It deserves to be dismissed and accordingly dismissed.

(K. KANNAN)
JUDGE

December 08, 2015
Pankaj*