

123.

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

Regular Second Appeal No.1757 of 2015 (O&M)

Date of decision: 10.12.2015

Baba Shamsher Giri

... Appellant

versus

Gram Panchayat Rajgarh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.K. Chauhan, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The plaintiff filed a suit for declaration that the mutation entry dated 11.03.1930 showing Hari Giri as having expired issueless was wrong and a further prayer recording the suit property as vesting with the gram panchayat shamlat patti rajputan by mutation from 15.09.1964 in favour of Nagar Panchayat was also invalid and that further the mutation effected on 21.08.1981 in favour of defendants 2 to 4 was illegal, null and void.
2. The plaintiff was claiming himself to be the dohlidar to the suit land and the plaintiff's reference was to jamabandi entry for

the years 1887 and 1921 which had recorded Hari Giri as a person who was a dohlidar did not die issueless but the dera came to the management of the Hari Giri's brother Budh Giri and the plaintiff being removed 5 generations down the line from Budh Giri was entitled to the similar legal character.

3. The defendant contended that the property was always the property of gram panchayat and in respect of a portion of the property, a school had been constructed and in respect of the remaining portion, there had been an exchange made with defendants 2 to 4 and in recognition of the exchange and possession, defendants 2 to 4 had been entered as owners in respect of portion of the property since 21.08.1981. The plaintiff's status as successor to Hari Giri was denied and the suit was also stated to be barred by limitation from seeking for a prayer challenging the mutations effected in the years 1930, 1964 and 1981 respectively.

4. At the trial of the suit, the plaintiff proved jamabandis of 19th century and early 20th century making reference to Hari Giri as the Dohlidar in relation to the suit property but there was no documentary evidence connecting the plaintiff as having been nominated as a chela 5 degrees down the line from the last dohlidar Budh Giri. There was nothing elicited as regards even the customs about the manner of devolution of the religious office and the court found that with no documentary evidence as available to show the

plaintiff's own interest as a so-called successor to Hari Giri. The court also held that the revenue entries made in the year 1930 and the character of property as vesting it panchayat was well brought out by the fact that the resolutions had been brought about 4 decades earlier for construction of a school and the school had indeed been constructed. In another portion, there had been an exchange made which was recorded in the year 1981 and a declaratory relief in the manner sought by the plaintiff could not be given through a suit instituted in the year 2010 after nearly 80 years after the mutations of revenue entries.

5. The suit was dismissed by the trial court and it was confirmed in appeal. The second appeal is filed on lofty propositions of law which have no bearing to the case. The points that have to be squarely addressed are whether there had been any documents that could afford proof for connecting the last named dohlidar Hari Giri or Budh Giri to the plaintiff. There existed none; at least not filed before the courts below. The further issue was whether the mutations made and the manner of user inconsistent with the property being used for a religious purpose could be recovered by the plaintiff and seek for a restoration of the entry as though it belonged to the religious institution. The suit itself was not by a religious institution but it was in the name of the appellant-plaintiff describing himself to be chela of Baba Vasudev Giri. The trial court

and the appellate court have also observed that there was no proof of any existing custom about how the plaintiff was picked up as a chela of Baba Vasudev Giri. The plaintiff would seek for a declaration in relation to the property without disclosing the manner of devolution.

6. The suit itself was not, in my view, properly framed for when the plaintiff would challenge the mutations effected from the years 1930, 1964 and 1981 on the basis that the property belonged to the religious institution and the property had been endowed for some religious purpose, without proving the plaintiff's status as a lawful representative of the institution, the relief could not have been sustained. The arguments by the learned counsel that he is not seeking for any declaration of his personal right and that he is only interested in securing the income from the properties for the purpose of dera cannot also be supported, for, that is not the prayer in the suit. The prayer goes no more than that declare that the entries made in the years 1930, 1964 and 1981 to be bad.

7. The revenue entries in the books are maintained for the purpose of identifying the owner in possession and for collection of revenue cannot be brought by any person. His own proprietary status vis-a-vis the property in the character in which it is claimed must be proved before any declaratory action is properly laid. There is no proof of such status.

8. The suit must fail also on a more formidable objection taken by the defendant. There was no reason disclosed as to how the so-called predecessors has not taken any action all along from the year 1930 to restore the property to be required as a dholi and how they failed to challenge the entry of the property as invalid all these years. The suit is thoroughly a misadventure instituted on a fragile basis. There is no merit and the suit has been dismissed on substantive grounds of failure of the plaintiff to prove his own right to the property in whatever capacity that he claimed and also on the basis that the claim was hopelessly barred by limitation.

9. There is nothing for consideration in favour of the appellant. The appeal is without merit and it is dismissed.

(K.KANNAN)
JUDGE

10.12.2015
sanjeev