

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

**RSA NO. 2839 OF 2014 (O&M)
DECIDED ON : 19.03.2015**

Ram Kumar and others

...Appellants

versus

Dera Basau Puri

...Respondent

and

RSA NO. 2851 OF 2014 (O&M)

Udey Singh and others

...Appellants

versus

Dera Basau Puri

...Respondent

and

RSA NO. 2914 OF 2014 (O&M)

Dharambir and others

...Appellants

versus

Dera Basau Puri

...Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Mayank Mathur, Advocate.

K. C. PURI, J.

Vide this common order, I intend to dispose of three
regular second appeals bearing ***RSA No. 2839 of 2014*** tiled as,

"Ram Kumar and others vs. Dera Basau Puri", RSA No. 2851 of 2014 titled as, **"Udey Singh and others vs. Dera Basau Puri",** and **RSA No. 2914 of 2014** titled as, **"Dharambir and others vs. Dera Basau Puri",** as they have arisen out of the common judgment.

Challenge in these appeals is to the judgment and decree dated 28.01.2014 passed by Shri Basruddin, Additional District Judge, Hisar, vide which the appeals preferred by the defendants/ appellants against the judgments and decrees dated 23.10.2010 passed by Shri Gagan Deep Mittal, Civil Judge (Junior Division), Hansi, were dismissed.

Brief facts of the case are that plaintiff-Dera was established by inhabitants of village Bhatla and the agriculture land mentioned in the head notes of the plaint, was given to its Mahant as rent free Dholi for religious and charitable purposes and the amount of subscription, donation and offerings etc. were being utilized for constructing building of the Dera, temple, Samadhi, for the purpose of holding Satsang, Kirtan, Hawan and various religious and spiritual performances. It was further alleged that after the death of Mahant Ravi Puri on 8.1.1995, Mahant Budh Puri succeeded him as Mahant and manager of the plaintiff-Dera. Theraafter, Mahant Chandan puri was appointed as Mahant and Manager of the plaintiff-Dera regarding which the Chaddar Rasam was held in the village Bhatla in the presence of Mahant Budh puri, inhabitants of village Bhatla and the Bhekh of

the Puri Sadhus and Mahants. It was further alleged that after the appointment as Mahant and Manager of the Dera, Mahant Chandan Puri demanded the *batai-tihai* from the defendants of the land in dispute upon which the defendants refused to pay the *batai-tihai* of the land in dispute to the plaintiff-Dera by saying that they are not bound to pay the *batai-tihai* because they have got suffered various decrees in their favour by which they were declared to pay the lease money of the land in dispute @ ₹30/- per acre annually. It was further averred that Mahant Chandan Puri inquired into the matter and came to know that defendants in collusion with Mahant Ravi Puri had obtained the decrees collusively, which are illegal. It was further averred that the mutations along with the revenue record sanctioned on the basis of these decrees, are also liable to be set aside on the ground that they were suffered without any right, fraudulently and against the interest of plaintiff-Dera and the impugned decrees have not been registered with the Sub-Registrar and no notice was ever issued or served upon the inhabitants of the village who dedicated the land in dispute to the plaintiff-Dera. It was further averred that a Panchayat was organized in which defendants were requested to pay 1/3rd *batai* of the land in dispute to the plaintiff-Dera and to get the impugned decrees set aside as well as to get corrected the revenue record which was based upon the above said illegal decrees, but the defendants paid no heed to the request of plaintiff-Dera and filed suit for injunction against the

plaintiff Dera on false and frivolous grounds. It was further alleged that after obtaining the certified copies of the impugned decrees and revenue record, the plaintiff-Dera again requested the defendants to pay 1/3rd *batai* of the land in dispute and to get cancelled the impugned judgments and decrees and to get corrected the revenue record in favour of Dera, but defendants did not pay any heed.

Upon put to notice, all the defendants appeared through the same counsel and filed their written statements taking various preliminary objections regarding maintainability, locus-standi, cause of action, estoppel, jurisdiction, time barred etc. It was further mentioned that the building of Dera has already collapsed and today there is no trace of any Dera in village Bhatla and no Mahant is living in the Dera. The other averments were denied.

Replication was not filed.

From the respective pleadings of the parties, Issue no.1 was framed differently in all the suits. However, the remaining issues were similar for all the cases. In order to avoid repetition, Issue no. 1 of all the suits and remaining issues common to all the suits are given below:

Main Civil Suit No.59-C of 2007.

- 1) Whether the decree dated 8.3.1988 passed in civil suit no.165 of 1984 captioned as 'Munshi Ram etc. Vs. Dera Basau Puri' passed by the

Court of Sh. Dharambir Singh, the then learned Sub-Judge, Hansi and the decree passed in civil suit no.217 of 1985 on 28.11.1987 are illegal, void, against law and fact, without authority, null & void, based upon misconduct and collusion, collusive and not binding upon the rights of the plaintiff-Dera and likewise its mutation is also liable to be set aside? OPP.

Consolidated Suit No.53-C of 2007.

- 1) Whether the decree dated 30.3.1988 passed in civil suit no.222 of 1984 captioned as 'Diwana etc. Vs. Dera Basau Puri' passed by the Court of Sh.R.L.Shankla, the then learned Sub-Judge, Hansi is illegal, void, against law and fact, without authority, null & void, based upon misconduct and collusion, collusive and not binding upon the rights of the plaintiff-Dera and likewise its mutation is also liable to be set aside? OPP.

Consolidated Suit No.54-C of 2007.

- 1) Whether the decree dated 8.3.1988 passed in civil suit no.163 of 1984 captioned as Turan etc Vs. Dera Basau Puri' passed by the Court of Sh. Dharambir Singh, the then learned Sub-Judge, Hansi and the decree passed in civil suit no.218

of 1985 on 28.11.1987 are illegal, void, against law and fact, without authority, null & void, based upon misconduct and collusion, collusive and not binding upon the rights of the plaintiff-Dera and likewise its mutation is also liable to be set aside? OPP.

Consolidated Suit No.55-C of 2007.

- 1) Whether the decree dated 30.3.1988 passed in civil suit no.225 of 1984 captioned as 'Ballu etc. Vs. Dera Basau Puri' passed by the Court of Sh.R.L.Shankla, the then learned Sub-Judge, Hansi is illegal, void, against law and fact, without authority, null & void, based upon misconduct and collusion, collusive and not binding upon the rights of the plaintiff-Dera and likewise its mutation is also liable to be set aside? OPP.

Consolidated Suit No.56-C of 2007.

- 1) Whether the decree dated 30.3.1988 passed in civil suit no. 228 of 1984 captioned as "Krishan etc. Vs. Dera Basau Puri' passed by the Court of Sh.R.L.Shankla, the then learned Sub-Judge, Hansi is illegal, void, against law and fact, without authority, null & void, based upon misconduct and collusion, collusive and not

binding upon the rights of the plaintiff-Dera and likewise its mutation is also liable to be set aside? OPP.

Consolidated Suit No.57-C of 2007.

- 1) Whether the decree dated 8.3.1988 passed in civil suit no.161 of 1984 captioned as 'Ram Kumar etc. Vs. Dera Basau Puri' passed by the Court of Sh. Dharambir Singh, the then learned Sub-Judge, Hansi and the decree passed in civil suit no.219 of 1985 on 28.11.1987 are illegal, void, against law and fact, without authority, null & void, based upon misconduct and collusion, collusive and not binding upon the plaintiff-Dera and the rights of plaintiff-Dera and likewise its mutation is also liable to be set aside? OPP.

Consolidated Suit No.58-C of 2007.

- 1) Whether the decree dated 8.3.1988 passed in civil suit no.162 of 1984 captioned as 'Lalji etc Vs. Dera Basau puri' passed by the Court of Sh.Dharambir Singh, the then learned Sub-Judge, Hansi and the decree passed in civil suit no.215 of 1985 on 28.11.1987 are illegal, void, against law and fact, without authority, null & void, based upon misconduct and collusion,

collusive and not binding upon the rights of the plaintiff-Dera and likewise its mutation is also liable to be set aside? OPP.

Consolidated Suit NO.60-C of 2007.

- 1) Whether the decree dated 8.3.1988 passed in civil suit no.164 of 1984 captioned as 'Ram Singh etc. Vs. Dera Basau Puri passed by the Court of Sh.Dharambir Singh, the then learned Sub-Judge, Hansi and the decree passed in civil suit no.220 of 1985 on 28.11.1987 are illegal, void, against law and fact, without authority, null & void, based upon misconduct and collusion, collusive and not binding upon the rights of the plaintiff-Dera and likewise its mutation is also liable to be set aside? OPP.

Consolidated Suit NO.6I-C of 2007.

- 1) Whether the decree dated 30.03.1988 passed in civil suit no. 227 of 1984 captioned as 'Harphool etc. vs. Dera Basau Puri' passed by the court of Sh. R. L. Shankla, the then learned Sub-Judge, Hansi is illegal, void, against law and fact, without authority, null and void, based upon misconduct and collusion, collusive and not binding upon the rights of the plaintiff-Dera and likewise its mutation is also liable to be set

aside ? OPP

- 2) Whether the defendants are tenants, gair marusi on payment of 1/3rd batai of the plaintiff-Dera ? OPP
- 3) Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
- 4) Whether the suit of the plaintiff is not maintainable on the ground mentioned in para no.7 of the preliminary objections of the written statements ? OPD
- 5) Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
- 6) Whether the civil court has no jurisdiction to try and entertain the present suit ? OPD
- 7) Whether the suit of plaintiff is barred by law ? OPD
- 8) Relief.

In order to prove his case, plaintiff Chandan Puri Chela Budh Puri Chela Ram Puri Mahant himself stepped into the witness box as PW-1 and tendered his affidavit along with other documents on record. His evidence was closed by order vide order dated 29.07.2009.

On the other hand, the defendant examined Krishan Kumar as DW-1 and Jogi Ram as DW-2 and closed the evidence.

No evidence was led in rebuttal.

The learned trial court, after appraisal of the evidence returned the findings on Issues No.1 and 2 in favour of the plaintiff and decreed all the suits.

Feeling dissatisfied with the above said judgment and decree dated 23.10.2010, all the defendants filed separate appeals. The said appeals were dismissed vide judgment and decree dated 28.01.2014 passed by Shri Basruddin, Additional District Judge, Hisar.

Still feeling dissatisfied with the judgment and decree dated 28.01.2014 passed by Additional District Judge, Hisar and judgment and decree dated 23.10.2010 passed by Civil Judge (Junior Division), Hansi, the defendants have preferred the above mentioned appeals.

The appellants in para no. 4 of the grounds of appeal have mentioned that following questions of law have arisen in the present appeal :-

- 1) Whether the learned courts below could actually decree the suit of the plaintiff and dismiss the appeal of the appellant on the ground that perpetual tenancy/a lease for 99 years cannot be granted by a Mahant of the Dera even though none of the parties have pleaded that the lease of the appellants is a perpetual lease or that earlier decrees amount to granting of

perpetual lease/lease of 99 years to the appellants ?

- 2) Whether the courts below could decree the suit of the plaintiff holding that he had a locus to file the suit despite the fact that there is not even an iota of evidence on the file to prove that he is in any way connected to Dera Basau Puri ?
- 3) Whether the present suit could have been decreed despite the fact that the respondent has challenged the decrees dated 08.03.1984 and 28.11.1987 in the year 2007 ?
- 4) Whether the evidence adduced by appellant has been appreciated by both the learned courts below in its true perspective ?
- 5) Whether the provisions of Registration Act, 1908 qua the lease deed have been interpreted by the learned courts below in its true perspective ?

Learned counsel for the appellants has submitted that

Mahant Chandan Puri Chela Budh Puri Chela Ravi Puri has not

been able to prove that he is Mahant of the Dera who happened to be the plaintiff in the present case. However, that fact cannot be re-agitated in the regular second appeal, being a finding of fact recorded by both the courts below. There is categorical finding given by both the courts below that the plaintiff is able to prove the locus standi to file the suit. There is nothing on file that judgment of both the courts below are the result of misreading and misinterpreting the evidence. The present suit has been filed by Dera Basau Puri through Mahant Chandan Puri. So, in view of Section 100 CPC, the argument advanced by learned counsel for the appellant is without any merit and the same stands discarded.

The next question raised by learned counsel for the appellant is that previous decrees have been set-aside on flimsy grounds. However, there is finding of fact recorded by both the courts below that the previous decrees are a result of fraud upon the Dera. From the judgment dated 08.03.1984, it is revealed that the suit has been decreed on the basis of admission. No person including Mahant can give statement adverse to the benefit of Dera. Both the courts below have simply held that Dera is the owner of the property and that fact has not been disputed even by the defendants. So, the findings of both the courts below that Dera is entitled to 1/3rd batai does not call for any interference. No Mohatamim or Manager can create life tenancy for such a meager amount. The previous decrees have been

rightly set-aside by both the courts below. In fact it is a classical case of usurping the land of Dera by the defendant/appellants. Appellants wanted to keep the possession for all times to come without payment of any lease amount. It cannot be said that the present suit is barred by Order 2 Rule 2 CPC or that principle of res judicata would apply. A decree obtained by fraud is a nullity. Both the decrees obtained by the plaintiffs have been rightly set aside by both the courts below and the courts have appreciated the evidence in right perspective. The Manager/Mohtamim cannot accept the claim of plaintiffs against the interest of Dera.

In view of the above, I have no hesitation in holding that no substantial question of law has arisen in any of the appeal. Consequently, all the appeals are without any merit and the same stand dismissed.

MARCH 19, 2015
shalini

(K. C. PURI)
JUDGE