

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

135

Regular Second Appeal No.5706 of 2014 (O&M)

Date of Decision: August 31, 2015

Dharam Singh

...Appellant

Versus

Raman Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pardeep Goyal, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgments and decree passed by the Courts below i.e. the Civil Judge (Senior Division), Fatehgarh Sahib, dated 28.05.2013, by which suit for declaration to the effect that the appellant-plaintiff along with respondents-defendants 3 and 4 is the Mohtmim/owner of the property comprising of Khewat/Khatoni No.61/66, Khasra No.16//9/2(3-4) as per the jamabandi for the year 2003-2004, situated in village Kishanpura, Tehsil Bassi Pathana, District Fatehgarh Sahib, has been dismissed, however, relief of permanent injunction stands granted and the appeal preferred by the appellant-plaintiff stands dismissed by the District Judge, Fatehgarh Sahib, by judgment dated 12.05.2014.

2. It is the contention of the counsel for the appellant-plaintiff that the Courts below have proceeded on the assumption that the properties, ownership of which has been claimed by the appellant-plaintiff along with respondents-defendants 3 and 4, are charitable property, whereas no issue in this regard was framed. He further states that the Mohtmimship could be of a charitable property and, therefore, in the absence of any finding to the

effect that it was a charitable property on which the appellant-plaintiff was claiming his right, the judgment on the basis of which the claim of the appellant-plaintiff has been declined i.e. *Shiv Dayal Versus Om Parkash* 1992 P.L.J. 249 (P&H) would not be applicable. His further contention is that the claim of the appellant-plaintiff thus could not have been denied with regard to the declaration that he along with respondents-defendants 2 and 3 are the Mohtmim/owners of the property and, therefore, the impugned judgments deserve to be set aside.

3. I have considered the submissions made by the counsel for the appellant-plaintiff and have gone through the records of the case.

4. Even if the agreement dated 21.07.1999 on the basis of which, it has been asserted that Ram Saroop had executed transfer deed, the Mohtmimship of the suit property in favour of plaintiff and respondents-defendants 3 and 4 after receipt of ₹12,000/- from them towards full and final payment of the suit property is accepted, then also the said agreement could not have been acted upon as admittedly as per the jamabandis, which have been placed on record, the suit property was not only managed by Ram Saroop but by his brother Sham Saroop both sons of Sardha Ram jointly in equal share. Since this agreement was only executed by Ram Saroop, the transfer of Mohtmim rights in the property in favour of the appellant-plaintiff and his brothers could not be said to be a valid transfer as both the brothers i.e. Ram Saroop and Sham Saroop had equal rights and equal shares in the property. It has rightly been observed by the Courts below that the agreement (Exhibit P-1) does not confer any title upon the appellant-plaintiff as it is merely an agreement and not a conveyance deed. Further that the document of transfer being with regard to the rights of immovable

property valuing more than ₹100/- was required to be registered, which admittedly is not so. Therefore, the Courts below have rightly declined the claim of the appellant-plaintiff for a declaration as was prayed for.

5. The findings recorded by the Courts below being based on proper appreciation of the evidence on record, as has been produced, this Court is not inclined to interfere in the same.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

7. In view of the dismissal of the appeal itself, pending applications stand disposed of.

August 31, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE