

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

Civil Revision No.349 of 2016

Date of decision : 20.01.2016

Nirmala

.....Petitioner

Versus

Shri Gheesa Panth Ravi dass Ashram Dera Baba Gopal Dass & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. J.S. Mehndiratta, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 03.10.2015 passed by learned Civil Judge (Junior Division), Bilaspur, vide which the application moved by the petitioner/defendant No.1 for treating the issue of maintainability as preliminary issue has been dismissed.

2. Plaintiff-respondent No.1 has filed a suit for declaration to the effect that Cheli Nama dated 24.02.1994 alleged by defendant No.1

and contested mutation No.8138 Mouja Bilaspur proceedings before the A.C. First Grade Bilaspur are wrong, illegal, null & void, forged, fabricated and bogus document and not binding on the rights of the plaintiff in any manner. The consequential relief of permanent injunction has also been sought restraining the petitioner from alienating the suit property by way of sale, lease, gift, mortgage or any other manner and from interfering in the actual and physical possession of Dharam Dass Chela Baba Priya Dass Mahant of Dera and members of the plaintiff Sanstha on the basis of the impugned Cheli Nama. During the pendency of the suit, the petitioner moved an application that the suit filed by the plaintiff is not maintainable as it has nothing to do with the suit property which is the property of Mandir Chamaran Satsang and is managed by defendant No.1 who is Mohatmim of the Mandir and the society which has filed the suit, has nothing to do with the said Mandir. The said application was contested by respondent No.1. The same was dismissed by the learned trial court vide impugned order dated 3.10.2015. Hence, this revision petition.

3. I have heard Mr. J.S. Mehndiratta, Advocate, learned counsel for the petitioner and gone through the paper-book carefully.

4. Learned counsel for the petitioner contended that the suit filed by plaintiff-respondent No.1 is not maintainable as the plaintiff has nothing to do with the suit property which is the property of Mandir Chamaran Satsang and is managed by the petitioner who is Mohatmim of the Mandir. The petitioner being Cheli Mahant Priya Dass was appointed as Mahant of the Mandir on 24.02.1994 as successor of the Gaddi, which

goes from Guru to Chela. Even otherwise the mutation of inheritance of Priya Dass was sanctioned in favour of the petitioner being Cheli. Thus, he contended that the suit filed by the petitioner is not maintainable and issue of maintainability should be treated as preliminary issue.

5. I have duly considered the aforesaid contentions.

6. The suit has been filed by respondent No.1 challenging the Chela Nama dated 24.02.1994 executed by late Priya Dass in favour of the petitioner. The plaintiff society has alleged that after the death of Priya Dass, the plaintiff society which is registered one, through its Mohatmim Dharam Dass, is owner in possession of the suit property which is managing its affairs in all respects. The plaintiff society is in control of the Dera. On the other hand, the petitioner/defendant No.1 is claiming herself to be disciple of late Priya Dass on the basis of Cheli Nama dated 24.02.1994 which has been challenged in this suit. This is not disputed that issues in the present case has already been famed. Now the case is posted for the evidence of the plaintiffs. The questions raised in the present suit are the disputed questions of facts, which can only be resolved on the basis of evidence to be led by both the parties. It is the settled principle of law that where the factual position is disputed for which the recording of evidence is required, said issue cannot be treated as preliminary issue. In the instant case also, as to whether the plaintiff/respondent No.1 society has any connection or not with the disputed property/Dera, is certainly a question of fact which can only be adjudicated upon on the basis of evidence. Thus, the issue regarding maintainability of the suit is not a purely legal issue in view of the factual

controversy in the present suit. Hence, it cannot be treated as preliminary.

Thus, I do not find any illegality in the impugned order passed by learned trial court.

7. In view of my aforesaid discussion, the present revision petition has no merits and the same is hereby dismissed.

20.01.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**