

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

**RSA No.2263 of 1997 (O&M)
Date of Decision: 18.07.2016**

**Baba Gopal Dass Chela Surti Dass (Deceased) through LR
....Appellant**

Vs

**Ghat Talab Kaulan Wala
....Respondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Adish Gupta, Advocate
for the appellant.

Mr. Rajinder Goel, Advocate
for the respondent.

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?*

RAJ MOHAN SINGH, J.

[1]. Trial Court decreed the suit of the plaintiff for mandatory injunction directing the defendant to render the account of the income and expenditure of the *Mandir* for the last three years, however suit for mandatory injunction *qua* vacating the management of the *Mandir* was dismissed. However lower Appellate Court allowed both the reliefs to the plaintiff thereby decreeing the suit in *toto* in appeal.

[2]. Aggrieved from the aforesaid judgment and decree dated 03.05.1997 passed by Additional District Judge, Ropar decreeing the suit of the plaintiff in *toto*, defendant filed this

Regular Second Appeal before this Court.

[3]. Brief facts as gathered from the record are that the plaintiff-Ghat Talab Kaulan Wala through its Managers and Trustees filed suit for mandatory injunction directing the defendant to vacate the management of the *Mandir*, building and other property situated in the area of Mundi Kharar and for rendition of account. It was alleged that plaintiff-Ghat Talab Kaulan Wala was the owner of the suit property and the same was being managed through its Managers/Trustees Charan Dass and Manohar Lal. It was also alleged that the defendant was the *Sevadar* engaged by them and other members of the Trust and defendant had been managing the affairs of the management of the suit land comprising of a Well. The status of the defendant was only of *Sevadar*, who was managing the suit property as licensee of the plaintiff.

[4]. It was further alleged that defendant sought to raise construction of certain shops against the wishes of the plaintiff. A suit for permanent injunction was filed by the plaintiff, however the same was compromised on 11.08.1988 and on the basis of statement made by the learned counsel for the defendant, the same was dismissed as withdrawn. In the said suit the statement made before the Sub Judge, 1st Class, Kharar, by learned counsel for the defendant was to the effect that “on

instructions from defendant it was stated that the suit property was of Trust, where defendant was working as a Sevadar only for the welfare of the Trust and as per instructions given by the Managers of the Trust. Defendant undertook to abide by the instructions pertaining to the manner in which shops were to be constructed and rent thereof be collected". Thereafter defendant did not abide by the instructions issued by the plaintiff. He did not render any account of the income derived from the Trust and ultimately the suit came to be filed. It was claimed that the defendant be directed to vacate the premises/management of the *Mandir* and also render account of rent and income of the property derived for the last three years.

[5]. The suit was contested by the defendant. In the preliminary objection it was alleged that Charan Dass and Manohar Lal had no *locus standi* to file the suit. They were never appointed as Managers/Trustees of the plaintiff- Ghat Talab Kaulan Wala. They fraudulently got themselves recorded in the revenue record in connivance with the revenue officials. On merits it was alleged that in the year 1947, defendant was on tour to Punjab where he happened to come to Kharar and stayed in the property which was lying as barren land. Many persons from Kharar and surrounding villages requested him to

establish his permanent *dera* so that people from the area could be benefitted from his blessings and services in the name of God. The defendant accepted the requests of the persons of the area and stayed there and ever since he had been serving the people of the area to the best of his capability.

[6]. It was further contended by the defendant that he arranged *Langars* for the poor and helped the needy persons. He kept on begging in Kharar and adjoining villages and from the savings and patronage of philanthropist like Inderpal Gupta of Chandigarh, he raised a *Mandir* in the land in question. The alleged Trustees namely Charan Dass and Manohar Lal never came to assist the defendant for the construction of *Mandir* and other properties. Defendant was not the *Karinda* appointed by the aforesaid trustees, rather they had nothing to do with the suit land, nor they ever granted any licence to the defendant as alleged. They never came to serve the *Mandir* in the last 43 years, however defendant admitted the earlier suit filed by the plaintiff. The statement given in the earlier suit was claimed to have been made under some mis-conception and influence of the plaintiff, who were rather pleaded to be selfish. Other allegations were denied altogether. The shops were constructed by the defendant in accordance with law as plans and wishes of the worshippers.

[7]. After filing replication by the plaintiff, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to the injunction prayed for? OPP*
- 2. Whether the plaintiff is owner of the suit property as alleged in para No.1 of the plaint? OPP*
- 3. Whether the plaintiffs have no locus standi to file the suit? OPD*
- 4. Whether no cause of action has arisen to the plaintiff for filing this suit? OPD*
- 5. Relief.”*

[8]. Both the parties led their respective evidence on the aforesaid issues to prove their case. Plaintiff got examined Charan Dass as PW-1, Tarsem Kumar as PW-2 and Harbant Singh as PW-3. On the other hand, defendant examined himself as DW-1 and Som Nath as DW-2.

[9]. After appraisal of the evidence, trial Court dismissed the suit for mandatory injunction with direction to the defendant to vacate the management of the *Mandir*, however suit for directing the defendant to render accounts of income and

expenditure of *Mandir* for the last three years was decreed and the defendant was directed to prepare the account within a period of nine months. Preliminary decree was ordered to be passed against the defendant vide judgment and decree dated 02.09.1993 passed by Additional Senior Sub-Judge, Kharar. Against this part decretal and part dismissal of the suit only plaintiff went in appeal. The lower Appellate Court accepted the appeal thereby decreeing the suit in *toto* vide judgment and decree dated 03.05.1997 passed by Additional District Judge, Ropar.

[10]. At the time of admission of the appeal it was noted by the Court that a substantial question of law arises in the appeal. The same is as under:-

“Whether the plaintiff Charan Dass could represent the Trust known as Ghat Talab Kaulan Wala which is also known as Prabhu Wala and whether the suit filed by the Charan Dass is maintainable?”

[11]. I have heard learned counsel for the parties and have perused the record.

[12]. Apparently no cross-appeal was filed by the appellant before the lower Appellate Court against the part decretal of the suit by the trial Court. At this juncture, without advertng to the

scope of arguments in terms of Order 41 Rule 33 CPC, it would be relevant to note that the trial Court on the basis of statement recorded by learned counsel for the defendant in earlier suit proceeded to hold the defendant as *Sevadar* only as he never asserted adverse title in respect of suit land, rather admitted the title of the plaintiff in the earlier suit. The statement so recorded as per Ex.P-1 is reproduced as under:-

“I have instructions from the defendant that the suit property belongs to the trust i.e. the plaintiff, where I am working only as a Sevadar. Whatever I will do, I will do for the welfare of the trust and any instructions given by the manager of the trust especially in regard to the construction of the shops I shall abide by in addition to the instructions pertaining to the manner in which shops are to be constructed and rent thereof collected.”

[13]. Trial Court on the basis of aforesaid statement and entries in the revenue record decreed the suit in part to the extent of directing the defendant to render account of income and expenditure for the last three years. The lower Appellate Court found that the defendant *Sevadar* had asserted adverse title to that of the plaintiff and failed to keep account and, therefore, such *Sevadar* was liable to be removed. On that

premise, lower Appellate Court came to the conclusion that entire suit was liable to be decreed.

[14]. Before deliberating upon the necessary issues, it can be noticed that during pendency of the present appeal, appellant has died on 31.03.2000. Vide order dated 21.02.2002 in CM No.1888-C of 2002, the application filed by Ram Niwas Chela of Baba Gopal Dass Chela Surti Dass was ordered to be impleaded as legal representative of Baba Gopal Dass (deceased) and was allowed to continue the appeal, subject to just exceptions. In Civil Appeal No.9638 of 2003 arising out of SLP (C) No.20854 of 2002, the Hon'ble Apex Court was pleased to decide the case on 08.12.2003 in the following manner:-

“The order taking a summary view of the rights on superficial basis does not appear to be correct. Though it may seem to be for the purpose of mere representation as such in the proceedings it may not really clothe Ram Niwas to be the successor in interest to claim rights in the property as Chela of Baba Gopal Das, who himself was said to be only a 'Sevadar'. The status of the deceased Baba Gopal Dass as well as that of Ram Niwas have to be independently considered objectively and adjudicated and merely from the fact of impleadment alone it cannot be taken for granted to be otherwise. That issue as well as the right and status of the persons vis-a-vis the properties will have to be appropriately and objectively adjudicated upon in the main appeal itself as a preliminary issue before a decision is taken on the merits of the case. Subject to the

above clarification and direction this appeal stands partly allowed with no order as to costs.”

[15]. Perusal of the aforesaid order would show that the impleadment of Ram Niwas may not really clothe him to be the successor of Baba Gopal Dass to claim right in the property as his Chela. He was only a *Sevadar*. Status of deceased Baba Gopal Dass as well as of Ram Niwas were to be independently considered objectively and were to be adjudicated upon. Mere impleadment of Ram Niwas alone was not considered sufficient as per first part of the aforesaid order of the Hon'ble Apex Court. The second part of the order obligated the Court that issue as well as right and status of person viz-a-viz. properties will have to be appropriately and objectively adjudicated upon in the main appeal itself as a preliminary issue before a decision is taken in the main case on merits.

[16]. In view of observations made by the Hon'ble the Apex Court, this Court proceeded to frame one more substantial question of law on 22.01.2015, in addition to the first substantial question of law as already framed by this Court at the time of admission of the appeal. The same is reproduced as under:-

“Whether status of the deceased Baba Gopal Dass as well as that of Ram Niwas, when independently considered, would make them Legal Representatives when Gopal Dass had mentioned

himself to be 'Sevadar' and Ram Niwas as alleged Chela of Baba Gopal Dass?"

[17]. The first substantial question of law is dependent upon the pleadings and evidence brought out on record by the plaintiff with regard to competence of Charan Dass to maintain the suit. Charan Dass appeared as PW-1 and stated that plaintiff-Ghat Talab Kaula Wala known as Prabhu Wala was managed by the managers and trustees. He was one of them. Manohar Lal had died about 15-20 years back. The suit land was managed by them. Defendant was kept as *Sevadar* by them. The statement of Charan Dass as a whole did not pin point the Trust Deed viz-a-viz. the nomenclature of the Trust. The witnesses namely Charan Dass PW-1 and Tarsem Kumar PW-2 could not demonstrate as to the nature of charities which the Trust had undertaken. Section 92 of Civil Procedure Code deals with Public Charities which on reproduction reads as under:-

"92. Public charities:-

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the leave of the court, may institute a suit, whether contentious or not, in the

principal civil court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction whole or any part of the subject matter of the trust is situate to obtain a decree—

- (a) removing any trustee;*
- (b) appointing a new trustee;*
- (c) vesting any property in a trustee;*
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;*
- (d) directing accounts and inquiries;*
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;*
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;*
- (g) settling a scheme; or*
- (h) granting such further or other relief as the nature of the case may require.*

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), or by any responding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of

an express or constructive trust created for purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypress in one or more of the following circumstances, namely:—

- (a) where the original; purposes of the trust, in whole or in part,—
 - (i) have been, as far as may be, fulfilled; or*
 - (ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or**
- (b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or*
- (c) where the property available by virtue of the trust & other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spire of the trust and its applicability to common purposes; or*
- (d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or*
- (e) where the original purposes, in whole or in part, have, since, they were laid down,—
 - (i) been adequately provided for by other means, or**

- (ii) *ceased, as being useless or harmful to the community, or*
- (iii) *ceased to be, in law, charitable, or*
- (iv) *ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.”*

[18]. Three conditions were required to be satisfied for invoking the said provision. Firstly the pleadings should depict that the Trust was created for public charities of a charitable nature or religious nature. Secondly there was a breach of trust and that direction of the Court was needed for administration of such Trust. Thirdly, that the relief claimed is one of the relief enumerated in the Section. No trust deed was filed by the plaintiff.

[19]. Suit under Section 90 CPC has to be filed once plaintiff claimed itself as a Trust. Apparently the plaintiff is Ghat Talab Kaulan Wala which was impleaded through trustees which pre-supposes that there was a Trust. No person from public can become a trustee without there being specific recital in the Trust Deed. The primary concern of the Court was to find out that whether it was public or private Trust? Leave of the Court under Section 92 CPC was required dependent upon the Trust being a

public Trust. There has to be a specific averment in the plaint which needs specific denial or acceptance by the defendant. The suit under Section 92 CPC is a suit of special nature which pre-supposes the existence of public Trust or religious or charitable nature. The suit can only proceed if, allegations of breach of trust exist and for that administration of Trust is required under the direction of the Court. In such type of a situation grant of leave is *sine qua non* for filing such a suit for which Trust being public Trust is also a condition precedent.

[20]. For maintaining the suit *qua* public Trust, the leave of the Court under Section 92 CPC is mandatory. Pleadings of the plaintiff are conspicuously silent about these facts. Secondly for maintaining the suit, plaintiff has to show that there was a complete dedication of the property in favour of the general public. There has to be evidence proving beyond pale of doubt that Trust is a public Trust. Though no instruction in writing is required, to dedicate property for religious or charitable purposes. Only a clear unequivocal manifestation of intention to create a Trust and vesting thereof in the donor as a trustee is required. No such manifestation of intention to create Trust and trustee thereof have come forth on record.

[21]. Dedication for public purpose would involve complete cessation of ownership on the part of the founder and vesting of

the same for religious objects. These are the ingredients in case of public Trust. For private Trust as well there must be some pleadings. Hon'ble Apex Court in **Kuldip Chand & Anr. vs. Advocate General to Government of Himachal Pradesh and Ors, 2003(1) RCR (Civil) 824**, laid down certain tests and guidelines on public or private nature of Trust. The guidelines are in the following manner:-

- “(1) *Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;*
- (2) *The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;*
- (3) *Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the*

temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

- (4) *Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment.”*

[22]. If at all the Trust is to be considered a public Trust keeping in view the properties being a *Mandir*, the leave of the Court in terms of sub-Section (3) of Section 92 CPC was required to be complied mandatorily. In order to maintain the suit in respect of Trust/trustees the Court has to be satisfied that the person who wants to file the suit is interested in the Trust. It is only on the satisfaction of the Court, permission to institute the suit can be granted in case of public Trust.

[23]. Since the pleadings are conspicuously missing with regard to nature of Trust of which Charan Dass and Manohar Lal claimed themselves to be trustees, therefore, first substantial question of law has to be answered in negative to hold that suit was not maintainable at the instance of Charan Dass for want of material pleadings in the plaint as regards nature of Trust of which Charan Dass claimed himself to be

trustee.

[24]. With the decision of first substantial question of law, the suit itself was not maintainable, since the defendant has died during pendency of the appeal, the property being a *Mandir* of which services were rendered by the defendant as *Sevadar*. In view of order passed by the Hon'ble Apex Court the right and status of the appellant have to be appropriately and objectively adjudicated upon in this appeal. The first part of the order in unequivocal terms recorded that the appellant was only a *Sevadar*. His impleadment in the appeal was only for the purpose of mere representation and would not really clothe him to be the successor in interest of Baba Gopal Dass, who himself was *Sevadar* only. The status of Baba Gopal Dass (deceased) as well as that of Ram Niwas were to be independently and objectively considered and to be adjudicated upon in view of first part of the order passed by the Hon'ble Apex Court.

[25]. Since Baba Gopal Dass was a *Sevadar* only as admitted in his statement in the earlier suit which has been proved by Harbant Singh, Advocate while appearing as PW-3, therefore, the scope of present litigation cannot travel beyond the status of the appellant admitted by him in earlier litigation which ultimately culminated in withdrawal of the suit. Whether Ram Niwas could have inherited any right of Baba Gopal Dass

as *Sevadar*? The services cannot be equated with any heritable right like tenancy or inheritance. However, in case of public Trust every individual has right to serve. Baba Gopal Dass was also serving in the *Mandir* irrespective of the *Mandir* as a public Trust property or private Trust property. There was nothing to inherit like services rendered by Baba Gopal Dass. Inheritance of services of Baba Gopal Dass was open to all. No special status can be conferred upon Ram Niwas so far as inheritance of service/*Sevadari* is concerned.

[26]. In view of aforesaid, any person from public can offer service to *Mandir*. Therefore, in view of first part of the order passed by the Hon'ble Apex Court Ram Niwas was only impleaded for the purposes of representation in the present appeal without meaning anything on merits i.e. rights of Baba Gopal Dass viz-a-viz. suit property. The second part of the order in the context of decision on the individual right of Ram Niwas is concerned, the same has to be decided that Ram Niwas is none else than any person from public at large, who could offer his service in place of Baba Gopal Dass. There are no pleadings, nor any evidence on record to show that Ram Niwas was ever appointed as Chela by *Bhek* or any other religious ceremonies were performed by competent authority or by *Sadhu Samaj* for appointing him in place of Baba Gopal Dass.

[27]. In the absence of any pleadings and evidence on record, the status of Ram Niwas cannot be adjudicated viz-a-viz. alleged inheritance of *Sevardari* held by Baba Gopal Dass in the suit property. In view of aforesaid, the second substantial question of law has to be answered against Ram Niwas that his status was not better than any person from public, who could have served the *Mandir* in place of Baba Gopal Dass.

[28]. In view of aforesaid, the direction of vacating the premises has become infructuous. So far as direction to Baba Gopal Dass in respect of rendition of account is concerned, that cannot be complied with by any person for want of lawful inheritance of Baba Gopal Dass in favour of anyone.

[29]. Keeping in view the totality of facts and circumstances of this case, this Court is of the opinion that since the suit itself was not maintainable, therefore, this appeal even though abated *qua* rights of Baba Gopal Dass, but the question of inheritance of Baba Gopal Dass is left open. The appeal stands abated, leaving the parties to establish their right viz-a-viz. inheritance of Baba Gopal Dass and to claim right of service/*Sevadari*.

[30]. With the aforesaid findings, the appeal is disposed of.

July 18, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE