

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1454 of 2007

Date of decision:September 06, 2016

Mahant Harminder Pal

...Appellant

Versus

Kesar Singh and others

...Respondents

RSA No.1737 of 2007

Mahant Harminder Pal

...Appellant

Versus

Mahant Pawan Dass and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Arun Jain, Senior Advocate with
Mr.Munish Gupta, Advocate for the appellant.
Mr.Amol Rattan Sidhu, Senior Advocate with
Mr.Rajesh Narang, Advocate for
respondent Nos.1 (in RSA No.1737 of 2007) and
respondent No.9 (in RSA No.1454 of 2007).
Ms.Anju Arora and Ms. Alisha Arora, Advocates
for respondent Nos.1,2,4,5, 8 (in RSA No.1454 of
2007) and respondents Nos.2,5,7,8,10 (in RSA
No.1737 of 2007)

AMIT RAWAL, J.

This order of mine shall dispose of two appeals
because one is filed at the instance of Pawan Dass and other is
filed on behalf of the tenants.

The appellant is in regular second appeal against the judgment and decree dated 31.1.2007 passed by the Lower Appellate Court whereby the suit seeking declaration and possession has been dismissed.

Mr.Arun Jain, learned senior counsel assisted by Mr.Munish Gupta, Advocate submits that Dharamshala Salaudi by Udasin Sadhu Sect i.e. Bhek Udasin owned land measuring 185 kanals and 2 marlas. According to Udasin Sampardai, the appointment and election of Mahantaship/Mohitmimship is governed by the rules of the Udasin Sadhu and is to be made by the Bhek of Udasin Sadhu. The previous Mahant Jagmohan Dass had left the village and later on, transpired that he died on 11.5.1986. The aforementioned Dharamshala Salaudi was left without any Mahant/Mohitmim. The application was submitted by the appellant on 4.7.1988 for his appointment as the Mohantship before the Bhek Udasin. The other persons, namely, Bant Dass and Pawan Dass had also applied vide different applications dated 8.7.1988 Ex.P4 and 18.7.1988 Ex.P6, though Pawan Dass had submitted an application to the Central Body, the then President Hari Dass forwarded his application to the Punjab Unit. Gurdev Dass was the President of Punjab Unit. The meeting of Bhek was held on 14.8.1988 and the plaintiff-appellant was appointed as Mahant of Dharamshala Salaudi. He has drawn the attention of this Court

to the proceedings dated 14.8.1988 Ex.P10. He submitted that in the aforementioned meeting, the plaintiff-appellant was appointed by the Bhek of Sects, whereby, the applications of other persons, namely, Bant Dass and Pawan Dass were rejected. Hari Dass, the President of the Central Body illegally held the meeting on 17.8.1988 Ex.D7 rejected the appointment of the appellant-plaintiff as Mahant and appointed Pawan Dass as Mahant and held the meeting of General House to take action against Gurdev Dass, President of Punjab Unit and listed the matter for 30.8.1988 before the aforementioned Central Body. The aforementioned Gurdev Dass instituted a civil suit bearing No.541 of 1988 challenging the order of Central Body. Vide order dated 30.8.1988 Ex.P73, the trial Court passed an interim order in the application under Order 39 Rules 1 and 2 CPC directing the parties to maintain status quo regarding the Punjab Unit. On the same day, Gurdev Dass brought to the notice of the aforesaid stay order to Hari Dass, the President of Central Body, but he ran away with the record. In the meantime, the Central Body held the meeting vide Resolution dated 4.9.1988 Ex.P64. The newly elected body headed by its President, Mahant Pritam Dass held the meeting and restored back the Resolution dated 14.8.1988 Ex.P10. Many other Resolutions, eight in numbers, were passed. Hari Dass in the same very Resolutions was removed. The injunction suit filed

which was ultimately compromised with the Central Body and the Central Body filed a civil suit bearing No.301 of 1989 against Hari Dass in the shape of permanent injunction restraining Hari Dass from holding the meeting by acting as President and another respondents as General Secretary, Officer Secretary of Bhartya Udasin Mahan Sabha, Regd. Central Body Committee at Barnala or in Dera near DSP Office, Barnala, with a further relief of mandatory injunction to hand over all the books, stamps, letter pads, registers and books of accounts etc. relating to the Bhartya Udasin Mahan Sabha, Regd. Central Committee. The aforementioned suit was decreed vide judgment and decree dated 24.10.1992 in which it has been proved on record that the Resolution dated 4.9.1988 was restored. Pritam Dass was elected as President and Hari Dass was removed from the Central Body. On the basis of exparte evidence brought on record, the trial Court decreed the suit. The said judgment and decree attained finality.

He further submitted that the majority of the property was under the occupation of the tenants and two parallel proceedings, were initiated, one for ejectment and other is suit for declaration to the plaintiff-appellant as Mahant as well as for possession.

The trial Court on the basis of preponderance of oral and documentary evidence, decreed the suit but the Lower

Appellate Court has committed illegality much less in discharging the obligation in reversing the oral and documentary evidence without assigning any reasons on the facts and law. It is a duty of the lower Appellate Court to formulate the points for determination as per provisions provided under Order 41 Rule 37 of CPC.

No doubt, as per pleadings, the parties were at variance, though the eight issues (were framed) including issues 8-A,8-B and 1-A. There was no occasion for the lower Appellate Court to have upheld the appointment of Pawan Dass as Mahant in the absence of any independent claim. Pawan Dass has been playing in the hands of tenants and tenants had been acknowledging him as Mahant, though there is no relationship between them. The Central Body as noticed the above fabricated Resolution dated 17.8.1988. During the course of arguments, learned senior counsel has drawn attention of this Court to the translated copy of the Resolution dated 4.9.1988 Ex.P64. He further submitted that though the trial Court did not grant the relief of possession but upheld the ejectment. There was no occasion for the lower Appellate Court to grant declaration in favour of Pawan Dass as having been appointed as Mahant of Udasin. The judgment and decree of the Lower Appellate Court is based upon surmises and conjectures, rather an attempt has been made to make up a

new case which has not been pleaded by the parties, nor claimed and as urges this Court to formulate the following substantial questions of law for determination:

- a. Whether the resolution dated 17.8.88 relied upon by the learned lower appellate court is legal and has any value to surpass the resolution dated 14.8.88 vide which the appellant has been appointed as Mahant of the Dharamsala Salaudi?
- b. Whether the learned lower appellate court was required to consider all the documents on record to show that the appellant is Mahant of the Dharamsala, but by not discussing all the documents and evidence of the witnesses, whether the learned appellate court has surpassed the provisions of Sec. 96 of the CPC.
- c. Whether the judgment is bad in law being not decided issuewise as required by the Hon'ble Apex Court in number of judgments?
- d. Whether the judgment of the learned lower appellate court is based on surmises and conjectures and is result of misreading and misappreciation of the evidence on the file?

- e. Whether the learned lower appellate court is competent to make out a new case for the parties when neither pleaded nor argued and the same is beyond jurisdiction?
- f. Whether the learned lower appellate Court was duty bound to the case within four corners of CPC and by not doing so, the judgment of the learned lower appellate court is sustainable in the eyes of law?
- g. Whether the resolution dated 17.8.88 considered by lower appellate court is contrary to law and rules?

Per contra, Mr.Amol Rattan Sidhu, learned Senior counsel assisted by Rajesh Narang, Advocate submitted, that there was a direction by the Central Body against the so-called President not to proceed further and as per Resolutions dated 4.9.1988 Ex.D9 and dated 9.8.1988 Ex.D22, the President of Punjab Unit apologised before the Central Body. He further submitted that the photocopy of the registers of the Punjab Unit from pages No.1 to 36 (Ex.D5) and pages No.37 to 111 (Ex.D6) show that all the appellants recorded in the year 1987 to 1999 and thereafter in favour of chela and son. In fact, Pawan Dass is the son of previous Mahant Jagmohan Dass and the appellant

could not have been appointed as Mahant as it was against the usages and customs. He has also referred the findings recorded by the lower Appellate Court whereby it has been mentioned that the trial Court has relied upon the photographs Ex.P32 to Ex.P50 with regard to ceremonies performed at village Salaudi for the purpose of appointment of the appellant as Mohitmim is weak piece of evidence. He further submitted that there is no written constitution of the Punjab Unit of Udasin Maha Sabha and thus, they had no authority to appoint the Mohitmim of the Dharamshala. Gurdev Dass, President of the Punjab Unit is relative of appellant being his father-in-law. Appellant Harminder Pal was not remotely related to previous Mahant Jagmohan Dass, nor he was Chela of Jagmohan Dass. The Resolution of the Punjab Unit dated 14.8.1988 Ex.P10 was overruled by the Central Body and President Gurdev Dass and his Secretary were removed. Thus, the appointment of Harminder Pal as Mohitmim cannot be held to be genuine and legal and Pawan Dass, who admittedly being the son of Mahant Jagmohan Dass, was rightly appointed as Mahant. In this background, the lower Appellate Court reversed the findings recorded by the trial Court on this issue.

Mr.Arun Jain, learned senior counsel, in rebuttal has drawn attention of this Court to the findings recorded in para 19 of the judgment of the trial Court, wherein, it has been

recorded “.....that there is no evidence on the record which may show that appellant Pawan Dass was ever appointed as Chela.” He submitted that once Pawan Dass was not appointed as Chela, he could not be appointed as Mahant.

I have heard learned counsel for the parties and perused the findings recorded by the Courts below.

From the pleadings as well as Resolution dated 4.9.1988 Ex.P64, it is concluded that the proceedings conducted on 17.8.1988 Ex.D7 whereby Pawan Dass was appointed as Mahant had been set aside by the newly constituted body and Hari Dass was no longer the President of the Central Body and he could not have passed such Resolution. The suit was instituted by the Central Body against the President acknowledging the removal of Hari Dass and appropriate direction was issued to hand over the record. The said suit, as noticed above, was already decreed and has attained finality. In my view, the Lower Appellate Court would have no occasion to disagree with the well reasoned judgment dated 24.10.1992 of the Lower Court below. The lower Appellate Court has exceeded jurisdiction in granting the declaration in favour of Pawan Dass on issues No.8A and 8B. It is a conceded position on record that in a civil suit bearing No.541 of 1988, Ex.P73, injunction was granted and Hari Dass had taken away the proceedings of the meeting and held meeting somewhere else.

Eight Resolutions were passed by the newly elected body headed by its President nullifying the action of Hari Dass and the appointment of Harminder Pal as Mahant was restored. Even the Resolution dated 14.8.1988 has not been challenged by Pawan Dass. I am not in agreement with the finding that Gurdev Dass was related to Harminder Pal who had appointed his son-in-law as Mohitmim because he was appointed in the meeting held on 14.8.1988, Ex.P10, which was attended by various Mahants and has duly been proved on record. No rule has been cited to show that the Central Body can suo moto convene the meeting and set aside the order passed by Bhek. As is evident from the observations referred in para No.19 of the judgment of the trial Court, wherein, it has been recorded ".....that there is no evidence on the record which may show that appellant Pawan Dass was ever appointed as Chela." Pawan Dass alleged to be the son of previous Mahant could not have been appointed as Chela. At no point of time, Pawan Dass had challenged his non selection as Mahant. It is only at the stage when the suit was filed for the purpose of getting the recognition in law pertaining to the ejectment proceedings, the occasion arose for the appellant to file the suit. All these grounds have escaped in the judgment of Lower Appellate Court.

The Lower Appellate Court has failed in discharge of obligation as enshrined under Section 96 CPC.

Accordingly, the judgment of lower Appellate Court is set aside. Substantial questions of law, as noticed above, are answered in favour of the plaintiff-appellant. Resultantly, the judgment and decree of the Lower Appellate Court is set aside and the judgment and decree of the trial Court is restored. Consequently, the suit stands decreed and the appeals are allowed.

September 06,2016
KD

(AMIT RAWAL)
JUDGE