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

**RSA-4438-2009 (O&M)
Date of decision : 12.08.2016**

Subash Chand

... Appellant

Versus

Dera Mandir Chhajju Kund and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the applicants in CM No.14526-C of 2012.

Mr. Amarjit Singh Virk, Advocate
for respondent Nos.4 and 5.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the claim in the suit seeking declaration to the effect that the suit property vests with defendant No.1 i.e. Dera Mandir Chhajju Kund Kaithal through Mohatmim Swami Chetna Nand, alleged Chella of Swami Jagdishwara Nand Gir, on the premise that it is a religious endowment and the owner recorded in the column of ownership i.e. defendant Nos.5 and 6 are left with no right, title and interest in the suit with a consequential relief of injunction restraining the defendant(s) from alienating or transferring the property in any manner, has been dismissed by both the Courts below.

Mr. Rajinder Goyal, learned counsel appearing on behalf of the

appellant-plaintiff submits that the aforementioned suit was filed in a representative capacity i.e. by invoking the provisions of Order 1 Rule 8 of the Code of Civil Procedure. Both the Courts below have arrived at a conclusion that the suit filed at the instance of plaintiff was in collusion with defendant No.1, but the fact remains that the suit property was being used by Mandir and since, the revenue record reflected in the name of defendant(s), there was threat of alienation of the property. The appellant-plaintiff is none-else, but the worshiper worshipping the installed idols.

He submits that the entire land is 97 kanals 14 marlas, whereas the Mandir has been erected on a small chunk of land and rest of the land appurtenant thereto is vacant. It has been established on record that the worshiper has a right to protect the property from the encroachers and the factum of *locus standi* had been upheld by the Courts below, but yet the Courts below, gave undue importance to the fact that only the plaintiff had been examined, whereas the other witnesses were not required to be examined. Ex.P-1 jamabandi for the year 1940-41 shows that there is a Shivalaya, Shukar Kund and there is a kund/pond. The land was not subject to any land revenue. The column 9 of the revenue record established that there is a temple, dera, land etc. were “Bila Adayagi Lagan Bawaja Hifajat Dera Chhajju Kund”. All these factors prove the fact that the property was a religious endowment and therefore, defendant(s) could not deal with the property, once it has been used since time immemorial, thus, the declaration with regard to the religious endowment was required to be granted. The judgment and decree of both the Courts below is based upon the conjectures. The respondent-defendants Nos. 5 & 6 also filed a counter-claim against defendant No.1 regarding mismanagement . The same was

also declined on the ground of maintainability. The mutation bearing No.7197 dated 19.07.1995 was recorded in the name of Swami Chetna Nand, alleged Chella of Swami Jagdishwara Nand Gir. It is, in this background of the matter, the aforementioned suit was filed, but the Courts below failed to notice the aforementioned facts, thus, urges this Court for setting aside of the judgment and decree under challenge.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Amit Jain, learned counsel appearing on behalf of applicants in CM No.14526-C-2012 seeking impleadment of the applicants as respondent Nos.7 to 9 on the premise that the judgment and decree dated 07.03.2009 granting the specific relief qua agreement to sell has been passed in favour of the applicants and they have become owner of the land measuring 90 kanals 5 marlas. Mr. A.S. Virk, learned counsel appearing on behalf of respondent Nos.4 & 5, submits that suit *ex facie* is collusive one. Defendant No.1 squandered away the fruits of the property by mismanaging the property. The concurrent findings of fact should not be interfered until and unless there is a gross illegality and perversity. The lease illegally executed by defendant No.1 in favour of defendant No.2 was basically an act of creating the third party right and causing impediment in the title ownership of the defendant(s). The plaintiff is none-else, but puppets in the hands of the defendant(s), thus urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no illegality and perversity, much less, no interference is called, for, as the revenue record reveals that the entire property measuring 97 kanals 14 marals was mutated in the name of defendant Nos.5 and 6. Out of that, vide judgment and decree

aforementioned, land measuring 90 kanals 5 marlas has been sold, in essence, the title and interest has vested with the applicants in CM No.14526-C-2012. In my view, the application on behalf of the subsequent vendees, is liable to be allowed in view of the provisions of Order 22 Rule 10 CPC and accordingly, the application is allowed and they are ordered to be impleaded as respondent Nos.7 to 9.

The aforementioned judgment and decree dated 07.03.2009 has attained the finality and it has not been challenged. The suit, in my view, is collusive one. The worshiper cannot squander the property of the private owner in the manner and mode as has been indicated above. Since, the temple is constructed on the small piece of land and the sale deed is of remaining piece of land, I am of the view that under the guise of declaration and injunction, the appellant-plaintiff can not seek the restraint qua the entire property.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and the appeal is dismissed.

12.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No