

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

**ESA No.27 of 2016 (O&M)
Decided on: 28.05.2016**

Shri Kailash Chander

....Appellant

Versus

Mahant Chattar Muni and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. G.P.S. Bal, Advocate
for the appellant.

Mr. V.K. Sandhir, Advocate
for the caveator/respondent No.1.

- 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?*

REKHA MITTAL, J.

By invoking Article 226/227 of the Constitution of India, the present petition directs challenge against order dated 07.03.2014 (Annexure P-7) passed by the Additional Civil Judge (Sr. Division), Amritsar and order dated 24.12.2015 (Annexure P-9) passed by the Additional District Judge, Amritsar whereby the objection petition preferred by the appellant was dismissed and the findings recorded by the Executing Court were affirmed in appeal by the Additional District Judge.

Counsel for the appellant has submitted that a civil suit titled Mahant Chattar Muni, Mahant and Administrator of Akhara

Nirvansar, Sultanwind Gate, Inside Lakkar Mandi, Amritsar vs M/s Shahzada Nand Trust through Madan Gopal one of its trustee for possession of land measuring 07 kanals 15 marlas 108 *sarsai*, detailed in headnote of the plaint and reproduced in judgment of the trial Court (Annexure P-3) was decreed *ex parte* on 29.08.1997. The Judgment-debtor/defendant filed an application for setting-aside *ex parte* judgment and decree dated 29.08.1997 but was unsuccessful upto this Court. The decree-holder through Mahant Sukhdeva Nand through attorney Sham Singh son of Dhana Singh filed an application for execution of the decree dated 29.08.1997 (Annexure P-4) with a prayer that warrants of possession be issued against the Judgment-debtor.

The appellant filed an objection petition (Annexure P-5) on the grounds that Shahzada Nand Charitable Trust, Putlighar, Amritsar is owner of the suit property by way of purchase from Hari Krishan Khanna Charitable Trust, Amritsar through Sh. Hari Krishan Khanna by virtue of document registered on 18.06.1956 with the Sub-Registrar, Amritsar. The objector is a tenant in six rooms, *verandah*, open space under M/s. Shahzada Nand Charitable Trust, Putlighar, Amritsar and is running a school in the building shown as Red in the site plan attached.

It is argued that in the suit instituted by the decree-holder, it has been averred that one Sh. Babu Ram Grover son of Rala Ram took property in dispute on lease vide registered lease deed dated 14.11.1938 on yearly lease money of Rs.81.04/- *paisa* from Mahant Ram Salan Dass. The lease was for a period of 50 years commencing w.e.f. 01.05.1938 and expired on 30.04.1988. It is further argued that

said Babu Ram Grover, alleged lessee of the property in question has not been impleaded as a party in the suit. Another submission made by counsel is that the execution petition is not maintainable as there is a dispute with regard to Mahantship of Akhara Nirwansar and till the time said dispute is decided in appropriate proceedings, possession of property in question cannot be delivered in execution of the decree dated 29.08.1997.

Counsel for the caveator/respondent No.1 has argued that the Courts below, on a detailed consideration of the averments set up in the objection petition, reply filed thereto has rightly dismissed the objection petition and the findings recorded by the Executing Court have been duly affirmed in appeal. It is further submitted that as the objector is claiming to be in possession of the suit property on behalf of the JD, he is bound to give up his alleged possession in execution of the decree passed against the Judgment-debtor. Another submission made by counsel is that the objector cannot claim any better rights in the suit property than the JD, therefore, no fault much less illegality can be found in the consistent findings recorded by the Courts below.

I have heard counsel for the parties, perused the paperbook and various annexures appended with the petition.

It is an undisputed position of the case that the judgment and decree dated 29.08.1997 passed in favour of Akhara Nirwansar for possession of the decretal land has attained finality between the parties. The objector/appellant does not claim any independent right to possession of the suit property except through the JD – M/s. Shahzada

Nand Trust (in short 'Trust'). Counsel for the appellant has failed to point out any materials on record that the said Trust is owner of the suit property when otherwise as the judgment and decree passed by the trial Court has attained finality, no such plea of the Trust being owner of the suit property and, therefore, not liable to part with possession of suit land is otherwise not sustainable. In this view of the matter, I find myself unable to accept submissions of counsel for the appellant or to differ with the findings recorded by the Courts below.

So far as plea of the appellant that Sh. Babu Ram Grover the alleged lessee has not been impleaded as a party, as the appellant is not claiming any rights through said Babu Ram Grover, contention raised by the appellant in this regard is misconceived and merits outright rejection. The other plea of the appellant with regard to any dispute *qua* Mahantship of Akhara Nirwansar cannot enure to benefit of the appellant to retain possession of the suit property despite a decree having been passed in favour of Akhara Nirwansar, held to be owner of the property in question. Analyzed from any angle, the appeal sans merit and deserves to be dismissed.

In view of what has been discussed hereinabove, the appeal fails and is accordingly dismissed *in limine*. No order as to costs.

28.05.2016
yakub

(REKHA MITTAL)
JUDGE