

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

Date of decision : 26.09.2016

1. RSA-1017-2010 (O&M)

Mahant Kesar Dass

... Appellant

Versus

Hari Dass and others

... Respondents

2. RSA-3806-2010 (O&M)

Hari Dass

... Appellant

Versus

Kesar Singh

... Respondent

3. RSA-4453-2010 (O&M)

Swami Anand Dass

... Appellant

Versus

Kesar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amarjit Markan, Advocate and
Mr. Kanwal Goyal, Advocate
for the appellant in RSA No.1017 of 2010 and
for respondent No.1 in RSA Nos.4453 & 3806 of 2010.

Mr. Kashmir Singh, Advocate
for the appellant in RSA No.4453 of 2010.

Mr. S.S. Salar, Advocate
for Mahant Hari Dass alleged chela of Gurdev Dass (deceased).

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of three appeals bearing **RSA**
No.1017 of 2010 titled as **“Mahant Kesar Dass V/s Hari Dass and others”**
arising out of Civil Suit No.539 of 1992 titled as “Mahant Kesar Dass V/s
Gram Panchayat, Kanganpur and others”, (for short 'first suit'), **RSA**

No.3806 of 2010 titled as “Hari Dass V/s Kesar Singh” arising out of Civil Suit bearing No.545 of 1992 titled as Gurdev Dass Chela Uttam Dass Chela Sunder Dass V/s Kesar Dass” (for short 'second suit') and RSA No.4453 of 2010 titled as “Swami Anand Dass V/s Kesar Singh and others” arising out of Civil Suit bearing No.169 of 1999 titled as “Swami Anand Dass V/s Kesar Singh and others” (for short 'third suit').

The appellant-plaintiff in the appeal bearing RSA No.1017 of 2010 is successful in the trial Court, whereby the first suit was decreed, but the lower Appellate Court has reversed the findings while exercising the powers under Section 92 of the Code of Civil Procedure and framed the scheme and appointed Sub Divisional Magistrate, Malerkota as a Caretaker of the property. The second suit, at the instance of the Gurdev Dass, has been dismissed by both the Courts below and the Third suit, at the instance of Swami Anand Dass claiming to be Chela of the Dera Udasian, Kanganpur, Tehsil Malerkota, District Sangrur, has also been dismissed by both the Courts below. It is, in this background of the matter, three appeals, aforementioned, have been filed.

Mr. Amarjit Markan, Advocate and Mr. Kanwal Goyal, Advocate, learned counsel appearing on behalf of Kesar Dass submits that Kesar Dass was the Chela of Mahant Uttam Dass of the concerned Dera Udasian Sect. Mahant Uttam Dass during his lifetime appointed Kesar Dass as Mahant. The aforementioned appointment was upheld in the congregation of Bhekh held on 24.03.1991 (Ex.DW-1/A). Uttam Dass died on 07.12.1991. The factum of the appointment of Mahantship by Bhekh was confirmed vide proceedings held on 25.12.1991 (Ex.DW-1/B) and as well as the resolution passed by the Panchayat (Ex.D-1). The trial Court on

the basis of the aforementioned facts, decreed the suit, but the lower Appellate Court non-suited the appellant-plaintiff-Kesar Dass on the premise that Mahant Kesar Dass was not able to prove the factum of the appointment of Chela. He relies upon the *ratio decidendi* culled out by the judgment of Hon'ble Supreme Court in **“Amar Prakash and others V/s Parkasha Nand and others” AIR 1979 SC 845**, to contend that a person who is not even the Chela, but accepted one, can be validly appointed as successor. He further submits that as per the ratio decidendi culled out by this Court by relying upon the judgment of Hon'ble Supreme Court in **“Iqbal Singh V/s Santokh Singh and another” AIR 1984 Punjab and Haryana 366**, there is no bar for having been appointed as Mahant during the lifetime of the erstwhile Mahant. The proceedings of Bhekh have been proved through the testimony of PW-1 Sant Sukhdev Muni, being scribe of the proceedings dated 24.03.1991 and 25.12.1991. He further submits that Gurdev Dass claimed himself to be appointed as Mahant in the alleged meeting held on 05.07.1992, but the fact remains that the aforementioned proceedings have not been proved in accordance with law. It is not a decision of Bhekh as in view of the custom, only Bhekh appoints the Mahant. It has been scribed by one PW-5 Hukam Singh.

He further submits that this alleged congregation of Gurdev Dass is of village Mithewal, whereas the head 'gaddi' of Udasian sect. is at Village Kanganpur. None of the Mahants as reflected in the aforementioned order dated 05.07.1992 have been examined except only witness PW-5 Hukam Singh.

He further submits that PW-1 Sant Sukhdev Muni, the witness of Gurdev Dass, admitted that the head 'gaddi' of the Udasian sect. is at

Village Kanganpur and the 'Pagri' can be only performed at Dera and not at any other place. This fact is also admitted by PW-3 Hardial Singh, therefore, the appointment of Mahant would be meaningless, much less, no force in the eyes of law. Gurdev Dass also admitted that head Dera is at village Kanganpur. All these facts have escaped to the notice of the lower Appellate Court, thus, urges this Court for setting aside the findings under challenge.

Per contra, Mr. S.S. Salar, learned counsel appearing on behalf of Gurdev Dass, submits that both the Courts below have committed illegality and perversity in dismissing the second suit on the premise that Gurdev Dass was celebrate and was Udasian 'Sadhu' and had become the Chela of Uttam Dass after the due performance of all the ceremonies. After demise of Gurdev Dass, Hari Dass after due performance of the requisite ceremonies had become the Chela. The evidence brought on record leads to an irresistible conclusion that Gurdev Dass had *locus standi* and cause of action to file the suit. Both the Courts below have completely ignored this aspect that Kesar Dass had made various manipulations/false creations in connivance with group of persons, who wanted to usurp and grab of the property of the Dera for their personal gains and not for the welfare/benefit of the public in general. Dera situated at Kanganwal, Mithewal and other villages was established for a charitable purpose. Dera, in question, belonged to Udasi Sadhus. The line of decent of the said Dera had been by devolution from Guru to Chela. The institution is governed by custom and usage.

He further submits that Gurdev Dass had been proved to be only surviving Chela of Uttam Dass, when he died on 07.12.1991. All these

facts have been ignored by both the Courts below, thus, urges this Court for dismissing the first suit and decreeing the second suit.

Mr. Kashmir Singh, learned counsel appearing on behalf of the Mahant Swami Anand Dass submits that the findings of the Courts below are perverse and illegal. Both the Courts below have committed illegality and perversity in dismissing the third suit. The proper issues were not framed. The question, to be determined is whether Kesar Dass is entitled to manage the affair of the Dera or yet to be decided by Bhekh as to who is the Mahant of the Dera. He submit that there are 9 Padhaties (Branches) of the Udasian Samparday who owe its allegiance to Panch Parmeshwar Panchaiti Akhara Bara Udasian Nirwan known and styled as Padhati of 'Mehan Sahib Ji'.

He further submits that Mahant Uttam Dass Chela Baba Sunder Dass was the last Mahant and Mohatimin of the said Dera, who was given recognition as Mahant of said Deraby Bara Akhara, Allahabad. Mahant Uttam Dass belonged to the Branch of Udasian Sect. and was unmarried. According to the custom and usage of Udasian Sect. belonging to the Branch of 'Mehan Sahib Ji' and that of Udasin Dera, only unmarried person can be appointed as Mahant. After the death of Uttam Dass, Kesar Dass on one hand and Gurdev Dass on the other started alleging themselves as Mahants. Since, there was a litigation, the Panchayat and the residents of Village Kanganpur approached Shri Mahant of Bara Akhara Udasian at Allahabad and requested him to appoint suitable person as Mahant and Mohatimin of the Dera. On the request of the Panchayat and residents of Village Kanganpur, a gathering of the Sthani-Mukami and many other Mahants of said Udasian sect. from different places had taken place, on

17.07.1997 in Village Kanganpur (Kanganwal). The said gathering was presided over by Shri Hari Hara Nand which participated by many other people. A writing to this effect was also made, much less, photographs. The appellant-Swami Anand Dass had rightly been appointed as Mahant with the help of many Sathani and Mukami and other Mahants of Behkh Udasian. Dera Kanganpur also holds the properties in Village Dhoorkot, Tehsil and District Ludhiana, which are in possession of some persons other than the defendants. A separate suit had also been filed, in this regard. All these facts have been escaped to the notice of both the Courts below, thus, urges this Court setting the judgment and decree under challenge.

I have heard the learned counsel for the parties and appraised the paper book, record of the Courts below and as well as the case law cited above.

Shorn of the facts as noticed above, the question which arises for determination is that whether a Mahant can be appointed during his lifetime, the answer is in “positive” as it is permissible under custom in view of the *ratio decidendi* culled out by the judgment of this Court in **“Iqbal Singh's case** (supra). For the sake of brevity, the findings given by this Court by relying upon the judgment of Hon'ble Supreme Court in paragraph No.11 reads thus:-

11. Now, the question arises whether the appellant could be appointed as a Mahant by Mahant Mehal Singh during his lifetime. There is no general law which is applicable to the religious institutions. Each institution is governed by its own custom and practice. Para 85, Digest of Customary law by W. H. Rattigan, Thirteenth Edition, says that the office of Mahant is usually elective and not hereditary. But a Mahant may

nominate a successor subject to confirmation by his fraternity. Similar view was taken by the Supreme Court in [Krishna Singh v. Mathura Ahir](#), AIR 1980 SC 707. It has been observed therein that succession to mahantship of a math or religious institution is regulated by custom or usage of the particular institution except where a rule of succession is laid down by the founder himself who created the endowment. It has been further observed that where the Mahant has the power to appoint his successor, it is the custom in the various Maths that such appointments should be confirmed or recognised by the members of the religious fraternity. Therefore, in order to determine the question, we have to take into consideration the evidence of the parties. The evidence led by the plaintiff has already been discussed above according to which a Mahant can appoint a Chela during his lifetime with the approval of the Bhekh. The respondents did not lead any evidence to the contrary. The appointment of the appellant by Mahant Mehal Singh was not challenged during his lifetime though he remained alive for more than three years after appellant was appointed as Mahant by him. That further supports the version of the appellant. It is also not imaginable that if a Mahant does not want to act as such or has become incapable of carrying out the duties as a Mahant, he cannot give up Mahantship. Therefore, I am of the opinion that the appellant could be appointed as a Mahant by Mahant Mehal Singh during his life time. Thus, he is a validly appointed Mahant.”

Now the other question, also, arises is that a person who is not even appointed as Chela, but accepted one, can be validly appointed as successor, the answer is also in positive. For the sake of brevity, the findings rendered in paragraph No.6 of the judgment rendered in **“Amar Prakash's case** (supra), read thus:-

“6. The question that remains for consideration is whether the plaintiff was the Chela of Mahant Krishan Das

and whether he could be validly appointed, if h was not the Chela. In Ex.P7 dated July 23, 1961 which was executed by Mahant Krishan Das and attested by all visiting Mahants the plaintiff Parkasha Nand was described as 'Sadaq Chela' of Mahant Krishan Das. The ceremony which took place on July 23, 1961 was described by Parkasha Nand in the following words:-

The congregation set on the durries on the first floor of the Dera about 25 Mahants and about 30 villagers sat on those durries. Mahant Krishan Das offered a Tilak on my forehead. Mahant Bikram Dass collected turbans from the Mahants who were present there and tied five turbans on my head. Mahant Som Parkash offered me a Doshala and sugar-cakes were distributed. All these proceedings were gone through with the free and voluntary consent of late Mahant Krishan Das and no pressure was brought to bear on him. Mahant Krishan Das was not confined. Exs.P6 to P8 were written at that time and the people who were present had affixed their signatures and thumb-impressions thereon.

We are satisfied that late Mahant Krishan Das accepted the plaintiff as his Chela and appointed him as his successor Mahant. We may also mention here that the learned subordinate Judge in his report mentioned that Pandit Bhagtanand who was previously a Mahant of the Dera was not a Chela of his predecessor Mahant Sundar Das and that Mahant Krishan Das himself was not a Chela of his predessor Mahant Bhagtanana.”

But, the reasoning assigned by the lower Appellate Court, in my view, is against the *ratio decidendi* culled out by the judgments cited supra. The trial Court after examining the evidence i.e. particularly proceedings dated 24.03.1991 (Ex.DW-1/A) and 25.02.1991 (Ex.DW-1/B) rightly held that Kesar Dass was validly appointed as Mahant in the

congregation of Bhekh. Gurdev Dass had not been held to be validly appointed for the reason that he was appointed by congregation held at Village Mithewal. Gurdev Dass in cross-examination admitted that the head seat of Udasian sect. is at Village Kanganpur. If it is so, then 'gaddi' ceremony and bhog ceremony was to be performed at Village Kanganpur, thus, the evidence relied upon by Gurdev Dass is not of Village Kanganpur, but of Village Mithewal i.e. Branch of Dera Udasian sect. at Kanganpur, therefore, for the purpose of appointment of Mahantship, the congregation had to be held at that place where the head seat of Udasian Sect. is situated i.e. at Kanganpur. In my view, the lower Appellate Court ought not to have framed the scheme as per provisions of Section 92 of the Code of Civil Procedure by appointing the Sub Divisional Magistrate as Caretaker of the property. In my view the findings arrived at by the lower Appellate Court in **RSA No.1017 of 2010** are totally against the *ratio decidendi* culled out by the judgments cited supra, therefore, there was no occasion to set aside the well reasoned judgment of the trial Court.

The other appeals bearing **RSA Nos.3806 & 4453 of 2010**, plaintiffs have also failed to prove on record any fact that as the meeting was suddenly held on 17.07.1997. The aforementioned fact has been noticed by both the Courts below. Swami Hari Hara Nanda Ji did not call Kesar Dass or Swami Anand Dass. He straightway convened a meeting held on 17.07.1997 and performed the ceremonies regarding the appointment of Swami Anand Dass as Mahant. Such like procedure is totally against the principle of natural justice. Chela or Mahant is always appointed by Bhekh. No such enquiries were made at any point of time by Swami Hari Har Nanda Ji, even he did not perform the ceremonies

regarding the appointment of Swami Anand Ji-plaintiff in third suit. The witnesses examined have been admitted that Dera is under the control of Kesar Dass. The congregation regarding the appointment of Swami Anand Dass as Mahant was held at school which is at a distance of 100/150 karams from the Dera. Swami Hari Har Nanda Ji did not enter into Dera Kanganwal. No evidence has brought on record to show that large number of Mahants belonging to Udasin Sampardye participated in the alleged ceremonies held on 17.07.1997. The Courts below rightly relied upon the statement of PW-11 Prem Dass and PW-12 Sukhdeva Nand Lal as the said statements were incomplete. The ceremonies performed on 17.07.1997 had no authenticity of law as it does not show that Mahants belonging to Udasin Sect. were ever invited.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213”**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4) SCC 262**, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in “Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29] ”

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already

found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeals, aforementioned.

For the foregoing reasons, the judgment and decree of the lower Appellate Court in **RSA No.1017 of 2010** is hereby set aside and that of trial Court is restored and accordingly, the appeal is allowed.

The other appeals bearing **RSA Nos.3806 & 4453 of 2010** are, accordingly, dismissed, by upholding the concurrent findings of fact and law, whereby the suit bearing No.545 of 1992 and 169 of 1999 have been dismissed.

It is made clear that the appellant-plaintiff Kesar Dass is Mahant, thus, shall not be entitled to alienate or create third party right by way of lease etc. and will not, even, make an attempt to alienate the property for his own personal use. It will remain or deemed to be property of Dera.

With the aforesaid observations, **RSA No.1017 of 2010** is allowed and the other **RSA Nos.3806 & 4453 of 2010** are dismissed.

26.09.2016
yogesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned ☒ Yes/ No

Whether Reportable ☒ Yes/ No