

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3440 of 2010(O&M)
DATE OF DECISION: November 7,2016

Dera Baba Sidh Kalinjhar & Sri Guru Grant Sahib through
Mohtim Baba Dyal Muni

...Appellants

versus

Gurmail Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.S.C.Arora, Advocate for the appellant.
Mr.Deepak Aggarwal, Advocate for the
respondent.

AMIT RAWAL, J.

CM No.383-C of 2015

This is an application for rectification of the memo
of parties.

After hearing the learned counsel for the
appellant, the present application is allowed. The memo of
parties is taken on record.

Main case

The plaintiff is aggrieved of the concurrent
findings of the fact whereby the suit seeking permanent
injunction restraining the defendants from illegally and
forcibly taking possession of land measuring 76 kanals 12

marlas comprised in khewat/ khatauni No.248-250/679, 680 and 682 bearing khasra numbers 1008/2(21-18) 1009/1 (8-0) 1000/3(2-4), 1013/ 3/3(8-0) 1014/1(18-0), 1021(12-16), 1022/1(5-14) situated at village Kaljharani, Tehsil and District Bathinda and also from illegally and forcibly interfering into the management and smooth running of Dera Mat Kalinjhar Baba Sidh, Kaljharani, Tehsil and District Bathinda with a subsequent relief by way of mandatory injunction for issuance of direction to the respondents to deliver the possession of the suit land which have been illegally and unlawfully taken into possession from the plaintiff on 16.5.2004, has been dismissed by both the Courts below.

Mr.S.C.Arora, learned counsel appearing for the appellant submits that originally civil suit bearing No.630 dated 27.11.2003 with regard to permanent injunction was filed on the premise that since time immemorial, the affairs of Dera Baba Sidh Math Jaklinjhar, Kaljharani and Shri Guru Grant Sahib, Kaljharani were being controlled and managed by its Mahants. Earlier Baba Hardev Muni Chela Baba Kirpal Muni was its Mohtim. His name was incorporated in the column of cultivation. After his death, his Chela was Tandon Muni alias Baba Parshotam Dass who also died. The plaintiff, being the Chela of Baba Tandon Muni alias Baba

Parshotam Dass, was appointed as Mahant by Shri Panchayati Akhara Wadda Udaseen Nirwan Rajghat, Kankhal, District Haridwar. A certificate dated 7.5.2001 to this effect was also issued. The plaintiff had been using the income for the welfare and benefit of the Dera. on 22.10.2001, the khasra girdawari of the suit land had been corrected in favour of the plaintiff by Assistant Collector IInd Grade, Bathinda. The defendants being desperate persons wanted to illegally and forcibly take the possession of the suit land from the plaintiff on 16.5.2004 and, therefore, prayer for mandatory injunction was incorporated by way of amendment. He submits that the stand of the defendants that the suit land was in possession of Dera Matha Kalinjhar known as Dera Bhullar Baba Sidh Kalinjhar, who was the owner of the suit land and managed by registered body known as Dera Bhullar Baba Sidh Kalinjhar, Kaljharani. The Society was managing the suit property for the Dera, being the true owner. Sadhu Narain Giri and Karam Singh were appointed by the Managing Body of the Dera. Respondent-defendant No.1 was the President of the Society and the remaining respondent- defendants were members of the registered Society. It is the appellant-plaintiff who wanted to grab the property of Dera. He submits that both the Courts below have ignored the very vital aspect i.e. the suit

was only with regard to the injunction and not with regard to title. No doubt, the documentary evidence placed on record showed the continuous and uninterrupted possession. It was the duty of the respondents-defendants to prove that they were managing the suit property. The trial Court has totally misconstrued and misread the oral and documentary evidence. Even the proper opportunity was not granted to the appellants to place on record the sufficient material.

On the contrary, learned counsel for the respondents submits that the suit was not maintainable, particularly, the appellant-plaintiff allegedly dispossessed, though the possession of the appellant-plaintiff was never admitted but the fact remains that in order to seek possession, he should have only sought the amendment of the plaint vis-à-vis mandatory injunction and should have also claimed the declaration as Mahant, unless and until, such relief is not sought, the suit was not maintainable.

In rebuttal, learned counsel for the appellant-plaintiff submits that the appellant-plaintiff may be permitted to withdraw the suit and the appeal with a liberty file the same, in accordance with law.

I have heard the learned counsel for the parties and am of the view that there is no force in the contentions of learned counsel for the appellant.

It is too late in the day to make such permission as the appellant-plaintiff was aware of the factum of dispossession way back in 2004 and the suit is of the year 2003 and the Court continued with the proceedings. Unless and until, the appellant-plaintiff established his status of Mahanat by seeking declaration under Section 34 of the Specific Relief Act, the suit is not maintainable. If the request of learned counsel for the appellant-plaintiff is accepted, it would tantamount to put the clock back after such a long time.

For the reasons recorded above, I find no ground to differ with the findings recorded by both the Courts below. Accordingly, the present appeal is dismissed.

November 7, 2016
KD

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No