

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

RSA No.1202 of 2011 (O&M)

Date of Decision.19.09.2016

Hari Ram and others

.....Appellants

Vs.

Baba Bal Nath Chela Omkar Nath Chela Triveni NathRespondent

Present: Mr. Rohit Ahuja, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-defendants sons of Nathi son of Lohrey are aggrieved of the concurrent finding of fact whereby the suit of the respondent-plaintiff for granting decree of possession in respect of land in dispute described in para 1 of the plaint, had been passed against them with consequential relief. They had been directed to hand over physical possession of the suit land within the specified period and were also restrained from alienating the suit land in any manner to any other person and from changing the nature of suit land.

Mr. Rohit Ahuja, learned counsel appearing for the appellants submits that in order to establish the claim/foundation of possession, the plaintiff had to prove the fact that he was duly appointed Chela of Omkar Nath. In earlier round of litigation, culminating upto the Supreme Court, in Civil Appeal No.1291 of 1981, it has been held that Kamal Nath is not a duly nominated Chela of Omkar Nath. The plaintiff in the instant case is none else but Baba Bal Nath claiming himself to be Chela of Omkar Nath. In this regard, he has drawn attention of this Court to the order of the Hon'ble Supreme Court dated 04.08.1993 attached as Annexure A-1 with

the paper book.

He further submits that the plaintiff has failed to establish the appointment of Chela Omkar Nath and therefore, could not succeed in the suit for possession. Earlier suit for ejectment bearing No.26 of 1968-69 in respect of the suit land against their predecessor-in-interest against Lohrey son of Gariba was filed and the same was decreed vide judgment and decree dated 12.04.1971. In fact, the aforementioned decree had attained finality. Once the plaintiff has not been able to seek the execution, the present suit is nothing but to circumvent the wrath of the Limitation Act and therefore, the suit was liable to be dismissed on this ground alone.

In fact, the plaintiff's suit was hopelessly barred as the appellants-defendants have been in long and continuous possession. The factum of plaintiff being Dholidar/landlord of the land had been emphatically denied. In fact, it was stated that defendants were/are in possession of the suit land since the time of forefathers @₹120/- as CHAKOTA SAAL TAMAM. The defendants did not at any point of time relinquish the possession. The factum of tenancy is already proved. The plaintiff has miserably failed to prove that he was duly appointed Chela of Omkar Nath, Chela Triveni Nath. In the absence of the same, suit could not have been entertained, much less, decreed. Though the plea of adverse possession was taken but that was alternative, thus, urges this Court for setting aside the judgment and decree passed by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

He also submits that respondent-plaintiff has taken possession even after passing of the notice of motion and interim order, in essence, the

appellants-defendants are out of possession since then.

I have heard learned counsel for the appellants, appraised the paper book and also order of the Hon'ble Supreme Court. The order of the Hon'ble Supreme court only pertained to the appointment of Kamal Nath as Chela. It did not deal with the appointment of Baba Bal Nath, plaintiff, therefore, the said order would not apply. As per copy of jamabandi for the year 2001-2002, Ex. P-1, Omkar Nath Chela Triveni Nath has been shown as Dholidar of the suit land. However, after the ejectment as indicated above, the status of the appellants-defendants is not else but trespassers and not of tenants. The remedy for them, if any, shall be suit for possession.

The question arises whether the plaintiff can pursue the relief of possession on the premise that he is appointed chela or not. The fact remains that defendants in the evidence admitted that he was managing the affairs of the Mandir. The plaintiff produced the following witnesses i.e. PW-1 plaintiff himself, PW-2 Dibban, PW-3 Suraj Mal, PW-4 Sukhbir who deposed that the plaintiff had been appointed Chela of Omkar Nath but the fact remains that the defendant, DW-1 Roop Lal in his cross-examination admitted that the plaintiff is looking after the affairs of the Mandir for the last 5-6 months. Once the factum of managing the affairs had been admitted, it is not necessary for me to delve upon the appointment of plaintiff being Chela as the appellants-defendants have not sought any declaration by way of counter-claim *viz-a-viz* challenging the status of the plaintiff as Chela.

The appellants-defendants are unauthorized occupants of the land in view of the ejectment order already passed as indicated above and since they have already been dispossessed long time back when notice of

motion was issued by this Court, no purpose will be served to put the clock back.

I do not find any illegality and perversity in the judgment and decree passed by both the Courts below as the same are founded upon correct appreciation of oral as well as documentary evidence, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 19, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No