

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

RSA No.5070 of 2011
Date of decision : 05.08.2016

Mela Ram

...Appellant

Versus

Hari Om Gir @ Harbans Gir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. K.S. Dadwal, Advocate for the appellant.

Mr. Anish Setia, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit for permanent injunction restraining the defendant No.1 from occupying any part of property/land measuring 28 kanals 16 marlas comprised in Khewat No.258/339, Kh. No.240 (4 kanal-13 marla Banjar Qadim) & Kh. No.242 area 24 kanals 3 marlas (Barani 3 kanals – 3 marlas Nehri 3 kanal – 9 marla abadi 3 kanal – 3 marla & Banjar Qadim 14 kanals 16 marlas), situated in revenue estate of Village Sahera Dadial, HB No.624, Tehsil Mukerian, has been dismissed.

Mr. Krishan Singh Dadwal, learned counsel appearing on behalf of appellant-plaintiff submits that trial Court on the basis of the preponderance of the evidence, decreed the suit as the claim in the suit was for permanent injunction against the defendant No.1 restraining them from interfering into the peaceful and forcible dispossession from occupying any part of the suit property as described in the plaint, except in due course of law.

The case set up by the plaintiff before the trial Court was that the plaintiff being proprietor of the village had a locus standi to file the suit on the account of the fact that ancestors had donated suit land to the Mandir/Thakurdwara Baba Nand Lal Ji vide mutation No.163, therefore, he also became founder member. Earlier the civil suit filed by the Management Committee of the Baba Nand Lal Ji against the previous Pujari titled as Mandir Committee Vs. Nand Gopal which was decreed in favour of appellant-plaintiff and khasra Nos.240 and 242 were also the subject matter of the previous suit. It was held that plaintiff No.2 being exclusive owner in respect of land measuring 156 kanals 14 marlas as described in the plaint belonging to Thakurdwara Sahera Wala. It has been further stated that as per the amendment in the plaint, defendant No.1 was earlier kept as Pujari in Thakurdwara/Mandir but due to mis-conduct, vide Resolution dated 03.09.2000 he was dismissed by the Managing Committee, therefore he had no right to occupy the land of Thakurdwara/Mandir and the Managing Committee appointed another Pujari. The defendant No.1 still wrongly and illegally claimed the possession over the suit property.

All these facts have been noticed by the trial Court and decreed

the suit. Lower Appellate Court has gone on conjectures and surmises by holding that the plaintiff did not have locus standi to file the suit as previously suit was filed by the Managing Committee. He further submits that he was founder member, therefore, Founder member has locus standi to expose cause of Thakurdwara/Mandir.

He further submits that the lower Appellate Court had not examined the pleadings as the defendants, in the written statement, admitted the extension of the service for development of the Mandir. Lower Appellate Court has further erred in not taking into consideration the law of Mulla, whereby para No.421 clearly talks about the founder. The previous suit granting the aforementioned possession of Thakurdwara/Mandir has been proved on record yet the lower Appellate Court erroneously dismissed the suit. Resolution Ex.P4 has not been interpreted/seen as by virtue of the same, the defendant No.1 was dismissed from service. It is only when the defendant started interfering into the peaceful possession, plaintiff filed the suit and thus urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. Anish Setia, learned counsel appearing on behalf of respondent-defendant submits that the lower Appellate Court being last Court of facts and law appreciated the entire evidence held that once the possession is of the defendant No.1, remedy if any was to seek the possession in accordance with law but not by seeking permanent injunction. Previous decree is only granting them a title and not of injunction. Suit at the instance of the founder is not maintainable as it is the Managing Committee who should have come forward or ought to have passed

resolution in favour of any person including the plaintiff.

He further submits that Mela Ram had already been divested of the land and only attended the meeting of Managing Committee, therefore, cannot sue for being restored to right at management if at all grievance was, grievance should have been of Management Committee and thus urges this Court for affirmation of the findings under challenge.

In rebuttal, learned counsel for the appellant submits that a person who has been assisting the management of Temple, can always have a locus standi to institute suit challenging the alienation of the property. In support of his contention, he has relied upon ratio decidendi culled out in *Bishwanath and another Vs. Thakur Radha Ballabhji and others, AIR 1967 (SC) 1044*.

I have heard learned counsel for the parties and appraised the paper book.

Without commenting upon locus standi of the appellant-plaintiff, the fact remains that whether suit for permanent injunction in the fact and circumstances as set out in the plaint and written statement, much less, evidence was maintainable or not. It is conceded position on record that defendant No.1 was appointed as Pujari and was removed vide Resolution but as per categorical pleading, he had wrongly and unnecessarily been occupying the premises. In such circumstances, remedy would not be of permanent injunction seeking restraint order, but for mandatory injunction or for possession.

Keeping in view of his status, either of licensee or tenant, in my view relief sought in the plaint was wholly misconceived and not in

accordance with law.

I do not dispute the maintainability of the suit qua at the instance of Mela Ram in view of law laid down by Hon'ble Supreme Court supra. In view of the fact that suit was not properly framed and the relief sought was not correct, thus, rightly so, the lower Appellate Court dismissed the same.

I do not intend to differ with the findings by upholding the judgment and decree of Lower Appellate Court, much less, no substantial questions of law arises for determination.

Appeal stands dismissed.

05.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No