

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2083 of 2016 (O&M)
Date of Decision : 09.08.2016

Palwinder Singh @ Balwinder Singh and othersAppellants

Versus

Ragunath Mandir Navetia, Guru Gangeshwara Mahila Yoga Ashram Trust
Santokhsar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bikramjit Aroua, Advocate
for the appellants.

Surinder Gupta, J.

This second appeal has been filed by defendants-appellants Palwinder Singh @ Balwinder Singh and others against concurrent judgments and decrees passed by Courts below decreeing the suit of plaintiff-Ragunath Mandir Navetia Guru, Gangeshwara Mahila Yoga Ashram Trust Santokhsar (later referred to as 'plaintiff-trust') for mandatory injunction directing appellants to quit, vacate and hand-over vacant and peaceful possession of the demised premises owned by plaintiff-respondent no. 1 and to further restrain them from encroaching, trespassing over any part of the property of plaintiff, as fully described in headnote.

2. Plaintiff's case, in brief, is that plaintiff-trust was created on 11.06.1968 and was duly registered. Plaintiff-trust authorized Sh. Sanjay Aggarwal, Advocate, a member of Advisory Committee of Male Members of the Trust, to file suit vide resolution dated 21.07.2012 (Ex. P-2). Defendant no. 1-Palwinder Singh was working in the name of Balwinder Singh and on his request he was given an annexe on the first floor of one room to stay there for three months. Thereafter, he did not vacate the room and assured to

hand over vacant possession of the premises by 03.03.1997. On his failure

to vacate the premises on 03.03.1997, he was again given notice dated 14.03.1997 to vacate the demised premises by 24.12.1997. Defendant no. 1 and his wife have been making false promises and giving assurances to vacate the premises but ultimately refused. They rather fabricated two receipts of rent for the year 1997-1998 alleged to have been executed by Dr. Krishna, inspite of the fact that she had expired on 25.06.1991. They then filed a civil suit and tried to get the relief of injunction but their application was dismissed by Civil Judge (Junior Division), Amritsar on 27.08.2005 and their suit was dismissed by Court of Additional Civil Judge (Senior Division), Amritsar on 01.11.2008. Thereafter, they filed frivolous suit against Electricity Board and Raj Dulari based on the false documents.

3. Defendant no. 1 alongwith his wife and family members are in occupation of annexe i.e. portion of *Ashram* as licensees. Due to nefarious activities the licence granted to them and their family was revoked vide legal notice dated 19.03.2012 and they were directed to vacate and hand over vacant possession of licenced premises to plaintiff-trust. Instead of vacating the premises they tried to encroach upon remaining part of the trust property including main hall, hence this suit.

4. Defendants no. 4 to 6, who are sons and daughters of defendant no. 1, did not contest the suit and were proceeded *ex parte*. Defendants no. 1 to 3, 5, 7 and 8 contested claimed of plaintiff *inter alia* pleading that defendant no. 1 is statutory tenant in the demised premises and plaintiff-trust has no concern with tenancy of defendant no. 1. He had deposited arrears of rent in the Court. The *locus standi* of Sanjay Aggarwal, Advocate, who filed the instant suit was also challenged. It was also denied that any Advisory Committee was created by plaintiff-trust. Defendants alleged that no male

person will have any right to interfere in *Mahila Sadhna Kendra* or have access to the *Sadhna Kendra*. All the trustees of plaintiff have since expired and resolution dated 21.07.2012 authorizing Sh. Sanjay Aggarwal, Advocate, to file suit is forged and fabricated. It was admitted that plaintiff-trust was managing the affairs of the *Dr. Krishna Ashram* situated at *Mata Logan Wali Devi Mandir* as per trust deed dated 11.06.1968. Other averments of plaintiff-trust were denied and contested.

5. This fact was not disputed before the Courts below that premises in question is owned by plaintiff-trust and defendants-appellants are in possession of part of the suit property. Civil Judge (Junior Division), Amritsar held status of possession of defendants-appellants as licensees and observed in para 18 of the judgment as follows:-

“18. It is also averred by the defendants that they are not licensees rather the tenants of the premises in question. Defendant no. 1 while appearing as DW-1 categorically deposed that he had not executed any rent note in favour of the plaintiffs rather the same was an oral tenancy and that he had not collected any rent receipts in this respect also. Subsequently, in his testimony DW-1 deposed that he is in possession of the property in question as being its owner whereas in his written pleadings averred that he is a tenant in the said premises. The testimony of the said witness is unreliable as at one point of time in his written pleadings he set up his claim over the property in question as being tenant and at the other point he raised his claim in his testimony as being owner of the property

in question. Moreover, the defendants have not placed on record any cogent and convincing evidence to appreciate their legal capacity as being either of tenant or that of an owner with respect to the property in question. Therefore, when the defendants have failed to discharge the onus probandi which lies upon them as per section 103 of Indian Evidence Act and on the other hand, when the plaintiff have successfully discharged their burden of proof as per section 101 of Indian Evidence Act that the defendants were inducted as licensee in the property in question and the plaintiffs have served due notice of revocation of the license which has been admittedly not replied by defendants.”

6. The plea raised by defendants-appellants that Sh. Sanjay Aggarwal, Advocate was not authorized to file present suit was negated. Learned Civil Judge (Junior Division) took note of the fact that vide affidavit dated 04.09.1992 (Ex. P-3), defendants-appellants were allowed to occupy one room on first floor of annexe outside main building of *Ashram* on humanitarian grounds. It was also proved that defendants no. 1 and 2 (appellants) vide writings dated 24.12.1996 and 14.09.1997 undertook to vacate the demised premises. Findings recorded by learned Civil Judge (Junior Division) were affirmed by Ist Appellate Court.

6. I have heard learned counsel for appellants and perused the paper-book with his assistance.

7. Learned counsel for appellants during his lengthy arguments has mainly stressed on two points. Firstly, that Sh. Sanjay Aggarwal, Advocate is

not an authorized person to file this suit and, secondly, under the terms and conditions of trust deed, no male person shall have any right to interfere in *Mahila Sadhna Kendra* or to have access to *Sadhna Kendra*, as such, Advisory Committee of Male Members constituted by plaintiff-trust is against the terms of trust deed or could take any action on behalf of plaintiff-trust. He has referred to clauses 6, 7 and 9 of the trust deed dated 11.06.1968, which are incorporated in para 10 of grounds of appeal, as follows:-

- “6. *The right of Management of the properties of the Deity and of establishing, running and maintaining a Mahila Sadhna Kendra for spiritual pursuits, Yogic Sadhna, Dhyan Sadhna, Swadhaya, Sat-Sang, Religious discourse and of such type shall vest in the trustees.*
7. *For the purpose of properly performing the daily services and worship of the Deity and for proper maintenance of other Sadhna activities and programmes, the Trustees shall appoint such persons as they deem fit for a particular work.*
9. *The Trustees of the said Trust shall be females. No male person shall have any right to interfere in Mahila Sadhna Kendra or having access to Sadhna Kendras.”*

8. Learned counsel for appellants has argued that it is clear from perusal of above clauses that no male member can be associated with plaintiff-trust. This point was considered by Court below while referring to Clause 14 of the trust deed, which provides that “*Trustees may from time to time frame schemes, rules and regulations for carrying out the objects of the trust and management and running of the trust and for regulating meetings*

of board of trustees or otherwise but add and/or alter and/or vary the same from time to time as the trustees may think fit". Even otherwise perusal of clause 9 of the trust deed quoted above bars interference in *Mahila Sadhna Kendra* or having access to *Sadhna Kendra*. On bare perusal of clause 7 read with clause 14, Courts below have rightly observed that plaintiff-trust may appoint such person as they deem fit for a particular work and from time to time frame schemes and rules and regulations for carrying out the objects of the trust as they deem fit and proper. Learned Additional District Judge, Amritsar observed that for conducting all other work for day to day services as well as management of the trust and running the trust, there is no bar for appointing any person for that purpose. Sh. Sanjay Aggarwal, Advocate has been appointed by plaintiff-trust to look after litigation and his appointment is for a specific purpose as per resolution of the trust (Ex. P-2). The above observations of facts by Courts below are based on evidence on record and are in consonance with the terms incorporated in the trust deed and calls for no interference in this appeal.

9. Learned counsel for appellants has argued that copies of documents and resolution were placed on record and exhibited without proving the same in accordance with law. Plaintiff had produced photocopy of resolution, which was neither primary nor secondary evidence. This argument was never raised before Courts below or at the time of producing evidence, as such, appellants are barred from raising the same in regular second appeal. Even otherwise, the trust deed is being relied upon by appellants also. Other documents are copies of litigation between the parties and some other official documents. If defendants-appellants had any objection they could raise the same at the time of filing of these documents

in Court and they cannot raise this plea at this stage. Even otherwise, dispute in this case pertains to status of possession of appellant over suit property and not regarding constitution, management or administration of plaintiff-trust.

10. Learned counsel for appellants while drawing attention to resolution dated 07.07.1989 (Ex. P-24) has argued that vide this resolution certain trustees were added after death of trustees, namely, Smt. Kailash Wati, Smt. Satya Sood and resignation given by Smt. Ved Goyanka. This resolution was antedated, fake and under this resolution trustees were not competent to form any advisory committee or authorize plaintiff-trust to file present suit. This submission of learned counsel is also without any basis. Resolution of the trust dated 07.07.1989 has never been challenged. Moreover, plaintiff-trust is duly registered in the office of Sub-Registrar, Amritsar and appellants have not called for any evidence from that office in support of their contention. Both the Courts below have considered evidence on record while reaching the conclusion that status of defendants-appellants regarding their possession over suit property is that of licensees and not as tenants and I find no reason to interfere with the findings of fact recorded by Courts below on this point.

11. Here learned counsel for appellants has argued that application filed by defendants-appellants before Ist Appellate Court seeking permission to lead additional evidence to place on record copies of judgment, challan regarding deposit of rent in the treasury was dismissed by Ist Appellate Court, thereby depriving them of producing material evidence to prove that they are tenant in the demised premises.

12. Learned Ist Appellate Court while declining the application to

lead additional evidence has taken note of plea of defendants-appellants that they are in possession of the demised premises as tenant and judgment dated 29.11.2013 and receipt dated 07.11.2013 were well within their knowledge and could be produced at earlier stage. Even during course of arguments, learned counsel for appellants could not make out as to how judgment passed in suit for injunction is material piece of evidence to decide the matter in controversy involved in this case. Basis of defence raised by defendants-appellants to contest claim of plaintiff-trust is that they are in possession of the demised premises as tenant. They had already produced and proved rent receipt in support of their contention, as such, Ist Appellate Court has committed no error of law while declining the application.

13. Learned counsel for appellants could not make out that findings of Courts below are based on misreading of evidence or record or any material document has also been ignored or misinterpreted calling for intervention. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

August 09, 2016

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No