

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

RSA No.2327 of 2016 (O&M)

Date of decision : 09.05.2016

Piare Lal (deceased through LRs)

...Appellant

Versus

Shivala Jhiriwala 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. H.K. Aurora, Advocate for the appellants.

AMIT RAWAL, J. (Oral)

CM No.6145-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, LRs of deceased-Piare Lal-appellant No.1 as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

The application stands disposed of.

CM No.6144-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 9 days in refiling the appeal is condoned.

Application is allowed.

Main Case

The appellant-defendant No.6 is aggrieved of the judgment and decree rendered by the trial Court, affirmed by the lower Appellate Court dismissing the appeal claiming possession and mesne profits.

Mr. Aurora, learned counsel appearing on behalf of appellant confines his arguments with regard to the awarding of the mesne profits for the use and occupation of the land. As regards for possession, it is unequivocally proved that appellant had been in unauthorized possession, whereas on the contrary respondent has proved the ownership of the land. For the sake of brevity, the findings rendered by the trial Court reads thus:-

“16. This Court has considered the rival contentions of both the counsel for the parties and has gone through the evidence of both the parties very minutely and carefully.

17. Perusal of Ex.P7 judgment dated 28.03.85 passed in civil suit No.182/84, rendered by the Court of Sh. S.S. Sandhu, PCS, SJIC, Phillaur, entitled as 'Sagli Ram Vs. Harbans Lal' would reveal that defendant No.5 and 8 in present suit, have filed said civil suit against Harbans Lal i.e. plaintiff No.2 in present case as well as other for restraining said persons from interfering in their possession over Shivala Jhiriwala as well as property attached with said Mandir. It was clearly held in said judgment that Sagli Ram and Amritsaria had led no reliance evidence from which it can be said that they were in possession of temple and managing its affairs. On the other hand, Harbans Lal and others produced numerous bills and other documentary evidence to prove that Shiv Mandir Committee consisting of defendants and other persons have made costly constructions in the mandir premises. It was further held that plaintiffs i.e. Sagli Ram

and Amritsaria, defendant Nos.5 and 8 in present case, were no longer managing affairs of temple in question. It was further held that Shiv Mandir Committee i.e. present plaintiff is managing the affairs of temple in question. It was held that suit of Sagli Ram and Amritsaria with regard to temple, known as Shivala Jhiriwala, situated in Khewat No.480, Khatauni No.562, rectangle No.91(7-0) fails and same was dismissed to the extent. However, suit of Sagli Ram and Amritsaria with respect to remaining property i.e. suit property, measuring 21 kanals 11 marlas deducting 7 kanals falling in khasra No.91, in which, Mandir situates, was decreed. An appeal was preferred by both the parties against judgment dated 28.03.85 but same was dismissed by the court of Learned Addl. District Judge, Jalandhar.

18. Thereafter, mutation No.4012 was sanctioned by A.C. IInd Grade, Phillaur, vide order dated 17.06.94 in respect of land measuring 7 kanals 0 marlas falling in khasra No.91, i.e. Shivala Jhiriwala in favour of Shiv Mandir Committee. Perusal of order dated 06.12.94 passed by Sh. Bhagwant Singh, Collector, Phillaur, in an appeal filed by Piara Lal son of Anant Ram, against Shiv Mandir Committee, with respect to mutation No.4012, would reveal that matter was settled between Shiv Mandir Committee and Piara Lal and in said appeal, Piara Lal admitted that he will not interfere into affairs of Shivala Jhiriwala and further admitted that there is construction raised by Shiv Mandir Committee in Shivala Jhiriwala and affairs of said Shivala are being looked after by Shiv Mandir Committee. He further admitted that there is tubewell in the name of Megh Nath in khasra No.91 and Megh Nath will disconnect the same and will get the same installed in some other khasra number. He very categorically admitted in said proceedings that Shiv

Mandir Committee will be ba-itmam i.e. manager/mohatmim of Shivala Jhiriwala.

19. The plaintiffs have filed this suit for obtaining possession of 21 kanals 14 marlas, as fully detailed in the headnote of plaint. The plaintiff have also claimed compensation for illegal use and occupation of land in dispute by the defendants. Admittedly, suit property stands in the name of Shivala Jhiriwala, Village Nagar. Perusal of mutation No.4012, would reveal that khasra no.91 having an area 7 kanals, where mandir actually situate, has already been mutated in favour of the plaintiffs i.e. Shiv Mandir Committee meaning thereby plaintiff committee has been approved by the Revenue Department to be in possession of premises of Mandir. This fact further get strengthened from the perusal of judgment dated 03.08.02, passed in civil suit No.223/96, decided on 11.06.09 by Sh. J.S. Bhinder, the then Addl. C.J.(SD) Phillaur. The said suit was filed by Shivala Jhilawala through present defendants Megh Raj etc. Said suit was filed against Shiv Mandir Committee i.e. present plaintiffs and it was clearly held in said judgment that plaintiffs (present defendants) have failed to prove that who among them is Manager/Mahant of property in dispute and when they were appointed as Mahant of property in dispute, thus, suit of the defendants was dismissed for possession of Shivala Jhiriwala Mandir.

During his cross-examination, the defendant Piare Lal has very categorically admitted that he is resident of village Rasulpur and Gujjar Ram, his grand father, has expired long back prior to his attaining age of discretion. He stated that he is neither a Sadhu nor a Beragi Sadhu but a pandit. He stated that they have no head office either in Kankhal or in Haridwar. He stated that they do not have

any agricultural property in village Rasulpur but their ancestral house is in that village. He stated that Shivala Jhiriwala is a Shivling but not a Muth. He stated that after the death of Gujjar Ram, there was no Pujari in Shivala Jhiriwala. Thereafter, he very categorically stated that since last 15 to 20 years, he has never seen festival of Mahashivratri in Shivala Jhiriwala. He stated that he was himself a Pujari in the Mandir, but he does not know as to in which year, he remained Pujari of Mandir. He stated that he is not in possession of any record showing that he has remained Pujari in the mandir. He stated that he has no accounts of mandir and property, nor any of his relative is in possession of any accounts. He stated that their family had a GADDI in mandir which is being occupied by 40 successors of Gujjar Ram. He stated that all 40 successors of Gujjar Ram are holding said throne. From the statement of the defendant Piare Lal it is very much clear that the defendants are using the suit property which is the ownership of the mandir for their own personal use. All the defendants are working in different departments of the Government and none of them is a pujari in the mandir.

20. The defendants have failed to prove that any one of them is a Mohitmim of the Shivala Jhiriwala. Defendant Piare Lal stated that all the 40 successors of Gujjar Ram are holding the Gaddi of the Mandir. It is settled law that there can be only one Mahant at a time of a Muth, whereas, the defendant has very categorically admitted that Shivala is not a Muth but a temple. The defendants have failed to prove that any of them has ever been a Pujari in the mandir, much less a Mahant of the same. Perusal of the jamabandies as placed on record by the defendants as Ex.D2 to Ex.D17 as well as Nakal Khatauni Bandobast for the Kaur 1885 proved on record as Ex.D20,

would amply prove that the ownership of the property in question has always been with the Mandir Shivala Jhiriwala, Village Nagar.

21. Defendant Piare Lal has further stated that he has never sold the proceeds of suit property and hence he does not know as to what is income out of suit property. He stated that nor he has ever sold fodder of cattle being sown in suit property. Thereafter, he stated that he has sown fodder for his own animal in the disputed property. From the statement of the defendant it is amply clear that the suit property is being used by the defendants for their personal use rather for the benefit of the mandir.”

He further submits that respondent did not lead any evidence claiming mesne profits at the rate of ₹1880/- per kanal. The disputed land is 21 kanal 11 marlas. The Courts below granted the mesne profits by taking the averments made in the plaint and the statement in the examination-in-chief, in essence, the appellant has miserably failed to discharge the onus while granting any certificate from the concerned Gram Panchayat or from commission agent with regard to the production of the documents relating to one killa and thus mesne profits is phenomenal and exorbitant. Lower Appellate Court also failed to appreciate the aforementioned fact and thus, there is illegality and perversity and urges this Court to formulate substantial question of law.

I have heard learned counsel for the appellant and appraised the paper book and of the view that while taking mesne profit at the rate of ₹1880/- per kanal per month, total mesne profit of 8 kanals and 1 killa is approximately between ₹40,000/- which is less than what Piare Lal (since deceased) admitted in the cross-examination.

In my view, in case plaintiff pressed for more, perhaps, the trial Court could have granted the same but in the absence of the direct and cogent evidence, mesne profit granted do not require any interference.

In view of the aforementioned findings, I am of the view that appellant-defendant has not been able to lead any contrary evidence. Even the predecessor-in-interest of Piare Lal also admitted the management of the property.

No ground for interference is made out, much less, no substantial question of law arises for determination.

Dismissed.

09.05.2016

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**(AMIT RAWAL)
JUDGE**