

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

RSA No.1527 of 2014 (O&M)

Date of Decision.08.07.2016

2. RSA No.1528 of 2014 (O&M)

3. RSA No.1529 of 2014 (O&M)

Darshan Singh alias Darshan Dass

.....Appellant

Vs.

Mahant Krishan Gopal Dass and another

.....Respondents

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Ranjit Saini, Advocate and
Mr. Paramveer Singh, Advocate
for the appellant.

Mr. Suvineet Sharma, Advocate and
Mr. Gourav Goel, Advocate
for respondent No.1.

Mr. S.S. Momi, Advocate
for respondent No.2 in RSA No.1527 of 2014.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J.

This order of mine shall dispose of three regular second appeals in RSA Nos.1527 to 1529 of 2014 filed at the instance of the appellant-defendant whereby suit No.RT47/99/12 for declaration and permanent injunction and suit No.RT47A/99/2012 for declaration and possession, having the same memo of parties as “Mahant Krishan Gopal Dass and another Vs. Darshan Singh @ Darshan Dass” had been dismissed by the trial Court (hereinafter called suit Nos.1 and 2) and the third suit bearing No.47B/2002/2012 titled “Darshan Dass @ Darshan Singh Vs. Krishan Gopal Dass and another” claiming declaration and permanent injunction had

been decreed whereby appellant-defendant Darshan Dass alias Darshan

Singh had been declared as Mahant and Chela of Braham Dass and respondent-defendant Krishan Gopal Dass had been restrained from forcibly dispossessing appellant-Darshan Dass from the suit land measuring 28 bighas 19 biswas as described in the headnote of the plaint. The judgments and decrees in the aforementioned suits i.e. suit Nos.1 and 2, in appeals preferred by Mahant Krishan Gopal Dass, were reversed in the sense that both these suits had been decreed and the 3rd suit, which was originally filed by Darshan Dass @ Darshan Singh, had been dismissed by the lower Appellate Court. It is in these circumstances, the defendant in suit Nos.1 and 2 and plaintiff in the 3rd suit, has filed the present regular second appeals.

It would be apt to refer brief facts before addressing to the submissions of the learned counsel for the parties to the lis.

Civil Suit Nos.1 and 2 had been filed at the instance of Mahant Krishan Gopal Dass claiming that he was duly appointed Mohatmim in respect of agricultural land measuring 249 bighas 0 biswas (hereinafter called the suit property) and had been declared as Mahant in the meeting of the Udasi Bhekh held on 25.01.1999 on demise of Mahan Braham Dass who unfortunately expired on 09.01.1999. It is the further case of the plaintiff in suit Nos.1 and 2 that Mahant of the neighbouring Dera of Udasi Bhekh and fraternity of Udasi Sect took part in the Bhekh and selected him as Mahant of Dera Udassian described as Langar Vaka Deh. It has further been alleged that Mahant Braham Dass executed a Will dated 27.03.1981 Ex.P13 and the appellant-plaintiff in the 3rd suit had no concern, whatsoever, with the property in dispute.

Previously in the 2nd suit, Braham Dass, Chela Pritam Dass,

Chela Hari Dass, predecessor-in-interest of the plaintiff in suit Nos.1 and 2 and the defendant was inducted as tenant of the property in dispute on the terms and conditions i.e. as per the *batai* vide report No.81 dated 6.11.1992, accordingly, lease deed for a period of 20 years, effective from 22.05.1986 to 21.05.1981, at annual lease money of ₹500/- was registered on the same very date on the terms and conditions mentioned in the lease deed and the possession of the property was handed over to the appellant-defendant (in suit Nos.1 and 2) who was allowed to construct building and obtain electric connection. As per further pleadings, even the appellant-defendant has also produced a forged and fabricated Will dated 24.4.1997 before the Halqa Patwari and got the mutation No.1031 of the property in dispute entered in his name and the mutation was contested by referring the matter to the Assistant Collector 1st Grade, Dera Bassi and during those proceedings, an application was moved to produce the aforementioned Will but the reply came that the Will had been washed away. It is further stated in the suit that the property in suit is secular property which remained in the hands of Mahant of Dera Nabha and the right of the appellant-defendant as tenant stood extinguished by virtue of the expiry of lease period and thus possession became unauthorized.

In the 3rd suit, the appellant-plaintiff sought a declaration that Mahant Braham Dass Ji, Chela Pritam Dass was the Mahant and Mohatmim, much less, the administrator of Dera, who died on 09.01.1999 and during his life time, he appointed the appellant-plaintiff in 3rd suit as his Chela. After death of Mahant Braham Dass Ji, the appellant-plaintiff in 3rd suit was appointed as Mahant Mohatmim of Dera Udasian i.e. Dera Nabha Sahib Langar Vaka Deh Nabha and also Dera Ramgarh Bhuda on 28.02.1999 in a

gathering of Sant Mohtmims, Mahants and respectable of the area. On the said date i.e. 28.02.1999, even Bhekh Ceremony and Tilak Chaddar Rasam were also performed under custom while appointing the appellant-plaintiff in suit No.3 as Mahant Mohatmim. In the gathering, many persons namely Sant Panch Parmeshwar Shri Panchayati Akhara, Bara Udassian and numerous other Mahants Shri Maheshwar Dass Ji, Mahant Shri Sadhu Ram Ji of Dera Baba Ram Dass Ji Chaure Wala Patiala, Sant Gurcharan Dass Ji of Dharamgarh (Banur Mor Wale), Sant Baba Ram Dass Ji Dera Kakrali Wala, Mahant Sohan Dass Ji Dera Banur, Mahant Arvinder Dass Ji Dera Banur, Sarpanch of Village Ramgarh Bhuda Charan Singh, Sarpanch Raghbir Singh Rampur Khurd, Dharam Singh of village Bhabat were present and all the aforementioned persons also applied the Tilak while giving approval to the appointment of the appellant-plaintiff as Mahant. Even the photography/videography of the ceremony was done. It is also pleaded that the appellant-plaintiff in the 3rd suit performed barsi of Mahant Braham Dass Ji. The first barsi was performed on 8.12.1999 and subsequently on 08.12.2000 & 8.12.2001 second and third barsis were performed and all accounts of barsi are being maintained by the appellant-plaintiff.

Since the property in dispute was common, the trial Court consolidated the suits and proceeded to decide all the suits by taking the evidence in one suit. The trial Court on the basis of oral and documentary evidence found that the Will set up by the respondent-plaintiff in suit Nos.1 and 2 was not proved in accordance with law i.e. there was no compliance of provisions of Section 63(c) of the Indian Succession Act and also Section 68 of the Indian Evidence Act, much less, in respect of the property which

was dedicated to a Sect, Will cannot be executed and the claim as regards appointment of plaintiff in suit Nos.1 and 2 and defendant in suit No.3 as Mahant on the ground that the alleged gathering on 25.01.1999 was witnessed by Mahant Rattan Dass, the said witness was not even examined to support the same. Document Ex.P14 dated 25.01.1999 was written by none less but his son namely Amar Dass. The trial Court dismissed the suits No.1 and 2 filed by the plaintiff-respondent as noticed above but in the appeals, the lower Appellate Court reversed the findings of the trial Court.

Mr. Puneet Bali, Senior Advocate to support the grounds of appeal has raised the following submissions:-

- (i) That the succession to the office of Mahant is regulated by custom or usage and not by way of testamentary documents. In this regard, he has relied upon the judgments rendered by the Supreme Court and various High Courts in **The Commr., Hindu Religious Endowments, Madras Vs. Lakshmindra Thirtha Swamiar of Shri Shirur Mutt AIR 1954 (SC) 282;** **Ram Das Vs. Vaishnavdas and others AIR 1983 (MP) 75;** **Mst. Raj Kali Kuer Vs. Ram Rattan Pandey AIR 1955 SC 493** and also rendered a judgment of this Court in **Laj Dass (deceased) through LRs and others Vs. Jethu and others** in RSA No.19 of 2010 decided on 04.09.2015 wherein it has been held that the use of the property as private property cannot, in any way, detract from the character i.e. “Dedicated Property.” As per Hindu law, the property acquired by Mahant cannot be of secular nature and would not change the character of the property as religious. In other words, descent of property from Guru to Chela does not warrant presumption that the property is

religious.

(ii) He further submitted that lower Appellate Court has assigned no reason for setting aside the well reasoned judgments and decrees of the trial Court as the respondent-plaintiff in suit Nos.1 and 2 failed to prove his appointment as Mahant. As regards the finding rendered by the lower Appellate Court with regard to lease of the property, it is a matter of record that the writing dated 25.01.1999, Ex.P14, did not bear the signature of Mahant Braham Dass Ji and this fact has been admitted by Krishan Gopal in the 3rd suit filed by the appellant-plaintiff seeking declaration and possession of 28 bighas 19 biswas. The lower Appellate Court has also erred in not taking into consideration the fact that the bhekh was assembled at Kalajahar, Distt. Sangrur on the occasion of Rasam Mahanti of Mahant Manmohan Dass, which fact was admitted by respondent-plaintiff in suit Nos.1 and 2, copy of the same has been proved as Ex.D-105 dated 2.1.1999 and the bhekh was assembled on 25.01.1999. The lower Appellate Court has wrongly held that the certificate given by the Sub Registrar with regard to the registration of the Will being public document requires no form of proof i.e. compliance of Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act. It is not in accordance with the settled proposition of law.

(iii) He further submitted that the statement of Amar Dass son of Krishan Gopal cannot be relied upon, for, a person who

himself claimed to have become Mahant on 25.01.1999 did not examine in this regard any independent witness. The Court could not have relied upon the statement of Amar Dass as he did not offer himself for cross-examination.

(iv) He further submitted that the lease of the land as stated above was taken on 22.05.1986 whereas as per the statement of DW-3 Dharam Singh, the appellant herein, was inducted Chela by Mahant Braham Dass in the year 1990 and thus, the appellant was not Chela at the time when the land was taken on lease. This aspect has totally escaped the notice of the lower Appellate Court and thus, the finding of the lower Appellate Court with regard to the land having been taken on lease for 20 years by a Chela is neither here nor there.

The counsel for the appellant urged before this Court to formulate the following substantial questions of law as carved in the memorandum of appeal:-

- (i) Whether the Will Ex.P13 is shrouded by suspicious circumstances which has been validly discarded by the learned trial Court?
- (ii) Whether once the trial Court has held that the Will is shrouded by suspicious circumstances, the reversal of the findings by the lower Appellate Court without any sufficient reason is sustainable in the eyes of law?
- (iii) Whether once the property belongs to the Dera and Mahant is empowered only to look after the affairs of the property of the Dera, the Mahant can execute the Will

bequeathing the property of the Dera to the plaintiff No.1.?

(iv) Whether the lower Appellate Court has illegally reversed the well reasoned judgment and decree passed by the trial Court?

(v) Whether the judgment passed by the lower Appellate Court is illegal, without jurisdiction and an example of non-application of mind?

(vi) Whether if the persons obtained the certified copy of the Will from the office of the Sub Registrar, the same would tantamount to accepting the Will as has wrongly been held by the lower Appellate Court?

Mr. Suvineet Sharma, learned counsel appearing on behalf of respondent-plaintiff in suit Nos.1 and 2 and defendant in suit No.3 submitted that the lower Appellate Court being a Court of fact and law, after examining the evidence both oral and documentary threadbare, formed an opinion that Krishan Gopal was duly appointed as Mahant in the ceremony held on 25.01.1999 Ex.P14 and Will dated 27.03.1981 Ex.P13 has duly been proved through testimony of PW-6 Piara Singh i.e. one of the attesting witnesses of the Will, who deposed that Mahant Braham Dass got the Will written and it was then signed and thumb marked by him in the presence of all the marginal witnesses who attested the same in his presence. These witnesses also deposed about status of the sound mind of the testator. The lower Appellate Court rightly discarded the view expressed by the trial Court in not accepting the statement of Piara Singh by holding that it could be due to the fault in the preparation of copy which is not a photocopy. In fact, finding arrived at by the trial Court that the aforementioned witness

Piara Singh stated that Mahant Braham Dass, both signed and thumb marked the Will, while it actually bore the thumb impression and the second objection was that while according to the witness Piara Singh, Will was written on stamp paper, it was not actually so and that owing to the passage of time, the witness does not remember or enact a situation occurred 20 years back. As regards the gathering on 25.01.1999 Ex.P14, he submitted that the same stood proved through testimony of PW1 Amrik Singh, photographer, who took the photographs Ex.P-7 to P-12, negatives Ex.P1 to P4. PW-3 Amar Dass Chela of Mahant Krishan Gopal deposed that the gathering had taken place at Dera Nabha and headed by Mahant Rattan Dass and entry Ex.P14 was made in this regard. PW4-Ram Singh and PW-7 Amarjit Dass also spoke about the Bhekh ceremony. Though the entry Ex.P14 did not bear the signatures of all the witnesses but as enacted by the aforementioned photographs, the entry Ex.P14 bears the signatures of Mahant Rattan Dass. Thus through the testimony of all the afore-mentioned witnesses, it is clearly proved that Krishan Gopal was the only Chela of Mahant Braham Dass and was duly appointed. Even witnesses of the appellant-defendant in Suit Nos.1 and 2 namely Sadhu Ram (DW2) did not state that Mahant Braham Dass used to call Darshan Dass as his Chela. This fact was also reiterated by DW3-Dharam Singh, Ex-Sarpanch. In this regard, he has cited the judgment rendered by the Hon'ble Supreme Court in **Sital Das Vs. Sant Ram and others AIR 1954 SC 606** to contend that the succession to Mahantship of a math or religious institution is regulated by custom or usage of the particular institution except where a rule of succession is laid down by the founder himself and to the same effect relied on the judgment of the Supreme Court rendered in **The Commr., Hindu**

of Sri Shirur Mutt AIR 1954 SC 282. He submitted that there is no illegality or perversity in the impugned judgments and decrees of the lower Appellate Court, much less, no substantial question of law arises for consideration before this Court.

I have heard the learned counsel for the parties, appraised the paper book and the records of the Courts below as well as the judgments cited at bar and of the view that the lower Appellate Court did not appreciate the contradiction arrived at in the statement of Piara Singh, who did not prove the execution of the Will. Except the certificate of the Sub Registrar, registration of the Will has not been proved, whereas on the contrary, the trial Court, in my view, has given cogent and positive reasons for discarding the Will, the same are reiterated herein as under:-

“1. PW-2 Jagdeep Singh has alleged that he has seen the original Will Ex.P13, but in his cross-examination he has stated that it is correct that he has never seen the original vasika. Further he has stated in his cross-examination that in his register the names of that person is not written who had put his thumb impression. Moreover, PW-2 Jagdeep Singh has not produced the copy of entry of register.

2. Further PW-6 Piara Singh in his affidavit has stated that Mahant Brahm Dass and his witnesses were signed the Will before the Sub Registrar and then Sub Registrar signed the same. But perusal of the endorsement of Sub Registrar behind the back of Ex.P13 shows that there is absolutely no signature of Braham Dass. Hence, the examination-in-chief of Piara Singh is self-contradictory. Further PW-6 Piara Singh in his cross examination has stated that he, Braham Dass and other witnesses did not sign on the register of the scribe. But no explanation has been given by the plaintiff that why the column of entry of register remained blank.

3. Further in his cross-examination PW-6 Piara Singh has

stated that the Will was scribed on stamp paper which was purchased by Braham Dass from stamp vendor. Further in his cross examination PW-6 in contradiction to his earlier statement has stated that he has seen the Will Ex.P13 which is not scribed on stamp paper. From this statement of Ex.PW6 Piara Singh, it has become clear that the Will Ex.P13 is not the same Will, where in Piara Singh appended his thumb impression. Then where is the Will of stamp paper as per the version of PW-6 Piara Singh. Its explanation has not been given by the plaintiff Krishan Gopal. This discrepancy in the statement of Piara Singh, is not a minor discrepancy rather it is a major discrepancy and it is not a minor suspicious circumstance rather it is a major suspicious circumstance.

4. In the present suit defendant Darshan Dass has produced the certified copy of Will dated 27.03.1981 which is Ex.DW6/A. Perusal of the Ex.DW6/A shows that there is no signature of Braham Dass at any place, either at the end of this document or on the back side of this document.

5. An another major suspicious circumstance is that with whom Ex.P13 Will dated 27.03.1981 remained and from whose custody it came out as per plaint of first suit, there is absolutely no word regarding this fact from where Ex.P13 came and from whose custody it was. However, first time PW-6 Piara Singh examined by the plaintiff as witness of Will in his examination-in-chief has stated that he has given the information regarding the Will to the plaintiff Krishan Gopal at the time of cremation ceremony of Mahant Braham Dass. Mahant Braham Dass had died in the year 1999 and no explanation has been given by the plaintiff regarding the custody of the Will during the period from 1981 to 1999. On the other hand, Krishan Gopal as PW-5 has not mentioned even a single word in his duly sworn affidavit Ex.DW5/A, where from the Will dated 27.03.1981 came to him or it came to his knowledge or in whose custody the document Ex.P13 remained from the year 1981 to 1999. As per law when the

proper custody of Will not proved, this only circumstance is sufficient to discard the Will.

6. *When DW-1 Mahant Darshan Dass was cross-examined, not even a single circumstance has been put to the effect that Ex.P13 was ever executed by Mahant Braham Dass in favour of Krishan Gopal plaintiff. As per law, facts stated in examination-in-chief if not disputed in cross examination, then the same are deemed to be admitted because the defendant Mahant Darshan Dass has denied the execution of Will by Mahant Braham Dass.*

7. *Mere proving thumb impression of the executant without proving the contents of the document has no significance under the eyes of law. Moreover, in case of Will, proof of Will is strictly to be done under Section 63 of the Act, but in the instance case Krishan Gopal-plaintiff has miserably failed to prove the Will. Hence report of document expert R.V. Vashisth cannot help the plainiff-Krishan Gopal in any manner whatsoever.”*

Even otherwise, the property had devolved on Mahant Braham Dass through the custom and usage and therefore, he could not pass on the property by executing the Will. It has to be by way of custom and usage i.e. the Bhekh Ceremony as projected by both the sides.

Accordingly, the Will, in my view, though have not been proved, could no have been pressed into service of the plaintiff-respondent in suit Nos.1 and 2. The entire question now is whether the respondent-plaintiff in suit Nos.1 and 2 and the appellant-plaintiff in suit No.3 are duly appointed to the office of Mahantship or not? The answer is in positive in favour of appellant-plaintiff in suit No.3 and negative in favour of respondent-plaintiff in suit Nos.1 and 2. The resolution dated 25.01.1999 has been written by Amar Dass at the instance of Mahant Rattan but Mahant

witness as he is son of Krishan Gopal. Document Ex.P-14 has been exhibited only but the same has not been proved. It is settled law that mere exhibition of the document does not dispense with proof of the same. In this regard, I rely upon the judgment of the Hon'ble Supreme Court in *Sait Tarajee Khimchand And Ors. vs Yelamarti Satyam Alias Sattayya and others AIR 1971 SC 1865*. No certificate/entry in favour of Krishan Gopal had been issued by the Bhekh except resolution Ex.P14. Krishan Gopal in his cross-examination admitted that on 28.02.1999 at village Ramgarh Bhuda, Behkh ceremony was performed in the presence of Sant Samaj and Panch Parmeshwar Panchayati Akhara and Mahant Darshan Dass was appointed as Mahant of the Dera Udasin Langar Vaka Deh Nabha Sahib and Dera Vaka Ramgarh Bhuda. The lower Appellate Court, in my view, has completely misread the evidence by holding that the Bhekh Ceremony performed on 25.01.1999 has been proved. The view expressed by the lower Appellate Court that non-examination of the witnesses of Bhekh Ceremony would not be fatal as the same has been proved by photographs is totally fallacious and arbitrary. It is settled law that the photographs cannot prove the document unless and until the same is proved in accordance with law. No witness to the aforesaid Bhekh Ceremony except Amar Dass as noticed above has been examined. I am in agreement with the judgments cited by the learned Senior Counsel Mr. Puneet Bali wherein it has been held that successor of Mahant can be appointed by way of a custom or usage i.e. by holding of Bhekh Ceremony which has been cogently and directly proved to be held on 28.02.1999. It has come on record that Dera Udasin Langar Vaka Deh Nabha Sahib is under Udasian Sect and Bhekh Ceremony performed on 25.01.1999 was actually at

Manmohan Dass and not for the purpose of appointing Krishan Gopal as Mahant. Krishan Gopal-plaintiff had admitted every photograph of the ceremony held on 28.02.1999 whereby Darshan Dass @ Darshan Singh had been appointed as Mahant. There is another aspect of the matter that no documentary evidence has been placed on record to prove the possession of Krishan Gopal. Neither PW-3 Amar Dass nor PW-4 Ram Singh has deposed in favour of Krishan Gopal of being in possession of the suit land, much less, in his own statement, he failed to prove possession, in other words, even did not utter a word. Therefore, reference of the claim in the revenue record would be meaningless. As regards the lease of the land, after the expiry of the lease deed, appellant-Darshan Dass was duly appointed as Mahant of Dera Langar Vaka Deh Nabha and also Dera Ramgarh Bhuda and even after the expiry of the lease period, he is managing land being Mohatmim and administrator of Dera.

In my view, the trial Court, had rightly held that the Appellant-defendant in suit Nos.1 and 2 and appellant-plaintiff in suit No.3 is legally entitled to manage the Dera property being Mohatmim of the Dera and for the reasons stated in the aforementioned paras, the judgments and decrees of the lower Appellate Court are set aside and the judgments and decrees passed by the trial Court are upheld, meaning thereby, suit Nos.1 and 2 are dismissed and suit No.3 is decreed.

All the regular second appeals are allowed.

(AMIT RAWAL)
JUDGE

July 08, 2016
Pankaj*