

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

**RSA No.298 of 2014 (O&M)
Date of decision:29.07.2016**

Mohan Singh and another

... Appellants

Vs.

Kuldeep Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Krishan Singh, Advocate
for the appellants.

AMIT RAWAL J.

Appellant-plaintiff No.1 is aggrieved of the dismissal of the suit seeking declaration and permanent injunction to the effect that Samadh situated in Khata/Khatauni No.143/452 comprised in Khasra No.33/3(2-0) is that of Buta Singh son of Bhai Sher Singh grand father of plaintiff No.1 and great grand father of plaintiff No.2 being Gair Mumkin property as per the site plan dated 29.07.2006, with a consequential relief of permanent injunction restraining the defendants from illegally interfering into the affairs of the Samadh managed by the descendants of Bhai Buta Singh as per jamabandi for the year 2000-01 and in alternative relief of possession, has been dismissed and the appeal filed against thereof, has also been dismissed by the Lower Appellate Court by upholding the judgment and decree of the trial Court.

Mr. Krishan Singh, learned counsel appearing on behalf of the appellant/plaintiff No.1 submits that suit aforementioned, was filed on the

premise that Buta Singh, grand father of appellant/plaintiff No.1 and great grand father of plaintiff No.2, died in the year 1931. He donated more than 6 kills (12 bighas) of land and on it a Gurudawara was erected with a further direction that the land would be managed by the family of Buta Singh for the welfare of the Gurudawara. The defendants alleged that there used to be a Samadh of Naugaja Peer over the land and they threatened to take possession. In these circumstances, the suit aforementioned, was filed. The trial Court though dismissed the suit but during the appellate stage, an application under Order 41 Rule 27 read with Section 151 of Code of Civil Procedure (for short 'CPC') was filed on behalf of the appellant/plaintiff for leading additional evidence to prove on record 'Shajra Nasab' and Pedigree Table of Buta Singh but the same was also dismissed, vide order dated 06.08.2013. Even the appellant also moved an application under Order 6 Rule 17 read with Section 151 CPC seeking amendment of the plaint. The judgments and decrees of both the Courts below are not sustainable in the eyes of law as both the Courts below gravely erred in holding that there was nothing on record to arrive at conclusion that Buta Singh son of Sher Singh, was earlier owner of disputed area of Samadh, whereas, on the contrary, as per jamabandi Ex.P5, Samadh is in existence in khasra no.33/3. He further submits that appellants have also proved on file the revenue record Ex.P3 to P-5, wherein, it is crystal clear that Gurdial Singh son of Jai Singh son of Buta Singh has been recorded in possession in the column of cultivation of the suit property in the jamabandi, which carries presumption of truth until the same is rebutted. The defendants failed to rebut the same, therefore, the Court below ought not to have relied such revenue record. He further

submits that dismissal of the application under Order 41 Rule 27 CPC would not only erroneous but also fallacious as Shajra Nasab/pedigree table has not been proved through the testimony of Buta Singh son of Sher Singh and thus, urges this Court for formulating the substantial questions of law as culled out in the memorandum of appeal.

I have heard learned counsel for the appellant/plaintiff No.1 and appraised the judgments and decrees of the Courts below.

There is no force and substance in the submissions of Mr.Krishan Singh as the appellant/plaintiff has failed to prove on record that Buta Singh son of Sher Singh was earlier owner of the disputed area under Samadh or donated by Buta Singh to Gurudawara Sahib. In the column meant for ownership in jamabandi Ex. P5, the land in dispute was shown to be in the ownership of '*Chah Buta Singh Wala Saakin Deh*' while in the cultivation column it was shown Gurdial Singh son of Jai Singh son of Buta Singh. The plaintiffs have not been able to prove the possession of the disputed Samadh property, as jamabandi (Ex.P5) did not support their case. The appellant has also been failed to prove that Gurdial Singh was not son of Buta Singh.

The Lower Appellate Court, in my view, rightly declined the application for leading additional evidence. The revenue record did not spell out that family of Buta Singh was given any right to manage the property/alleged Samadh. In my view, the plaintiff has miserably failed to prove ownership and possession and therefore, relief of declaration has rightly been rejected.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

July 29, 2016
savita

Weather speaking/reasoned

Yes/No

Whether Reportable

Yes/No