

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

**RSA No.3138 of 2014 (O&M)
Date of Decision: 09.08.2016**

Lekh Ram Bawa

.....Appellant

Vs

Inder Dass and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Vinod Bhardwaj, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in second appeal against concurrent judgments and decrees passed by the Courts below dismissing the suit for declaration filed by the plaintiff.

[2]. Plaintiff alleged that he was Mahant and Mohatmim of Gurdwara Sahib Dera Nanhera, Tehsil Patran, District Patiala and was Manager of the Dera situated at village Nanhera and was managing the affairs of agricultural land measuring 839 kanals 0 marla situated in the revenue estate of village Nanhera.

[3]. Plaintiff further alleged that defendants No.2 to 29 were the tenants in the land under the plaintiff. Defendant No.1

had no concern to the Dera as well as to the property. Plaintiff also sought permanent injunction seeking to restrain defendant No.1 from interfering in the possession and affairs of Dera and in the land to the extent of half share in the context of collecting and claiming rent or batai from defendants No.2 to 29.

[4]. Plaintiff based his claim on the ground that he was an Udassi Sadhu and renounced the world. He was Mahant/Mohitmim of Gurdwara Sahib of village Nanhera. He was appointed as Mohitmim by Om Parkash Chela Dharam Dass on 21.08.2006 in the presence of Udassi Bekh and respectable by way of executing a writing dated 21.08.2006. Plaintiff became Mohimim/Manager of the suit land and defendants No.2 to 29 became tenants under him to the extent of half share of the total land as narrated above. There was a litigation pending between defendant No.1 and Om Parkash in Civil Courts as well as in the revenue Courts in respect of Mohitmim of Dera Gurdwara Sahib village Nanhera after the death of Dharam Dass. Om Parkash and defendant No.1 arrived at a compromise on 25.11.2006 with the intervention of respectable of the village. A compromise deed was executed in the presence of witnesses. The writing was read over to the parties and the witnesses. Both the parties signed the same. As per the said compromise, the agricultural land standing in the

name of deceased Dharam Dass will go to Om Parkash and the property standing in the name of Dera Udassian Gurdwara Sahib of Nanhera will be divided between Om Parkash and defendant No.1 in equal shares. The suit property in the name of Dharam Dass came under the ownership of Om Parkash as per said agreement dated 25.12.2006 and the same came under the management of the plaintiff. Defendants No.2 to 29 became tenants under the plaintiff to the extent of half share and the plaintiff was entitled to collect rent from them. The plaintiff sought declaration on the aforesaid premise in respect of land situated in village Nanhera.

[5]. The suit was contested by the defendants. Defendant No.1 controverted the pleadings in the suit on many counts. The averments were denied. The writing dated 21.08.2006 was claimed to be wrong and fabricated. It was denied that the plaintiff was ever appointed as Mahant/Mohatmim of Dera nor Om Parkash was competent to do so. It was also denied that the plaintiff had any concern with the Dera. Defendant No.1 alleged himself to be Mohatmim of Gurdwara Sahib Dera Nanhera and he was performing all his religious duties and functions in Dera. The litigation between Om Parkash and defendant No.1 was admitted, but there was no compromise as alleged by the plaintiff.

[6]. Defendant No.1 also alleged that the Civil Court held him to be Mohatmim/Mahant of the Dera and its property. The plaintiff had no right, title or interest in the Dera property, nor the plaintiff was entitled to manage and control the affairs of the Dera. Defendant No.1 was Mahant/Mohatmim of Dera and defendants No.2 to 29 were tenants of Dera. Defendants No.2 to 29 also contested the suit on all counts. The stand of defendant No.1 was reiterated by them.

[7]. After filing replication, both the parties went to trial on the following issues:-

- “1. Whether the plaintiffs are entitled to declaration to the effect that he is Mahant and Mohatmim of Gurdwara Sahib Nanhera to the extent of ½ share in the suit property? OPP*
- 2. Whether the defendant No.2 to 29 are tenants in the land occupied by them under the plaintiff? OPP*
- 3. Whether plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 4. Whether plaintiff has not approached the court with clean hands? OPD*
- 5. Relief.”*

[8]. Trial Court dismissed the suit vide judgment and decree dated 15.01.2011. The plaintiff remained unsuccessful before the lower Appellant Court who dismissed the appeal vide judgment and decree dated 05.12.2013. That is, how, the

present appeal came to be filed in this Court.

[9]. I have heard learned counsel for the appellant and also perused the record.

[10]. Learned counsel for the appellant has framed following substantial questions of law in para No.11 of grounds of appeal:-

“(a) Whether the Id. Courts below have wrongly dismissed the suit of the appellant/plaintiff without applying its judicial mind?

(b) Whether the Id. Courts below acted illegally in not considering the evidence brought on record by the appellant/plaintiff?”

[11]. Perusal of aforesaid questions do not suggest involvement of any question of law much less substantial question of law. Both the questions are pure questions of fact.

[12]. I have considered the controversy involved in the appeal. Plaintiff-appellant claimed right of Mahantship on the basis of confirmation of such status by Om Parkash. Said Om Parkash was not examined by him. Alleged Rasam Pagri by Udassi Bekh was not proved in accordance with law. Photocopies of the proceeding are not admissible in the absence of any convincing evidence. No document was produced in original. The photocopies produced on record were not proved in accordance with law. Some of the documents

which were produced in rebuttal remained unexplained for want of evidence. The evidence remained inadmissible as the same was led at belated stage without an effort to prove the execution of those documents by way of leading any cogent evidence, nor any rent receipts were exhibited in the context of showing that defendants No.2 to 29 ever remained tenants under the plaintiff. Link evidence to show connectivity with Gurdwara Sahib Nanhera remained missing.

[13]. Plaintiff was not even resident of Nanhera, rather he was found to be married person living in village Bhadalwar, District Sangrur where his family was living. Gurdwara Sahib Dera Nanhera is situated in District Patiala. The plaintiff could not adduce any evidence to show as to when and how he came to Gurdwara Sahib Dera Nanhera. Even as per the evidence of the plaintiff, it was proved that the land belonging to Gurdwara Shaib Dera Nanhera was in possession of defendant No.1. Since the plaintiff could not lead any evidence to show his belongingness to the Dera property in village Nanhera in any manner and he could not establish on record as to when and how he was appointed by Om Parkash as Mahant of Gurdwara, therefore, the questions as formulated by learned counsel for the appellant do not arise for consideration at the hands of this Court.

[14]. Both the Courts below have recorded findings of facts based on evidence. In considered opinion of this Court, findings of facts recorded by the Courts below cannot be interfered in regular second appeal as nothing could be pointed out that the judgments and decrees of the Courts below are the result of misreading of any evidence or are suffered with any perversity. Therefore, this appeal is found to be totally devoid of merits and is accordingly dismissed.

[15]. Since the appeal has been dismissed on merits, therefore, there is no necessity to pass any order in the application for condonation of delay of 18 days in filing the appeal i.e. CM No.7392-C of 2014. This application is thus becomes infructuous.

09.08.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No