

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 45 of 1991 (O&M)

Date of Decision: December 20, 2017

Education Board Devi Sahai Sanatan
Dharam Higher Secondary School, Jalandhar

...Appellant

Versus

Raj Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Nitin Sarin, Advocate for the appellant.

Mr. Avnish Mittal, Advocate for L.R.s of respondent No.1/
Defendant No.2 Raj Kumar.

Respondent No.2-ex parte vide order dated 24.10.2013.

MAHABIR SINGH SINDHU, J.

1. Plaintiff/appellant-Education Board Devi Sahai Sanatan Dharam Higher Secondary School, Rasta Mohalla, Jalandhar (hereinafter referred as "School") has filed the present Regular Second Appeal against the impugned judgment and decree dated 05.10.1990, passed by learned Additional District Judge, Jalandhar, while accepting the appeal filed by the defendants/respondents and setting aside the judgment and decree dated January 18, 1988, passed by learned Sub Judge, First Class, Jalandhar (hereinafter referred as "trial Court"), whereby the suit for mandatory injunction filed by the plaintiff/appellant had been decreed.

2. Brief facts of the case are that the School filed a suit for mandatory injunction directing the defendants/respondents to remove

themselves and not to re-enter in the premises of *Mandir* (Temple), shown in red colour of Site Plan of Property No.EL-166-167 Rasta Mohalla, Jalandhar (hereinafter referred to as “property in dispute”). The School is claimed to be a registered Society under the Societies Registration Act, 1860 (for short “Act of 1860”) and authorized one Manohar Lal to institute and pursue the suit by way of Resolution dated December 31, 1983. It is further pleaded that Property No.EL-166 was purchased by the School from the Central Government and one Ram Rakha. It has also been pleaded that earlier the Punjab Wakf Board (in short 'Wakf Board') had filed a Civil Suit No. 18 of 1971 against the School for claiming the ownership over the Property No.EL-166 by alleging the same to be a Mosque; but the said suit was dismissed by the then Sub Judge First Class, Jalandhar, vide judgment and decree dated July 31, 1972 and the School was held to be the owner of the Property No.EL-166. It is further pleaded that Smt. Vidya Vati-defendant No.1, who was an indigent and unprovided Hindu woman and she wanted shelter in the 'property in dispute' of the School and in order to provide her shelter, she was allowed to stay in the same for day-to-day service as a servant. It has further been pleaded that with the passage of time, defendant No.1 and her family grew up and defendant No.2-Raj Kumar, grand-son of defendant No.1 adopted a rude and insolent behavior towards the Management of the School. Even the presence of defendant No. 1 also became a nuisance. It is pleaded in para 6 of the plaint that defendants have no right, title or interest in the property in dispute as defendant No.1 was only a licensee and she thus abused the same and hence the licence stands revoked. It is further pleaded that both the defendants

were directed to remove themselves from the property in dispute; but they threatened to renovate the same as per their wishes, hence that led to filing of the present civil suit.

3. The defendants/respondents filed their written statement and *inter alia* submitted by raising preliminary objections of denying the claim of the School to the effect that it is neither a legal entity; nor society registered as alleged in the plaint. It was further averred that Manohar Lal through whom the suit has been filed is neither the authorized person; nor competent to institute the present suit on the basis of the alleged Resolution in view of the provisions of Act of 1860.

It has also been pleaded that there is nothing on record to prove that Vidya Vati-defendant No.1 (since deceased) was a licensee and she is now being represented by her legal representatives and they are in the occupation of the property in dispute since 1947 and at that time, there was a Mosque and which was converted into residential house of the defendants and wherein, a private *Mandir* (Temple) was established by said Vidya Vati-defendant No.1 after installing *Murtis* (deities). It has also been pleaded that no-one was ever allowed to enter the 'property in dispute' and that was in absolute occupation and control of defendant No.1 during her life-time and after her death, the same is being used by her legal heirs/representatives for the same very purpose, for which, it was being used by defendant No.1.

On merits, in addition to the averments made in the preliminary objections, it has been pleaded in reply to Para No.3 that the Site Plan of property bearing No.EL-166 is absolutely wrong and incorrect. Even, the

averments of the School regarding purchase of property bearing No.EL-166 from the Central Government and one Ram Rakha has also been denied being incorrect and thus the ownership of the School was disputed. Defendants/respondents have tried to explain the facts that the property in dispute was a Wakf property being a Mosque and all the Mosque and Wakf properties, on account of partition of the Country, vested in the Wakf Board established throughout the country and defendant No.1 occupied the property in dispute after migration from Pakistan to India in the year 1947 and thus her possession was adverse, hostile to the knowledge of the Wakf Board, established in the State of Punjab.

It has further been pleaded that even if the School purchased the property in dispute from the Central Government then also, they have no right, title or interest in the 'property in dispute' as the same was never vested in the Central Government and even the Central Government had no right, title or interest to sell the property in dispute to the School, as the seller cannot transfer a better title to the purchaser what he had before its transfer. Similarly, the averments of School regarding the purchase of property from Ram Rakha has also been denied on the similar plea that the property in dispute was a Mosque and the remainders of the Mosque are still in existence and the same was occupied by defendant No.1 after the partition in the year 1947 and she used it for her residence as well as for private *Mandir* (Temple). Specific plea has been raised that defendant No.1 as well as defendant No.2 became owner of the property in dispute by way of adverse possession. So far as decision of earlier civil suit between Wakf Board and School is concerned, the same has been denied being not binding

as the defendants were not the parties to that litigation.

Further in reply to para 4 of the plaint, the plea of Mosque is raised and factum of indigent person and unprovided Hindu woman is also denied. It has further been submitted that after migration of the people from Pakistan on account of partition, every individual sought refugee wherever it was possible and in the case in hand, defendant No.1 occupied the Mosque which was being used for her residence and also for private *Mandir* (Temple). The averment of the School that defendant No.1 was a servant in the *Mandir* (Temple) has also been denied and it has been submitted that there is no *Mandir* (Temple) belonging to the School in the property in dispute.

In reply to Para 5 of the plaint, it is claimed that the defendants/respondents are residing in the property in dispute in their own rights and no-one has any right, title or interest to put any restrictions on them for the enjoyment of the same.

In reply to Para 6 of the plaint, it is specifically denied that defendant No.1 is/was a licensee under the School; rather it is claimed that she never remained as a licensee under anyone and occupied the property in dispute in her own rights and there is no question of revocation of licence at the instance of the School and consequently, the defendants/respondents have denied that the School was grantor of any licence in favour of Vidya Vati-defendant No.1.

4. No replication was filed by the plaintiff/appellant-School.
5. On the basis of the pleadings of both the parties, learned trial Court framed sixteen issues, which read as under:-

- 1. Whether the plaintiff is a legal entity and is competent to sue?"OPP*
- 2. Whether Shri Manohar Lal is competent to sue?OPP*
- 3. Whether the plaintiff is estopped by his act and conduct from filing this suit?OPD*
- 4. Whether the suit is properly valued for the purposes of Court fee and jurisdiction and whether proper court fee has been paid?OPP*
- 5. Whether the plaintiff is a registered Society?OPP*
- 6. Whether the plaintiff has empowered Shri Manohar Lal to file this suit and whether the resolution to this effect has been passed?OPP*
- 7. Whether the plan filed with the plaint is correct?OPP*
- 8. Whether the disputed property has vested in the Punjab Wakf Board and whether Vidya Wati occupied the same since 1947 and whether she was become its owner by adverse possession?OPD*
- 9. Whether the property No.EL 166 was purchased by the plaintiff from the Central Govt. and whether Ram Rakha has become its owner?OPD*
- 10. Whether Mandir in dispute was created by the plaintiff and whether the defendant was given shelter in it as a servant by the plaintiff?OPP*
- 11. Whether the plaintiff is entitled to the mandatory injunction prayed for?OPP*
- 12. Whether the Mandir is a private mandir of Vidya Wati?OPP*
- 13. What is the effect of dismissal of the suit filed by the Wakf Board?OPP*
- 14. Whether Smt. Vidya Wati was in occupation of the suit property as a licensee and whether the licence has been revoked? OPD*

15. *Whether the defendants are entitled to special costs?If so how much?OPD*
16. *Relief.*

In order to prove their case, the School produced Manohar Lal (PW1), Shiv Nath (PW2) and Balwant Singh (PW3) and also brought on record documentary evidence by way of Exhibits P-1 to P-7, which are as under:-

Exhibits	Date	Documents
P-1	14.12.1955	Certificate of Registration, School Board Devi Sahai S.D. High School, Jullundhur City issued by the Registrar of Companies, Punjab under Act of 1860.
P-2	26.11.1959	Certificate from the Registrar of Firms and Societies regarding change of school name as “School Board of Devi Sahai S.D. Higher Secondary School”
P-3	28.01.1974	Certificate from the Registrar of Firms and Societies regarding change of name to “Education Board, Devi Sahai S.D. Hr. Sec. School, Jalandhar”
P-4	31.12.1983	Resolution passed by the School authorizing Sh. Manohar Lal to file suit etc.
P-5	23.01.1984	Site Plan of the disputed site appended along with the plaint.
P-6	31.07.1972	Judgment of Ld. Sub Judge 1 st Class, Jullundhur in case titled “Punjab Wakf Board Vs. Shri Devi Sahai Sanathan Dharam Primary School, Rasta Mohalla, Jullundur City”
P-7	18.09.1964	Certificate of Sale whereby Property No.EL-166, Jullundur was sold to the Education Board by Managing Officer (Sales), Jullundur.

On the other hand, defendants/respondents produced Raj Kumar Sharma (DW1), Bimlesh Kumari (DW2), Jagan Nath (DW3), Harminder Singh (DW4) and Mohammad Ali (DW5) and brought on record documentary evidence by way of Exhibits D-1 to D-19 and the same are as under:-

Exhibits	Dates	Documents
D-1	04/08/56	Electricity bill
D-2	04/09/56	Electricity bill
D-3	07/04/57	Electricity bill
D-4	06/09/57	Electricity bill
D-5	06/05/57	Electricity bill
D-6	06/08/57	Electricity bill
D-7	07/06/57	Electricity bill
D-8	06/02/57	Electricity bill
D-9	06/07/57	Electricity bill
D-10	06/03/57	Electricity bill
D-11	28.04.1958	Electricity bill
D-12	06/01/57	Electricity bill
D-13	06/10/57	Electricity bill
D-14 &15		Identity slip for encashment of NSC.
D-16 & 17	2.7.1987 & March, 1987, respectively	Electricity bills
D-18	06/12/68	Notice by Wakf Board
D-19		Meter book - EL-166 Rasta Mohalla

6. Learned trial Court, after taking into consideration the material available on record, decreed the suit of the School, vide judgment and decree dated January 18, 1988 and while deciding Issues No.1 and 5 in favour of the School came to the conclusion that the School being a registered Society under the Act of 1860 is a legal entity and competent to file the present suit.

Issues No.2 and 6 were also decided in favour of the School and learned trial Court came to the conclusion that Manohar Lal has been duly authorized by way of Resolution dated December 31, 1983 (Ex.P-4) and thus the suit filed by the School through him is well maintainable being

a competent person.

Issue No.7 pertaining to the Site Plan was also decided in favour of the School to the effect that the same is similar to the site plan which was issued by the Central Government with the Sale Deed in favour of the School.

Learned trial Court, while deciding Issues No.3, 8, 9, 10, 12, 13 and 14 jointly, recorded the findings that the School is the owner of Property No.EL-166 being purchaser from custodian and the property in dispute is part of the same. Learned trial Court came to the conclusion that the electricity bills produced by the defendants/respondents cannot be said to be pertaining to the property in dispute. Learned trial Court in Para 10 of its judgment specifically observed that “*no document has come on the file to prove the fact as to in which capacity, the defendants are there*”. It has further been recorded that defendant No.1 entered the suit property just for the purpose of Satsang (preaching) and she was residing separately somewhere else in Lavan Mohalla and she entered the suit property 7-8 years back just as a licensee to render day-to-day service. It was further recorded by the learned trial Court that the School is the owner of the suit property and they are well within their rights to file the present suit for mandatory injunction. It was also recorded that the defendants/respondents have not produced any document to show any right or title to remain in possession of the suit property and it was concluded that there was no occasion to estop the School from filing the suit for mandatory injunction. Learned trial Court also found that the suit property did not vest in the Wakf Board and defendant No.1 is not in occupation of the property in dispute

since 1947 and she has not become the owner of the same by way of adverse possession. It was also held that the School had purchased property i.e. EL-166 from the Central Government and had become its owner and the property in dispute is the part of the property so purchased and the possession of the defendants is that of servant and the property in dispute is not the private property of Vidya Vati-defendant No.1. It was further held that Vidya Vati-defendant No.1 was in occupation of the suit property as a licensee or servant and she has no legal right to stay therein.

Learned trial Court while deciding Issues No. 4 and 11 held that the School is the owner of the suit property and thus a suit for mandatory injunction is maintainable.

Issue No. 15 was decided against the defendants and in favour of the plaintiff-appellant.

7. Aggrieved against the judgment and decree passed by the trial Court, the defendants/respondents preferred an appeal and the same was allowed by learned First Appellate Court while passing the impugned judgment and decree dated October 5, 1990.

A perusal of the impugned judgment, passed by learned First Appellate Court, reveals that the findings on Issues No.1 and 5 were affirmed in favour of the School; whereas the findings on Issues No. 2 and 6 were reversed. Again, learned First Appellate Court affirmed the findings on Issues No.3 and 4 in favour of the School, but findings on Issue No.7 were reversed.

Learned First Appellate Court while deciding Issues No. 8, 9, 10, 12 and 14 jointly reversed the findings on all these issues of learned trial

Court.

Findings on Issues No. 11 and 13 were also reversed and decided against the School.

Whereas findings on Issue No. 15 were affirmed and ultimately, appeal was accepted and as a result thereof, the suit filed by the School stood dismissed, hence the present second appeal.

8. It is argued by learned counsel for the School that the property in dispute i.e EL-166 was purchased by the School from the Central Government and one Ram Rakha by way of Sale Certificate Ex.P-7 and it is duly proved on record and as such, the findings of the First Appellate Court that the property in dispute does not form the part of property No.EL-166 is not sustainable. It is further argued that the School is duly registered under the provision of Act of 1860 and as such Manohar Lal was duly authorized to file the present suit for mandatory injunction. It has further been argued that the School has duly proved its title over property No.EL166-167 by way of cogent evidence and the property in dispute is part and parcel of the same. It is also argued that the property in dispute is not the Mosque and Vidya Vati-defendant No.1 was inducted as a licensee by the School just to render day-to-day service and as such, the impugned judgment and decree passed by learned First Appellate Court is not legally sustainable.

On the other hand, learned counsel for the defendants/respondents has opposed the arguments of learned counsel for the School and submitted that the School is neither a registered Society under the Act of 1860 nor Manohar Lal was legally authorized to institute the present suit. It has also been argued that plaintiff-School has miserably

failed to prove its title over the property No.EL-166-167 as there is no evidence on record to prove the same. It is further argued that the property in dispute is not the part and parcel of the property Nos.166-167, rather, the same was a Mosque and was occupied by Vidya Vati (defendant No.1) after partition of the Country and since 1947, the defendants/respondents are in possession of the same and the electricity bills duly proved their possession, but these documents were not considered properly by learned trial Court. Lastly, it has been argued that the plaintiff-School has miserably failed to prove that Vidya Vati-defendant No.1 was ever inducted as a licensee over the property in dispute. Hence, the suit for mandatory injunction is/was not maintainable.

9. After hearing both the sides at length, the following points as substantial questions of law have arisen in this case for adjudication by this Court:-

- i) Whether the School is the Registered Society under the provisions of the Act of 1860 and Manohar Lal was duly authorized to institute the suit?
- ii) Whether the School has duly proved its title over the Property No.EL-166-167 and the property in dispute is part and parcel of the same?
- iii) Whether Vidya Vati-defendant No.1 was inducted as a licensee by the School over the property in dispute?

Point No.1

10. The perusal of Certificates of Registration dated 14.12.1955 (P-1), 26.11.1959 (P-2) and 28.01.1974 (P-3) duly prove that the School is a Registered Society under the provisions of the Act of 1860 and these documents are the conclusive evidence to that effect. Further perusal of the

Resolution dated 31.12.1983 (P-4) clearly reveals that the same was passed by the management of the School being a registered society and duly authorized Manohar Lal to file the present suit and moreover there is no challenge to the same by anyone and thus in view of the provisions of Section 6 of the Act of 1860, said Manohar Lal is a duly authorized person to institute the present suit. This point is decided accordingly.

Point No.2

11. To decide the point in issue, it is necessary to make a reference to paragraph 3 of the plaint in which it has been submitted that property No.EL-166 and Site Plan, which is attached with the plaint, was purchased by the School from the Central Government and Ram Rakha and Wakf Board filed a Civil Suit regarding this property, which was dismissed by learned Sub Judge, Jalandhar, vide judgment and decree dated 31.07.1972 (Ex.P-6) and the School was held to be the owner of the property by way of purchase, but perusal of the same nowhere reveals that such a finding was ever recorded by the then Sub Judge, Jalandhar that School is owner of the property No.EL-166. Even otherwise, there was no such issue framed by learned trial Court in Civil Suit No.18 of 1971, therefore, there was no occasion to record such a finding that the School was the owner of Property No.EL-166 and thus the School cannot take any benefit of the earlier litigation to prove its ownership. Moreover, the defendants/respondents were not the party to the earlier litigation and as such that is no much helpful to the School.

Still further, the appellant-School in order to prove their case has brought on record the certified copy of Sale Certificate dated

18.09.1964 (Ex. P-7), pertaining to property No.EL-166 as prescribed under Appendix 22 of Rule 90 (15) of Displaced Persons (Compensation and Rehabilitation) Rules, 1954 (for short “1954 Rules”) along with its rough Site Plan. Although the original Sale Certificate was not produced by the School, but the secondary evidence of the same by way of certified copy, which was obtained by the School from the Managing Officer (Sales), Jalandhar, was permitted to be brought on record by learned trial Court and thus the same is duly proved. The Boundaries of Property No.EL-166 as described in the Sale Certificate are as under:-

East-The property of Hari Chand-EL-165,
West-Gali(Street)
North-Mosque
South-Gali (street)

The School has also placed on record the Site Plan dated 23.01.1984 (Ex.P-5) along with the plaint and the boundaries of property No.EL-166-167 have been described as under:-

East- Property No. EL-164-165,
West-Street
North-Ajit Kumari, Kashmiri Lal, Sita Ram and Tilak Raj
South- street

The property in dispute has been marked as A, B, C & D and shown in red colour in the Site Plan attached with the plaint.

As per head-note of the plaint, the boundaries of property No.EL-166-167 have been shown as under:-

East-Property No.EL-164-165 and others
West-Street

North-Ajit Kumari, Kashmiri Lal, Sita Ram, Tilak Raj
South-Street.

12. Although in the Sale Certificate (Ex.P7), the boundaries of the Property No.EL-166 are mentioned and in the North, Mosque is shown; but there is no narration or recital that any Site Plan was enclosed with this Sale Certificate. Rather the Site Plan, which has been produced by the School along with the Sale Certificate, reads at the bottom as under:-

“Demarcation: School Building Devi Sahai S.D. Higher
Secondary School. House Auctioned.”

The property in dispute which has been shown with the red mark in the Site Plan (Ex.P-5) almost resembles with the Site Plan attached with the Sale Certificate. Meaning thereby, the property in dispute, which has been described as “disputed area” in the Site Plan (Ex.P-5), attached with the plaint, was very much in existence at the time of auction and issuance of Sale Certificate dated 18.09.1964 (P-7) in favour of the School by the Rehabilitation Department and the same is part of Property No.EL-166, which was duly purchased by the School and had become owner thereof by way of purchase; but at the same time, the School has failed to prove by way of any documentary evidence that it has purchased the Property No.EL-167, either from the Central Government or from said Ram Rakha. Therefore, Point No.2 is decided to the effect that the School has duly proved its title over the property No.EL-166 and property in dispute is part and parcel of the same, but the School has failed to prove by way of any cogent evidence its title over the Property No.EL-167. Point No.2 is decided accordingly.

Point No.3

13. In Para 4 of the plaint, it is pleaded that the property in dispute, as shown in red colour of the Site Plan (Ex.P-5), was put for the purposes of *Mandir* (Temple) of the School and Vidya Vati-defendant No.1 being an indigent and unprovided Hindu woman and in order to provide shelter, she was put in the *Mandir* for day-to-day services as a servant. On the other hand, the defendants/respondents disputed the contents of Para No.4 that she was allowed to render day-to-day services in the *Mandir* (Temple) as a servant; rather it is submitted that after partition of the Country, she (Defendant No.1) occupied the property in dispute since 1947 and her possession is adverse, hostile and not as a licensee and her possession is proved by way of Electricity Bills and other documentary evidence.

Manohar Lal (PW-1) deposed that the property in dispute was purchased from the Central Government as well as from Ram Rakha and the *Mandir* (Temple) was constructed by the plaintiff-School. It is further stated that Vidya Vati-defendant No.1 was allowed to stay in *Mandir* being indigent and unprovided woman for day-to-day services and he further deposed about the earlier litigation as well as judgment and decree dated 31.07.1972 (Ex.P-6). This witness has also deposed that the licence of Vidya Vati-defendant No.1 was revoked one month prior to the filing of the Suit. During his cross-examination, PW-1 has stated that he is not aware as to what was the area of the property in dispute. This witness has further stated that there was some dispute with Vidya Vati-defendant No.1 and both the parties went to Police Chowki. He has further stated that neither any licence deed was written; nor any letter was issued to Vidya Vati-defendant

No.1 as a licensee. He has further stated that property No.EL-167 was purchased from Ram Rakha, but no documentary evidence has been produced on record to that effect. This witness has also stated that Vidya Vati-defendant No.1 has been performing *puja* from donation as well as from her own pocket for the last 8-9 years. At the same time, this witness has specifically admitted that in Site Plan (Ex.P-5), the total area of property in dispute has not been mentioned.

Shiv Nath (PW2) deposed that property No.EL-166 and 167 are separate and property No.EL-167 was earlier owned by Ram Rakha and Property No.EL-166 belonged to the Rehabilitation Department. He has further stated that the School purchased the property from Rehabilitation Department and the Sale Certificate was issued, but the original Sale Deed has been misplaced and certified copy of the same is brought on record as Ex.P-7. This witness has also stated that the common wall of Property No.EL-166-167 was removed and now the School is being run over these properties. This witness has specifically stated that the property in dispute is situated in property No.EL-166 and Vidya Vati-defendant No.1 had entered into the same for rendering service therein. During his cross-examination, PW-2 has stated that no complaint regarding misplacement of Sale Certificate was lodged with the police and he has also admitted that in the Sale Certificate, there is no recital of area purchased from the Rehabilitation Department. He has further deposed that at the time of taking possession from the Rehabilitation Department, no proof or acknowledgment was obtained, but he has stated that the Site Plan was attached with the Sale Certificate. This witness has specifically admitted that on the Site Plan,

neither there is any signature by the Rehabilitation Department; nor by him and he has also stated that there is no date mentioned even on the Site Plan. He is also not aware about the fact as to whether any demarcation was conducted or not? He has also admitted that there is no recital of area in the Site Plan attached with the Sale Certificate. This witness has clearly stated during his cross-examination that he is not aware as to who brought Vidya Vati-defendant No.1 in the property in dispute.

Balwant Singh (PW3) has also deposed that property No.EL-166 was purchased from custodian Department and the property in dispute is situated in property No.EL-166 and Vidya Vati-defendant No.1 was brought to render services therein. This witness has also stated that property No.EL-167 was purchased from Ram Rakha which was having only one room in the North and the total area of property No.EL-167 was 1 or 1½ marla. He has also clearly admitted in his cross-examination that he is not aware as to who brought Vidya Vati-defendant No.1 to render services in the Temple/property in dispute. Therefore, none of the PWs have disclosed as to who brought Vidya Vati-defendant No.1 to render day-to-day service in the property in dispute.

14. Raj Kumar Sharma, defendant/respondent No.2, was examined as DW1 and he has produced on record the Electricity Bills Ex.D-1 to Ex.D-13, D-16 and D-17 w.e.f. 4.8.1956 to 2.7.1987 as well as the meter-book Ex.D-19, although which were objected to by the School before learned trial Court, but the objection was over-ruled subject to payment of cost and which were duly accepted by the School. This witness has further deposed that even a Notice dated 06.12.1968 (Ex.D-18) was also received by Vidya

Vati-defendant No.1 from Punjab Wakf Board regarding the property in dispute. He has further stated that the School has no concern with the property in dispute; rather prior to the Temple, there was a Mosque and the remainders of the Mosque are still there.

Vimlesh Kumari (DW-2), who is residing near the property in dispute, deposed that a Mosque existed in place of property in dispute prior to 1947 and after partition of the country, as soon as the migrants left the property in dispute, Vidya Vati-defendant No.1 started performing spiritual preachings (*satsang*) and worked as a priest (*pujaran*) in the temple. She further deposed that the School had a separate space and had no concern with the property in dispute; rather the School Authorities used the same to run classes with the permission of Vidya Vati-defendant No.1. She has also deposed that there existed an electricity connection in the property in dispute and the bills of which were duly being paid by Vidya Vati-defendant No.1 and now Raj Kumar is residing therein and rendering the services in the property in dispute. She has specifically stated that the School had no concern with the property in dispute and during her cross-examination, she had stated that the School had been constructed after setting up of the Temple (property in dispute) and she has specifically denied the suggestion during her cross-examination to the effect that the property in dispute was being run by the School and that School Authorities had appointed Vidya Vati-defendant No.1.

Jagan Nath (DW-3) also deposed that his house was just opposite to the property in dispute of Vidya Vati-defendant No.1. He further deposed that prior to the partition, the property in dispute was

Mosque and after partition, Vidya Vati-defendant No.1 established a *Mandir* there in the name of Shri Radha Krishan Mandir and she used to perform all the religious activities therein. He has also deposed that Vidya Vati-defendant No.1 used to live in the property in dispute and in his cross-examination, he stated that he knew Vidya Vati-defendant No.1 since 1947.

Harinder Singh, Clerk, PSEB (DW4) deposed that as per meter reading book pertaining to the year 1973-74, the Electricity Connection No.MR-90 was later on changed to CM-21/0090, as the number used to change by the passage of time. This witness has stated that Connection No.MR-90 had been installed in the name of Vidya Vati-defendant No.1 at No.EL-166, Rasta Mohalla, Jalandhar and the electricity bills were also issued in her name. This witness has further deposed that the electricity bills Ex.D-1 to D-13 and documents Ex.D-14 and D-15 were issued by his Department and dues to this effect were also received. In cross-examination, he has further stated that the bills Ex.D-1 to D-16 have been issued by the Jalandhar City Operation, Sub Division.

Mohammad Ali, Rent Controller, Punjab Wakf Board, Jalandhar (DW5) deposed that the Notice (Ex.D-18) in the name of Vidya Vati-defendant No.1 was issued by their Office.

15. As discussed in the earlier part of this judgement at Point No.2 also, alongwith the plaint, a Site Plan (Ex.P-5) has been attached by the School and the property in dispute is shown in red colour and marked as A B C D. Similarly, in the Site Plan attached with the sale certificate (Ex.P7) also, the property in dispute is shown in the almost similar dimensions. Therefore, it can be safely concluded that the Temple/property in dispute

was already in existence at the time of purchasing the property No.EL-166 in the year 1964 by the School. Otherwise, there is no occasion to show the same in the Site Plan annexed with the Sale Certificate, issued by Rehabilitation Department on 18.09.1964 (P-7). This aspect of the matter is further clarified by the Sale Certificate that the property, which was purchased in auction by the School, was not an open plot, rather the same was a house, as is clear from the Sale Certificate itself. It is also necessary to observe that the School has miserably failed to prove that the property in dispute (Mandir) was constructed by them after purchasing the property No.EL-166 from the Rehabilitation Department; but on the other hand, there is overwhelming documentary evidence brought on record by the defendants-respondents by way of electricity bills Ex.D-1 to D-13, D-16, D-17 and Meter-Book (D-19) right from 4.8.1956 to 2.7.1987 to prove that Vidya Vati-defendant No.1 was in possession of property in dispute prior to its auction in favour of School. The Electricity Bills pertain to the meter installed in the name of Vidya Vati-defendant No.1 at the property in dispute and even still further, the record from the Electricity Department has duly substantiated that the electricity connection was in existence in the name of Vidya Vati-defendant No.1 much prior to the issuance of Sale Certificate dated 18.9.1964 (Ex.P-7) by the Rehabilitation Department. Thus, the defendant-respondents have successfully proved the possession of Vidya Vati-defendant No.1 prior to the purchase of property No.EL-166 by way of documents as well as oral evidence while producing DW-2 and DW-3, who happened to be the neighbourers of Vidya Vati-defendant No.1 and residing near the property in dispute and were in the age group of 67 and 64,

respectively, at the time of recording their statements in the year 1987. Therefore, this Court is fully convinced that both these witnesses are reliable having seen the state of affairs during the partition days. Therefore, the assertion of the plaintiff-appellant that they purchased the property No.EL-166 in the year 1964 and thereafter constructed the Temple in dispute and inducted Vidya Vati-defendant No.1 as a licensee is not proved and the same is liable to be rejected; on the other hand, it is clearly proved that Vidya Vati-defendant No.1 was in possession of property in dispute much prior to 1964. Since this Court has come to the conclusion that the plaintiff-appellant has failed to prove that Vidya Vati-defendant No.1 was inducted as a licensee and as such the present suit for mandatory injunction cannot succeed as this is not a suit for possession and thus the same has rightly been dismissed by learned 1st appellate Court while passing the impugned judgement and decree.

16. In view of the facts and circumstances discussed hereinabove, the irresistible conclusion is as under:-

- i) The School is the Registered Society under the provisions of the Act of 1860 and Manohar Lal was the duly authorized person to institute the suit for mandatory injunction.
- ii) The School has duly proved its title so far as Property No.EL-166 is concerned; but there is no documentary evidence on record to prove that Property No.EL-167 was ever purchased by the School either from the Central Government or Ram Rakha.
- iii) The property in dispute (Temple) is the part and parcel of Property No.EL-166.
- iv) The School has failed to prove that Vidya Vati-defendant No.1 was ever inducted as a licensee over the property in dispute

(Temple) and as such, suit for mandatory injunction filed by the School is not maintainable.

17. Consequently, this Court does not find any merit in the present appeal to interfere in the impugned judgment and decree dated 5.10.1990, passed by learned 1st Appellate Court and the same deserves to be dismissed.

18. Ordered accordingly.

19. Resultantly, the impugned judgment and decree dated 05.10.1990, passed by learned Additional District Judge, Jalandhar is upheld. Both the parties shall bear their own costs.

December 20, 2017

Neeraj/Gulati

(MAHABIR SINGH SINDHU)
JUDGE

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes