

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.F.A.No.240 of 2000 (O&M)

Date of Decision: November 10, 2017

Ajmer Dass

...Petitioner

Versus

Mahant Amar Dass Beta Chela late Mahant Bal Mukand & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Arun Bansal, Advocate,
for the appellant.

Mr.Raman Mohinder Sharma, Advocate,
for respondent No.1.

AMIT RAWAL, J.

Appellant-defendant is in Regular First Appeal against the judgment and decree dated 20.12.1999 rendered by the Additional District Judge, Sangrur in Civil Suit No.1 of 10.6.1987 filed under Section 92 of the Civil Procedure Code and Section 14 of the Religious and Charitable Endowment Act seeking the following relief:-

- “a) Suit under Section 92 C.P.C. and under Section 14 of the Religious and Charitable Endowment Act for the removal of defendant as Trustee (Mohatmim).*
- b) Appointment of plaintiff No.1-A as the new Mohatmim (Trustee) in place of the defendant and for declaration of the plaintiff as Mohatmim (Trustee) of the Mandir Shri Thakardwara Shahpur Kalan;*
- c) Direction of enquiry & rendering thereof, into the accounts of the trust estate suit property;*
- d) Delivering possession of agricultural land measuring 33 kanal 19 Marlas comprised in Khewat No.415 Khatauni No.900 Khasra Nos.170//2/2/6-0, 3/8-0, 8/3-0, 9/6-13, 10/8-0,*

11/2-6 situated within the revenue estate of village Shahpur Kalan;

e) Suit for permanent injunction restraining the defendant from alienating in any manner the property of the above said Thakardawara or transferring any interest of any kind in the said property of the Thakardawara.”

Before advertng to the rival contentions of the parties, it would be in the fitness of things to give brief preface of the facts as emanated from the respective pleadings.

Respondent-plaintiffs preferred the aforementioned suit on the premise that in Village Shahpur Kalan, Tehsil and District Sangrur, there was a Dera known as Mandir Thakardawara and agricultural land measuring 33 Kanals 19 Marlas as described therein as per the jamabandi attached for the year 1981-82, owned by the said Dera. It also constructed a portion which had fallen into decay, being a dilapidated condition due to the neglect and mismanagement of the defendant. The land attached to the said Thakardawara was granted Muafi by the State. The aforementioned allotment of the land was done during consolidation in lieu of the land originally owned by the said Thakardawara to which the Muafi was granted and since then the Thakardawara had been owner of the property. The Bhaikh of Baragi Sect and Fats, including residents of Village Shahpur Kalan were/are the followers, worshippers and believers of the said Thakardawara and in view of blief, appointed plaintiff No.1 Bal Mukand (now deceased) as Mahant and Mohtmim vide writing dated 14.12.1986.

Owing to the demise of Bal Mukand, Bhaikh again assembled at the Thakardawara on the day of Bhog ceremony of late Mohant Shri Bal Mukand Chela Mohant Shri Shri Ram Ji and in the presence of number of Mohants, Bairagi Saints, followers, worshippers and believers, including

Nagar Panchayat appointed plaintiff No.1-A Amar Dass as Mohatmim. All the necessary ceremonies, as required, were also performed and the same was reduced into writing dated 12.7.1998. The defendant, being a habitual of all kind of vices and addicted, had not been managing the property of the Thakardawara in a proper manner and wasted all the income of the property to his own personal use and also for his other family members. He had not care to keep Thakardawara in a good and living condition and was residing in a separate house constructed out of the funds of the said Dera. Due to mismanagement of the Dera and its property, much less misappropriation of the income for personal ends, cause of action arose to file the aforementioned suit.

The aforementioned suit was contested by the appellant, being defendant, by denying all the allegations and a plea of owner in possession of land measuring 33 Kanals 19 Marlas and a Mandir, i.e., temple being constructed on it, was taken. It was also stated that in the princely, State of Patiala by the orders of Revenue Ministers, all the mutations of temples and Deras were entered in their name and such entries in the revenue record would not have any affect on the ownership and possession of the defendants. Even the writing of 14.12.1986, as averred by the plaintiffs, was alleged to be forged one. The alleged ceremony of Bhaikh was not in consonance with the settled law as none of the witnesses from the Bairagi had attested the aforementioned writing.

The aforementioned averments in the written statement were controverted by filing rejoinder. Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether the property in dispute is a religious and public trust and the defendant is a trustee thereof? OPP

2. *If issue No.1 is proved, whether the present suit is not maintainable under Section 92 C.P.C.and under Section 14 of the Religious and Charitable Endowment Act? OPD*
3. *Whether the defendant is owner of the property in dispute as alleged in the written statement? OPD*
4. *Whether the plaintiff was appointed as Mohatmim of the Dera on 14.12.1986 by the Bairagi Bhaikh after removing the defendant as its Mohatmim? OPP*
- 4-A. *Whether Amar Dass plaintiff No.1A has been duly appointed as Mohatmim of Mandir Thakardwara Shahpur Kalan? OPP*
5. *Whether the plaintiff is entitled to the injunction prayer for? OPP*
6. *Relief.”*

In support of the aforementioned pleadings, the plaintiffs examined the following witnesses:-

- a) PW-1 : Gurmail Singh Photographer.
- b) PW-2: Mahant Jangir Dass Chela Mahant Kirpa Ram.
- c) PW-3: Piara Dass Chela Tulsi Dass.
- d) PW-4: Baldev Singh.
- e) PW-5: Mahant Purshotam Dass Chela Ramji Dass.
- f) PW-6: Amar Dass Chela Bal Mukand.
- g) PW-7: Sat Narain Dass
- h) PW-8: Major Singh, Member Panchayat

On the contrary, the defendant examined the following witnesses in support of his claim:-

- i) DW-1: Pritam Singh son of Jagdish Singh
- ii) DW-2: Pritam Singh son of Jas Singh
- iii) DW-3: Ajmer Dass son of Gajan Dass

The plaintiffs brought on record the following documentary evidence:-

- 1) Exs.A/1, B/1, C/1, D/1, F/1 and G/1: Photographs.

- 2) Ex.PW2/1: Writing.
- 3) Ex.PW1/2: Photographs
- 4) Ex.PW5/A: Writing dated 12.7.1998.
- 5) Ex.PX: Jamabandi for the year 1981-82.
- 6) Ex.PY: Judgment dated 10.9.1996 rendered in Suit No. 388 of 1992 titled as Ajmer Dass Versus Jangir Dass & others for permanent injunction.
- 7) Ex.PZ: Decree sheet dated 10.9.1996.
- 8) Ex.PZ/1: Statement.
- 9) Ex.PZ/4: Statement in Suit No.120 of 1993 titled as Ajmer Dass Versus Bal Mukand.
10. Ex.PZ/2: Judgment in Suit No.120 dated 27.1.1993 titled Ajmer Dass Versus Bal Mukand seeking possession.
11. Ex.PZ/3: Decree-sheet dated 17.1.1994 in Suit No.120 dated 27.1.1993.

The trial Court, on the basis of the oral and documentary evidence aforementioned, decreed the suit.

Mr.Arun Bansal, learned counsel appearing on behalf of the appellant-defendant, in support of his grounds of appeal, raised the following submissions:-

- a) The suit under Section 92 of the Civil Procedure Code was not maintainable as it tantamounted to vindication of private and independent rights;
- b) The trial Court ignored the material question of law that whenever the right to the office of trustee is asserted or denied, the suit would not fall within the purview of Section 92 CPC;
- c) Plaintiffs were father and son, whereas respondent No.2 had nothing to do with the present suit property;
- d) Respondent-plaintiffs failed to prove the allegations against the appellant-defendant, who had been in possession of

the Dera till date and had been performing all ceremonies properly;

e) The judgment is based upon conjectures and surmises.

On the contrary, Mr.Raman Mohinder Sharma, learned counsel appearing on behalf of respondent No.1 submitted that vide judgment and decree, referred above, the Civil Court had already held that the appellant-defendant was not the owner of the suit land, but Mandir Thakardawara was/is the owner of the same where idols of Sri Krishan Bhagwan, Sri Ram Laxman and Sita Mata and Thakar Ji had been installed. All the religious ceremonies are performed and obeisance paid. Appointment of the Mahant had not been challenged by setting up a counter claim or any independent suit and, thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and is of the view that there is no force and merit in the submissions of Mr.Bansal.

Ajmer Dass had preferred a suit for permanent injunction (Ex.PY) and as per the judgment and decree dated 10.9.1996, the said suit was partly decreed restraining the defendants therein from dispossessing him from the land measuring 32 Kanals 8 Marlas except in due course of law. However, in Suit No.120 dated 27.1.993 (Ex.PZ/2) filed for possession by Ajmer Dass-appellant against Bal Mukand, it was held that Ajmer Dass had no locus to file the civil suit as he was not the owner of the suit land and the Thakardawara was the juristic personality. All these factors weighed in the mind of the Court, below, while decreeing the suit. The possession of the appellant-defendant has not been held to be illegal but unauthorised and in this background, the decree of possession had also been passed. For the

sake of brevity, relevant portion of the judgment Ex.P2/2 reads thus:-

“15. Issues No.2 and 3

Issues No.2 and 3 are interlinked and so they are taken up together for disposal. The onus of these issues was on the defendant. It is admitted fact between the parties that the land in dispute belongs to Mandir Thakur Dawara. According to the jamabandi Ex.P4 Mandir Thakur Dawara is the owner of the suit land and Ajmer Dass is the Mohatmim of the land whereas Ajmer Dass had stated in his plaint that he is owner of the suit land. From the copy of jamabandi it is clear that Ajmer Dass is not owner of the suit land and Mandir Thakur Dawara is the owner of the suit land. Mandir Thakur Dawara is the juristic personality and it is capable of holding property. So Ajmer Dass has got no locus-standi to file the suit as an owner.

So due to discussion above, issue No.2 and 3 are held in favour of the defendant and against the plaintiff.”

As regards the appointment of Bal Mukand as Mohatmim in place of the defendant in the Bhaikh held on 14.12.1986 and after his death, his son and Chela Mahant Amar Dass was appointed as Mohatmim on 12.7.1998, the un-clinched evidence, aforementioned, had proved to the hilt that proper ceremonies were held for appointment of the Mohatmim as it is always by the Bhaikh and not through endowment. Since appellant-defendant did not render any account, the residents of the village were against him. He kept the building in a dilapidated condition and indulged into certain vices. Even in the ceremonies aforementioned, the Panchayat had also offered Shagan to the newly appointed Mohatmim.

In the earlier suit, the appellant-defendant admitted the factum of congregation of the Bhaikh held on 14.12.1986. Thus, for all intents and purposes, he was estopped to challenge the same. No evidence had been led by the appellant-defendant to controvert the documentary evidence,

aforementioned, enabling this Court to form a different opinion than the one rendered by the trial Court.

For the reasons stated above, I do not intend to differ with the findings rendered by the Court below in decreeing the suit. The same cannot be faulted with. Resultantly, the appeal is dismissed.

November 10, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No