

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

**EFA No.1 of 2009 (O&M)
Date of Decision: 29.08.2017**

Mahant Jarnail Singh @ Jaila

.....Appellant

Vs

**Shiromani Gurudwara Prabhandhak Committee and others
....Respondents**

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

Present: Mr. Ashok Singla, Advocate
Mr. Ravish Bansal, Advocate and
Mr. Ankush Singla, Advocate
for the appellant.

Mr. Sukhbir Singh, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Appellant has preferred this First Appeal against the order dated 28.05.2009 passed by the Addl. District Judge, Faridkot, whereby objection petition filed by the appellant under Order 21 Rules 97/99 and 35 read with Section 151/47 CPC was dismissed with costs.

[2]. The brief facts are that Shiromani Gurudwara Parbhandhak Committee, Amritsar (for short 'the SGPC') filed a suit for possession against Mahant Fauja Singh before the Sikh

Gurudwara Tribunal Punjab, Chandigarh (for short 'the Tribunal') which was decreed *ex parte* vide judgment and decree dated 26.09.1974. The suit was decreed for possession of the suit property situated at Dhilwan Kalan viz. (a) Gurdwara building bounded as on its four sides by the agricultural land of the Gurdwara as shown in *Parats* I and IV of Notification No.1050-GP dated the 22nd May, 1964; and (b) land measuring 75 *Bighas*, 6 *Biswas* entered at *Khata* No.464, *Khatanui* No.772, *Khasra* No.1552 to 1555, as shown in *Jamabandi* of the year 1957-58 situated in revenue estate of Dhilwan Kalan Tehsil and District Faridkot. Gram Panchayat village Dhilwan Kalan was not the party to the aforesaid judgment and decree.

[3]. Gram Panchayat Dhilwan Kalan filed Civil Writ Petition No.2091 of 1980 before this Court against the Tribunal, Sikh Gurudwara Prabhandhak Committee, Amritsar and Mahant Fauja Singh Chela Baba Chet Singh, wherein the aforesaid judgment and decree dated 26.09.1974 passed by the Tribunal was assailed and interim injunction restraining the respondents from dispossessing the writ-petitioner was sought to be granted. This Court vide interim order dated 19.06.1980 stayed dispossession of the petitioner-Gram Panchayat Dhilwan Kalan and the said writ petition was ultimately admitted on 30.07.1980. Interim order was also confirmed. The said writ petition was

dismissed by this Court vide order dated 31.10.1992.

[4]. An application was filed for restoration of the execution allegedly filed in the year 1978-79 to execute the decree dated 26.09.1974. Objections were filed to the aforesaid application to the effect that no such execution was ever filed in the year 1978-79 for execution of the decree dated 26.09.1974, therefore, there was no question of any restoration of the alleged execution petition. Since the period of 12 years had already elapsed, therefore, the execution was time barred in terms of Article 136 of the Limitation Act and the decree had become unexecutable. Addl. District Judge (I), Faridkot vide order dated 19.04.1997 dismissed the application for want of prosecution. The decree-holder was given opportunity to file fresh application after furnishing such particulars of the file and application was ordered to be consigned. For ready reference order dated 19.04.1997 is reproduced hereasunder:-

“19.4.1997 Present : Counsel for the DH

The case is fixed for furnishing particulars of the fine since 9.10.2003 and particulars of the file have not been furnished so far inspite of number of opportunities afforded to the decree holder for the same. In view of these circumstances the application for restoration of the application is dismissed for want of non prosecution. The DH may file the application after furnishing such particulars in the application. The application be consigned.”

[5]. The aforesaid order was indicative of the fact that the decree-holder was given opportunity to file fresh application for restoration of the alleged execution after furnishing necessary particulars in the application. The order dated 19.04.1997 was never assailed by the decree-holder and had attained finality. The decree-holder instead of filing fresh application as per order dated 19.04.1997, filed a fresh execution petition on 11.09.1997 for execution of the decree dated 26.09.1974. In para No.6 of the execution petition i.e. in the column “whether any application moved earlier?” the averments were made that after passing of the said decree, decree-holder filed an application in the year 1978-79 for the execution of the present decree, which was entrusted to Addl. District Judge (I), Faridkot. During the pendency of the said execution application, the Gram Panchayat of village Dhilwan Kalan preferred objection under Section 47 CPC. Thereafter the Gram Panchayat filed CWP No.2091 of 1980 under Article 226/227 of the Constitution of India and got *ad interim* stay of execution of present application on 19.06.1980, which was confirmed on 30.07.1980. Thereafter Addl. District Judge, Faridkot after seeing the stay order of this Court, adjourned the said execution sine die on 23.08.1980. The said writ petition was dismissed by this Court on 31.10.1992.

[6]. It was further averred in para No.6 of the aforesaid

application that on 15.05.1993, the decree-holder filed an application for restoration of the said execution application in the Court of Addl. District Judge (I), Faridkot. The original execution application was not traceable in the record room, so the said application for restoration of the execution was dismissed by the Court for non-prosecution vide order dated 19.04.1997. However, liberty was given to the decree-holder to file fresh application after furnishing necessary particulars i.e. after tracing the particulars of previous application. The particulars of said execution application were not available and the same were also not traceable, therefore, fresh application for execution of the decree was filed.

[7]. Appellant Mahant Jarnail Singh @ Jaila filed objections to the effect that the fresh execution application was not maintainable as the same was not within limitation as per Article 136 of the Limitation Act. Only fresh restoration application could have been filed that too by furnishing particulars of alleged earlier execution application. The particulars of earlier execution were not supplied and the order dated 19.04.1997 had attained finality, therefore, the decree-holder could not go beyond the order dated 19.04.1997.

[8]. The appellant/objector filed the aforesaid objections on 08.10.2002 to the following effect:-

Firstly on the ground of limitation.

Secondly, the execution proceedings were never stayed by this Court, only a dispossession of the Gram Panchayat was stayed. The judgment-debtor was having no knowledge about any litigation between Gram Panchayat and the SGPC, Amritsar.

Thirdly, filing of any previous execution application was denied. Similarly it was also denied that the earlier execution was ever adjourned sine die on 23.08.1980.

Fourthly, the decree-holder could not produce the particulars of previous litigation and order dated 23.08.1980 and the application for restoration of the said execution was already dismissed for non-prosecution on 19.04.1997 and liberty was given only to file fresh application for restoration of the execution after obtaining necessary particulars. The order dated 19.04.1997 passed by the Addl. District Judge (I), Faridkot had attained finality and was binding upon the decree-holder.

Fifthly, at the most the previous execution petition could have been restored and fresh execution application was not maintainable. The suit property was claimed to be not owned by SGPC, Amritsar. There was no notification to that effect passed by the Punjab Government.

Sixthly that the judgment and decree dated

26.09.1974 was passed at the back of the judgment-debtor. Mahant Fauja Singh was never served with the process of the Court in accordance with law. Mahant Fauja Singh was not the owner of the property, nor was in possession of the same at any point of time in his individual capacity. The suit property as well as Gurudwara Sahib was under the ownership and possession of Shiromani Panth Akali Budda Dal Panjwa Takhat Chalda Wahir Chakarwanti Nihang Singh, Punjab (hereinafter to be referred as 'the Akali Budda Dal') having its head office at Damdama Sahib (Guru Kanshi) Bathinda and its Head Jathedar was Baba Santa Singh 96 Karori. The property in question was in possession of Akali Budda Dal. Mahant Fauja Singh or the SGPC, Amritsar never remained in possession of the same. At the time of filing of suit by the decree-holder, Mahant Fauja Singh was not in occupation of the property, rather the same was in possession of the Akali Budda Dal and its head Baba Santa Singh. No suit was filed against Akali Budda Dal. Judgment-debtor was never appointed as successor, rather the objector was nominated Incharge of Gurdwara Sahib by Jathedar of Baba Santa Singh. Akali Budda Dal (owner of the suit property) was not made party to the suit. No decree was passed against Akali Budda Dal. Akali Budda Dal was not bound by the judgment and decree in question and the judgment and decree could not be executed against Akali Budda Dal and against the objector, who was the nominee of Akali Budda Dal. The possession of the objector was not in the capacity of any legal representative of Mahant

Fauja Singh, rather he was appointed by Baba Santa Singh (head of Akali Budda Dal), who had spent huge amount of more than Rs.30 lacs in the construction of building of Gurdwara Sahib, construction of Sarovar and for residences of devotees of the Gurdwara Sahib.

[9]. It was further asserted that the construction/Kar Sewa continued for more than 10 years. The decree-holder never raised any objection during this period. The devotees and the villagers of surrounding areas had faith and confidence in the Gurdwara Sahib. Mahant Jarnail Singh claimed himself to be in possession of the suit property and also claimed that in the construction of the Gurudwara Sahib, there was a *smadh* of Sodhi Baba Kaul Ji Building, Langar Ghar and Hall rooms were part of the suit property. The property was dedicated by Sodhies of village Dhilwan Kalan. The founder of the institution was Sodhi Baba Kaul Ji, who was ancestor of Sodhies of village Dhilwan Kalan. The objector Jarnail Singh claimed himself to be of Sodhi community and he was appointed as Incharge/Manager of the property of Sodhies of the village vide writing dated 08.08.1998. With these averments, the objections filed by the objector/appellant came to fore.

[10]. The objections were contested by the decree-holder. The objections were dismissed by the Addl. District Judge, Faridkot vide order dated 28.05.2009, primarily on the ground

that the application was within limitation as the original execution application was under challenge by way of civil writ petition No.2091 of 1980 and, therefore, the time spent therein was required to be excluded. The reference was made to the statements of Neelam Rani Ahlmad DHW-4, Harjinder Singh Brar, Advocate DHW-5 and judgment dated 31.10.1992 passed by this Court i.e. Ex.DH-23.

[11]. Learned counsel for the appellant/objector contended that the alleged execution application filed in the year 1978-79 was not produced on record, no certified copy of the same was available. No Court official made any statement that the record was lost. No particulars of earlier application were ever summoned. The photocopy of alleged office copy of the Advocate was produced to which objections were made. The decree-holder even filed reply to the objections of the Gram Panchayat. DHW-5 Harjinder Singh Brar, Advocate was junior to Mr. H.S. Sekhon, Advocate, who was counsel of the decree-holder. The deponent DHW-5 had joined the office of Mr. H.S. Sekhon, Advocate only in the year 1979-80, whereas the alleged earlier application was filed in the year 1978-79. The order dated 23.09.1980 passed by the executing Court, allegedly adjourning the execution *sine die* was not produced on record. Vide the aforesaid order, it was claimed that the

execution petition was adjourned *sine die* due to stay of dispossession of the Gram Panchayat in the civil writ petition No.2091 of 1980.

[12]. Learned counsel vehemently contended that against the order dated 11.02.2005 passed by the Addl. District Judge, Faridkot, a Civil Revision No.1249 of 2005 was filed before this Court. The application was filed by the decree-holder for leading secondary evidence to prove the previous execution application. The Court came to the conclusion that the loss of the application could be presumed as inspite of record having been summoned, the same could not be produced being not traceable. The trial Court protected the right of the objector by allowing him to contest the evidence to be brought on record by the decree-holder in order to prove existence as well as loss of evidence before secondary evidence was taken on record.

[13]. It was further held by this Court that in order to succeed in the application for secondary evidence, the decree-holder was required to prove *prima facie* existence and loss of the document. The trial Court was pleased to allow the application as the existence and loss of the document were *prima facie* proved in view of observations made by this Court in CWP No.2091 of 1980, which was decided on 31.10.1992. The executing Court had protected the right of the objector as the

onus was on the decree-holder to prove the existence and loss of the document by way of secondary evidence. The revision petition was dismissed on 20.10.2008.

[14]. Learned counsel further submitted that para No.7 of the objection to the extent of spending more than Rs.30 lacs in the construction by Akali Budda Dal over building of Sarovar and residences of devotees has been impliedly admitted in para No.7 of the reply to the objections filed by the decree holder, as the averments were not specifically denied by the decree-holder. In order to prove the loss of document by secondary evidence, the decree-holder relied upon the document Ex.DH-4, i.e. entry of the execution register of the year 1975. The summoned witness i.e. Neelam Rani Ahlmad was examined to prove the aforesaid entry which was entered at serial No.1 dated 19.02.1975. The photocopy of the same was exhibited as Ex.DH-4. In the cross-examination, the aforesaid witness made the following statement:-

“Cross examination:-

It is correct that the registers maintained by us are issued by the Court as per the form prescribed by Hon'ble High Court. Volunteered, sometimes we do not get registers and use private ones. The register brought by me is not prescribed. Register is not page marked and there is no certificate from any officer upon it regarding this. The

register is not signed by any officer. The entry which I have produced today, entry previous to it is of 26.5.1970. I do not know as to who has written the entry of Ex.DH-4. The result of this case is not recorded in the register. It is incorrect that the record produced by me today has been prepared subsequently. It is incorrect that this register is not the execution register issued by the Court.”

[15]. Learned counsel further contended that the perusal of the aforesaid cross-examination of Neelam Rani Ahlmad disclosed that the register produced by her was not the prescribed register. The register was not page marked, nor there was any certificate from any officer. The register was not signed by any officer. Only one entry existed in the register and there was no previous entry to it. The witness pleaded ignorance as to who had made the aforesaid entry. The result of the case was also not recorded in the register. The witness also stated that the registers maintained by the office were normally issued by the Court as per prescribed form by the High Court and sometimes they did not get the register and used private register of their own. The witness also admitted that the previous entry produced by her was of 26.05.1970. From 26.05.1970 to 19.02.1975, there was no record produced by the witness.

[16]. Learned counsel further submitted that firstly, by virtue

of aforesaid entry, existence of earlier execution application could not be proved. Secondly, as per admitted case of the decree-holder, the execution was filed in the year 1978-79 as per para No.6 of the execution application dated 11.09.1997. Therefore, the production of document Ex.DH-4 by way of secondary evidence with the statement of DHW-4 Neelam Rani, could not be treated to be in consonance with the plea of the decree-holder that the execution was filed in the year 1978-79. The evidence sought to be led by the decree-holder was beyond pleadings of the execution. The statement of DHW-4 viz. cross-examination also shattered the case of the decree-holder and the existence of the previous execution application was not proved.

[17]. Learned counsel also relied upon statement of Harjinder Singh Brar, Advocate DHW-5, who had produced the office copy of execution application as Ex.DH-6 dated 26.09.1974. The objections were filed by the Gram Panchayat to which reply was filed by the decree-holder as DH-7 and Ex.DH-8. The objections filed by the Gram Panchayat under Section 47 CPC were also produced by the witness as Ex.D-9. The attested copy of the same was Ex.DH-10. The reply filed by the SGPC to the objections was also produced by the witness as Ex.DH-11 which was duly objected to. The witness deposed

that the documents produced by him were taken out from the file from the office of Mr. H.S. Sekhon, Advocate. The witness admitted that he had not taken out these documents from the file of Mr. H.S. Sekhon, rather he was shown these documents from the record available in the file of Mr. H.S. Sekhon, Advocate. He gave the statement only from the record and did not remember anything about the case orally. The name of the Court was not written on the application, though the witness submitted that these documents were submitted in the Court of Sh. S.C. Gupta.

[18]. Learned counsel also relied upon the statement of Bhagwan Singh DHW-6, the General Power of Attorney of SGPC. The witness in his cross-examination admitted in the following manner:-

“.....It is correct that we note the proceedings of every date of the case and send to our office and keep a copy of it with us. We obtain copy of the decision of the cases and submit the copy in our office and keep a copy with us. File of the Advocate which bears our noting as attorney is also submitted by us in our office. When the case is finalized....

.....Fauja Singh was in possession as attorney of Baba Sant Singh. We did not implead Baba Santa Singh as party....

.....The litigation pursued by us was against Fauja Singh and not as attorney....

.....I do not know in which Khasra Number disputed Gurudwara is constructed....

.....I do not know that there is Samadh of Baba Kaul Ji in the disputed land. I do not know that Baba Kaul Ji was ancestor of people of Sodhi community. I do not know that any land was recorded in the name of Baba Kaul Ji in the revenue record. I do not know that the Gurudwara has been constructed in the land owned by Baba Kaul Ji....

.....Execution of this case was filed on 18.02.1975. I do not have any record regarding filing of this application....

.....I do not have the copy of execution application filed on 18.02.1975 and its proceedings.....

.....It is correct that dispossession of Gram Panchayat only was stayed in that writ. Fauja Singh never filed any appeal against questioned decree, nor Fauja Singh ever obtained a stay against the execution proceedings....

.....Volunteered, that file was lost. I have not enquired from the record room about that file.....

.....I do not know that Jaila Singh and Fauja Singh have been appointed by the people of Sodhi community.....”

[19]. Learned counsel also referred to the statement of DHW-2 Surinder Singh, Record Keeper, Sessions Court, Faridkot, who had deposed that the summoned record was not available in the record room. In his cross-examination the witness had admitted that any file after consignment received in the record was entered in the register maintained for that

purpose. Every consigned file should have its *goshwara* number. The Ahlmad of the concerned Court used to send list of every file to be consigned. The register and said challan were being maintained in the record room. The summoned file was not mentioned in the above said register and in the challan form maintained in the record.

[20]. Learned counsel by referring to the aforesaid statements coupled with the statement of DHW-5 stated that no such record of previous execution was in existence, nor the same was ever filed in the Court or maintained by the record keeper. Even if, inquiry was ordered to be made in respect of existence and loss of document in question by allowing the application under Section 65 of the Indian Evidence Act, the decree-holder failed to connect the material with the record of execution originally filed. Existence and loss of the documents could be established on record, rather the documents sought to be produced by way of additional evidence did not correspond to the plea taken by the decree-holder in para No.6 of the execution. The pleadings in the execution were to the effect that the execution was originally filed in the year 1978-79. The documents sought to be produced on record were of the year 1975.

[21]. Learned counsel by relying upon Section 15 of the

Limitation Act and **A.S.K. Krishnappa Chettiar vs. S.V.V. Somiah, 1964 AIR (SC) 227; Vettakka Kakkattu Manakkal Parameswaan Nambudri and another vs. Seshan Pattar and others, 1929 AIR Madras 627; Virchand Kapur Chand vs. Marualappa and another, AIR (31) 1944 Bombay 303; (Vadlamannati) Bala Tripua Sundaramma vs. Abdul Khader, AIR 1933 Madras 418 (Full Bench); Pearey Lal Behari Lal and another vs. Krishan Sarup Shambhu Nath and another, AIR 1963 Punjab 457 (V50C 127); Lakshmi Kanta Jha vs. Lal Bihar Saran Singh and others, 1967 AIR (Patna) 236; Jaswant Rai Harbans Rai vs. Dogar Mal Jawahar Mal and others, AIR 1968 Punjab & Haryana 509; Smt. Lalita Almal vs. Smt. Jyotsna Debi and others, 1994(4) ICC 383; and Y. Lakshamma and another vs. G. Thyagaraju, 2011(3) ALT 77** contended that stay granted by the this Court in the civil writ petition No.2091 of 1980 was not in respect of stay execution of the decree, rather the same was stay dispossession and, therefore, the time spent during pendency of the said writ petition, was not to be excluded in terms of stay being not specific in nature. The stay dispossession of the Gram Panchayat never operated as stay of decree for the purposes of limitation of filing the execution. Even the stay order against one of the judgment-debtor cannot exclude the period of stay

against other judgment-debtors.

[22]. Learned counsel further contended that the Gram Panchayat was not the judgment-debtor in the instant case. Firstly, the stay was not in respect of stay of execution. The stay of dispossession had no relevancy, so far as the period of limitation was to be computed as against other judgment-debtors. The stay in respect of execution must be expressed and not by any necessary implication. The injunction must be expressed in its terms and was not to be interpreted by means of implications in order to draw any inference. The execution of decree was never stayed, nor any specific stay was passed by this Court. The protection of possession that too of the Gram Panchayat, could not have stalled the execution proceedings, if any.

[23]. On the basis of precedents cited above, learned counsel further contended that in the absence of any specific stay of execution, the period spent in the litigation initiated by the Gram Panchayat before this Court, could not be excluded while computing period of limitation. Article 136 of the Limitation Act prescribed limitation of 12 years for execution of the decree. Fresh application in the absence of proof of earlier execution was patently time barred and was not maintainable. The exclusion of time as per Section 15 of the Limitation Act was not

to be excluded, when institution or execution of the decree was stayed by the Court. Learned counsel also submitted that the executing Court was under the legal obligation under Section 3 of the Limitation Act to see whether execution was within limitation or not, even if, plea of limitation was not set up as a defence. As per the prayer made in the civil writ petition No.2091 of 1980 itself, the stay as sought was in respect of dispossession of the petitioner. Vide order dated 17.06.1980, when notice of motion was issued to the respondents for 29.07.1980, the stay dispossession was granted. The said order was confirmed on 30.07.1980, when the said writ petition was admitted.

[24]. On the other hand, learned counsel for the respondent contended that the *locus standi* of Mahant Fauja Singh was negated by the Tribunal in petition No.436 of 1965 vide judgment dated 10.02.1972. When the petition filed by the Mahant Fauja Singh under Section 8 of the Sikh Gurudwara Act, 1925 (hereinafter to be referred as 'the Act') was dismissed by holding that there was no evidence of any hereditary right in favour of Mahant Fauja Singh. Mahant Fauja Singh was not held to be hereditary office bearer. It was held that he had no locus to file petition under Section 8 of the Act. Petition was held not maintainable and the same was dismissed. FAO No.147 of 1972

was filed by Fauja Singh against the said order was dismissed by the Division Bench of this Court on 26.09.1973.

[25]. Learned counsel further contended that on 10.05.1974, notification under Section 9 of the Act was issued by the Government declaring the Gurudwara as Sikh Gurudwara after dismissal of the appeal. Thereafter, said Mahant Fauja Singh filed a petition under Section 10 of the Act, claiming the property, but the same was dismissed on 23.07.1974. On 26.09.1974, the suit for possession filed by SGPC against Mahant Fauja Singh was decreed by the Tribunal on 31.12.1974. One Harnek Singh was authorised to file execution application vide Ex.DH-2. On 19.02.1975, execution application was filed i.e. Ex.DH-6 to execute the decree dated 26.09.1974.

[26]. Learned counsel further contended that objection petition (Ex.DH-9) was filed by the Gram Panchayat under Section 47 CPC on 02.08.1979 to which reply (Ex.DH-7) was filed by the SGPC vide hand written draft. The objections were dismissed on 07.01.1980 and thereafter Gram Panchayat filed CWP No.2091 of 1980 before this Court on 01.05.1980 challenging the decree dated 26.09.1974, wherein Gram Panchayat staked its claim *qua* the land in question and Mahant Fauja Singh was claimed to be in illegal possession. On 29.09.1980, SGPC filed reply to the said writ petition, wherein it

was stated that Mahant Fauja Singh after having failed in the litigation connived with Gram Panchayat for delaying the delivery of possession. After admission of the aforesaid writ petition, the execution application was adjourned *sine die* on 23.07.1980 and this fact was apparent from letter written by SGPC on 06.02.1983 Ex.DH-3. The aforesaid writ petition was finally dismissed on 31.10.1992 and on 06.02.1993, the SGPC wrote a letter to GPA Harnek Singh to file the execution regarding possession of the land, wherein it was specifically mentioned that the execution application was already filed which was adjourned *sine die* on 23.07.1980. On 17.05.1993, application was filed for restoration of the execution application which was adjourned sine die by the executing Court. The said execution application was dismissed because of non-filing of the particulars vide order dated 19.07.1997, however liberty was given to the decree-holder to file the application after furnishing the particulars of the previous application. Thereafter fresh execution was filed giving all the details. Since the particulars were not available, therefore, the application was moved for secondary evidence which was allowed by the trial Court on 11.02.2005 and it was further upheld in Civil Revision No.1249 of 2005 vide order dated 20.02.2008. Thereafter, the decree-holder led the evidence in respect of loss of file before the

executing Court by referring the statements of Harnek Singh DHW-1, Neelam Rani, Ahlmad DHW-4 and Harjinder Singh Brar, Advocate as DHW-5.

[27]. Learned counsel further submitted that the existence and loss of file was proved before the Court and, therefore, the objections filed by the appellant were dismissed. Learned counsel by relying upon **Shiromani Gurdwara Prabhandhak Committee vs. Mahant Lachhman Dass (Dead) through LRs., 2002(4) R.C.R. (Civil) 281; Mohan Lal vs. Dharam Kaur (deceased) through LRs, 2002(1) R.C.R. (Civil) 223; Committee of Management of Gurudwaras, Amritsar and others vs. Indar Singh and others, AIR 1933 Lahore 1041** and **Shiromani Gurdwara Parbhandhak Committee vs. Jathedar Harkiat Singh and others, 1999(3) CivCC 511** contended that the Sikh Gurdwara Act, 1925 is a complete code in itself for adjudication of such rights and interest. The adjudicatory jurisdiction has been vested in the Tribunal. Once the Tribunal had adjudicated the matter and returned its finding on facts and evidence brought before it, then no Court could have adjudicated the *lis* by ignoring the findings of the statutory Tribunal.

[28]. Learned counsel by referring to Section 36 of the Act

contended that once the Gurdwara was declared to be a scheduled Gurdwara and a notification was duly issued under Section 5(3) of the Act, the property stood vested in the decree-holder and Civil Court has got no jurisdiction to question the title of the Gurdwara over the property. The decree was passed against Mahant Fauja Singh, who remained unsuccessful in a petition No.436 of 1965 filed under Section 8 of the Act and in FAO No.146 of 1972 filed by him. Thereafter under Section 9 of the Act, notification was issued by the Government declaring the Gurdwara as Sikh Gurdwara after dismissal of the appeal on 10.05.1974. Mahant Fauja Singh remained unsuccessful even in the petition under Section 10 of the Act, and thereafter the suit for possession filed by the SGPC against Mahant Fauja Singh was decreed.

[29]. Learned counsel contended that the statutory provisions of the Act are self-contained. Provisions have been made laying down the consequence of failure to submit a petition or non-inclusion of properties in the list. Presumption of due compliance with the prescribed procedure has been made in the Sections under which objections are to be filed.

[30]. Learned counsel by relying upon **Kesar Singh vs. Balwant Singh, AIR 1967 SC 487** also contended that in view of Sections 36 and 37 of the Act, it would not be open to any

Court to give a decision which will go against the decision of the Tribunal. The appellant/objector was debarred under the aforesaid provisions from raising the question whether, he was descendant of any predecessor, who was in possession of the suit property. The judgment rendered by a Tribunal was a judgment in *rem* and binding on all concerned including the objector, and therefore, the objector could not have claimed the property.

[31]. Learned counsel further contended that in view of Ex.DH-39 and Ex.DH-40, the notification under Section 73 of the Act was issued on 02.05.1964 and the property stood vested in the decree-holder and the same was duly implemented in the record. Dispute if any, with regard to the title of the property is the subject matter of adjudicatory mechanism vested in the Tribunal. The provisions have been made in the Act itself laying down the consequence of failure to submit a petition or non-inclusion of properties in the list. There is a presumption of due compliance with the prescribed procedure has been made in the Sections under which objections are to be filed. Apparently, a complete code has been provided in the form of the Act in which concept of filing objections has been highlighted in respect of consequence of failure to submit a petition or non-inclusion of the properties in the list.

[32]. Since the objector has claimed himself to be nominated incharge of Gurudwara Sahib by Jathedar Baba Santa Singh i.e. of Akali Budda Dal against whom no decree was passed, therefore, *locus standi* of the objector would become prime concern in adjudicating the *lis*, particularly when the aforesaid Budda Dal never came forward to assail the vesting of the land in SGPC by mean of notifications. Secondly, the dual locus of the objector on the basis of his being a member of Sodhi Community has to be tested with reference to his authority as manager of properties of Sodhies allegedly given to him vide writing dated 08.08.1998. Alleged nomination of the objector by Budda Dal or by Sodhies community of the village would bring the locus of the objector to be tested either by adjudicatory mechanism provided under the Act or by means of Order 21 Rule 97/100 CPC. In both the eventualities the executing Court would be obligating to frame a specific issue of *locus standi* of the objector to maintain the objection and then to decide the same on merits.

[33]. In the light of stand taken by both the parties, the locus standi of the objector in filing the objections under Order 21 Rule 97/99 CPC has to be considered by the Tribunal at the first instance, keeping in view the vesting of property in terms of notification issued under Section 7(3) of the Act on 02.05.1964

and unsuccessful attempts made by the Mahant Fauja Singh by filing petition under Section 8 of the Act and further FAO No.147 of 1972 decided on 10.02.1972. Since the notification under Section 9 of the Act had already been issued on 02.05.1964 and the petition under Section 10 of the Act filed by Mahant Fauja Singh was dismissed on 23.07.1974, therefore, in the light of the Act being a complete code in itself for adjudication of all rights and interests, the adjudicatory mechanism has also been provided under the Act itself and the jurisdiction has been vested with the Tribunal, therefore, the maintainability of provisions under Order 21 Rule 97/99 CPC has to be answered in the light of presumption of due compliance with the prescribed procedure made in the Act, where objections could have been filed for the consequence of failure to submit a petition before the competent Court in time.

[34]. The executing Court has proceeded with the objections by framing the issues in para No.5 of the judgment. None of the issue has dealt with the *locus standi* of the objector to maintain such type of objections in respect of the property which has already vested in the decree-holder by virtue of notification. Once the judgment-debtor had failed in challenging the vesting of the property in decree-holder, then the challenge of the objector in the capacity as projected would be subject to his

locus standi to file such objections.

[35]. In view of above, it would be a moot point to decide the *locus standi* of the appellant/objector to maintain the objection petition under Order 21 Rule 97/99 CPC in view of complete adjudicatory mechanism given in the Act. The very disposal of the objections filed by the objector/appellant would depend upon the *locus standi* for which a necessary issue is required to be framed by the executing Court and thereafter on the basis of material on record, the executing Court would adjudicate the same.

[36]. Since the executing Court has followed the regular procedure in deciding the objection, therefore, the order dated 28.05.2009 passed by the Addl. District Judge, Faridkot needs to be revisited in the light of aforesaid facts. The findings recorded by the executing Court under issue No.2 also needs to be revisited in view of discussion made in the preceding paras viz-a-viz. the evidence of DHW-4, DHW-5 and DHW-6. Since the issue of *locus standi* of the objector/appellant is of foremost importance, therefore the executing Court shall decide the issue of limitation afresh along with issue of *locus standi* to be framed by it. In the event of finding that the objector is lacking *locus standi*, then issue of limitation may become redundant but if it comes otherwise then, issue No.2 may decide the conspiracy to

the hilt.

[37]. In view of above, the impugned order is set aside. The case is remanded to the executing Court to frame necessary issue of *locus standi* of the objector/appellant to maintain such objections under Order 21 Rule 97/99 CPC and thereafter decide the question of limitation afresh in the light of material on record as discussed in the preceding paras of the judgment. Both the parties are directed to appear before the executing Court on 03.10.2017.

[38]. Nothing expressed hereinabove shall be considered to be an expression of merits of the case. The executing Court shall decide the case without being influenced by any factual observations made by this Court as the same were noticed as per arguments of learned counsel for the parties.

[39]. Executing Court shall make every endeavour to decide the case at the earliest.

[40]. Appeal stands disposed of.

August 29, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No