

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

Date of decision: 12.07.2017

RSA No.3106 of 2009 (O&M)

Sham Lal

...Appellant

Vs.

Shri Chakardhari Mandir Sudhar Committee

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Roshal Lal Sharma, Advocate, for the appellant.

Mr. Amit Jhanji, Advocate, for the respondent.

RAJIV NARAIN RAINA, J.

The instant second appeal has been filed by the appellant – defendant aggrieved against the judgment and decree passed by the Courts below, whereby the suit of the plaintiff – respondent was decreed for mandatory injunction directing the defendant to vacate stay in the Mandir and hand over the possession of the room as well as for permanent injunction restraining the appellant – defendant from interfering or creating disturbance or nuisance in the worshipping by the public.

Having heard learned counsel for the parties, I do not find any substantial question of law arises for consideration. The findings of the learned trial Court on Issues No.1 to 3, while decreeing the suit of the plaintiff – respondent, are as follow:

“11. It is argued by learned counsel for the plaintiff that the plaintiff committee is a registered body, registered with the Registrar of Firms & Societies and vide resolution, Sham Lal

is the authorized person to institute the suit and it is submitted that the defendant is a sewadar in the Mandir, who was raising the construction, so the committee had to file a suit for permanent injunction where in a compromise Ex.P9 was arrived and it was settled that the committee will collect the rent from the tenant Avinash Chander PW-1 and will give it to the defendant being sewadar and that thereafter the plaintiff made the statement in the Court Ex.P10 that whatever construction is to be raised will be raised by the plaintiff committee and the defendant Sham Lal shall not raise any type of construction and that thereafter in the suit plaintiff also made the statement for withdrawing the suit and the same was dismissed as such. It is further argued that thereafter, the defendant instituted an ejectment petition against the tenant of the Mandir after the settlement of his previous civil suit and that this ejectment petition of the defendant Sham Lal was dismissed by the Court of Rent Controller, Jalandhar, wherein, it was held that the defendant is proved to be the sewadar of the Mandir and not owner of the Mandir and it was further proved that the defendant is receiving Rs.350/- from the Managing Committee against the receipts as monthly allowance and it is argued that it was held that the tenanted property is part of the Mandir being run by the plaintiff committee and the present defendant Sham Lal had failed to establish the relationship of landlord and tenant.

12. It is further argued that thereafter, defendant filed an appeal and the Hon'ble Appellate Court dismissed appeal of the plaintiff, thereby, confirming the findings of the Ld. Rent Controller and it is stated that the defendant also admits that the same was dismissed in the Hon'ble High Court as well. It is, therefore, argued that the status of the defendant is that of a sewadar of the plaintiff committee and his possession over the portion of the Mandir is that of a licensee only and as the activities of the defendant were prejudicial to the community and the religious needs of the Mandir, therefore, the Committee revoked his license and services of the defendant as sewadar were terminated and he was served upon a legal

notice Ex.P11 to vacate the premises of Mandir but the defendant failed to do so, as such, the present suit had to be filed. It is argued that from the evidence lead by the plaintiff, it is proved that property in the dispute is a mandir being frequented by the public and the license of the defendant as sewadar stands terminated, so mandatory issue against him to vacate the premises and that he be also restrained permanently from interfering and creating disturbance or nuisance to the public in worshipping the idols and also from harassing the committee members.

13. On the other hand, it is argued by the Ld. Counsel for the defendant that earlier, mother of the plaintiff was owner and after her death, defendant became owner of the disputed property. In this regard, he has drawn my attention to the testimony of one Raj Rani who has proved admission and withdrawal register of the school of the children of the defendant and he further pointed out that Ex.D2, an affidavit given by the mother of the defendant for granting of electricity connection in favour of Avinash Chander tenant (PW1) goes on to show that mother of the defendant was owner of the disputed property. It is further argued that the ownership of the defendant Sham Lal is also proved from the testimony of DW2 Meena Kumari, who had categorically deposed that notice regarding the house tax assessment of the disputed property was issued to the defendant and the defendant Sham Lal had filed the objections to it and it is argued that all these, goes on to show that the defendant is in possession of the disputed property not as the licensee, but as an owner thereof and the plaintiff has got no right, title or concern with the Mandir.

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15. The defendant in this present case has not been able to prove any document of title in favour of his mother nor defendant Sham Lal has himself produced any document of title to show that he is the owner of the disputed property.

Defendant in his cross-examination has deposed that the property in dispute is the ownership of Punjab Wakf Board, but the defendant has not proved/produced any allotment letter either in the name of his mother or in his name to show his ownership. Defendant otherwise also admitted that there is no title deed in his favour regarding the property in dispute and DW2 Meena Kumari also admitted that the defendant has not given any proof/document regarding his ownership of the disputed property in the Municipal Corporation, Jalandhar and deposed that now the property is being assessed in the name of the plaintiff committee only. Meaning thereby, that the case of the defendant that he is owner in possession of the property in dispute is not proved from any cogent and convincing documentary evidence.

16. Still probing further, the defendant has admitted that he filed an ejectment petition against the tenant of the Mandir Avinash Chander PW1 on the ground that said Avinash Chander is a tenant under the defendant. Admittedly, that rent petition was dismissed by the Ld. Court of Sh. Gurbir Singh, the then Rent Controller, Jalandhar and the defendant was held to be not owner of the Mandir and it was held that property is part of the Chakardhari Mandir which is being run by the Chakardhari Sudhar Committee i.e. plaintiff and the present defendant has failed to prove the relation of landlord and tenant also. Still not satisfied, the defendant filed an appeal and the Court of Sh. G.K.Rai. Ld. Appellate Court dismissed the appeal of the defendant Sham Lal. Defendant in those proceedings admitted the receipts Ex.P5 to 8 issued by defendant Sham Lal himself in favour of the plaintiff committee showing that he used to receive Rs.350/- from the plaintiff committee as his remunerations on account of his being sewadar of the Mandir. The defendant admitted that the decision of the appellate authority was also upheld by the Hon'ble High Court.

17. Even further, defendant Sham Lal admits the filing of another previous suit before the filing of said ejectment

petition, which was filed against the defendant Sham Lal by the present plaintiff titled as 'Subhash Chander, President, Mandir Chakardhari Action Committee Vs. Sham Lal c/o Mandir Chakardhari' and the defendant admits in his cross examination that in that suit he had made a compromise proved here as Ex.P9 with the plaintiff committee and he identified his signatures, signatures of his wife and son also on this compromise. In this compromise Ex.P9, it is clearly written that rent of Rs.350/- will be collected by the existing committee of the Mandir and the committee shall given those Rs.350/- to the defendant Sham Lal who is a sewadar of the Mandir. This compromise was produced in the court and was placed on the judicial file in the previous suit and the defendant admits that in the previous suit he made a statement Ex.P10 after arrival of the compromise to the effect that whatever construction is to be raised, will be raised by the committee, he himself will not raise any construction in the disputed property and consequently, the plaintiff committee also made a statement in the court for withdrawal of the suit and the suit was dismissed as such. All these goes on to show that the plaintiff is not at all owner of the disputed property, rather, his status is that of a sewadar/caretaker only. DW5 also admitted that whenever the public comes to the Mandir for Pooja, then the defendant Sham Lal gives them holy water and parshad and admitted that the public frequents the Mandir. Defendant has placed much reliance upon the affidavit of his mother Ex.D2 which was submitted by PW1 in order to get electricity connection from P.S.E.B. However, as held in previous litigation discussed above and to my mind as well this document itself is not sufficient to show that the mother of the plaintiff was owner of the disputed property. Mere fact that the water connection is installed in the name of the person or the electricity connection is in his name, does not prove the ownership of the persons in respect of the property, even the caretaker or licensee can get water connection or sewerage connection by giving an indemnity bond. Moreover, the electricity connection as per testimony

of PW2 is in the name of the plaintiff committee. Thus, from the evidence lead by the plaintiff and in view of the previous judicial pronouncements discussed above, it stands duly proved that the disputed property is a Mandir which is being managed by the plaintiff which is a registered body, registered with the Registrar of Firms & Societies and whose president is Subhash Chander PW3, who vide resolution of the plaintiff committee Ex.P3 has been duly authorized to file the present suit. It also further stands duly proved that the defendant was sewadar whose services were terminated vide notice Ex.P11 and his license was revoked but in spite of this, the defendant has not vacated the premises. Therefore, the plaintiff is entitled for the mandatory injunction directing the defendant to vacate the stay in the Mandir and hand over the possession of the room to the plaintiff and it stands proved that the defendant has got no right, title or concern with the disputed property, as such, he has got no right to interfere or create disturbance or nuisance to the public in worshipping the idols and from harassing the committee member in any manner. All these issues are decided in favour of the plaintiff and against the defendant.” (underlining for ready reference to arguments raised and decision thereon)

In appeal by the appellant – defendant, learned first Appellate Court, while affirming the findings recorded by the learned trial Court, held as follow:

“11. After going through the record and considering the arguments, I find that both the parties have led evidence in support of their claim. The appellant has mainly lead the evidence to the effect that earlier to him, his mother Basanti Devi was in possession of the property as owner and after her, he is in possession of the property. But I find that the person who alleges particular fact has to prove it. He has not placed on record any document of title, neither in favour of his mother nor in favour of him. Defendant in his cross-examination has stated that property in dispute is the

ownership of Punjab Wakf Board. But no allotment letter has been proved. The only evidence led by the appellant to rebut the evidence is the school record, electricity and municipal record. In none of the documents, there is mention of the defendant as owner over the property. So, the contention of the plaintiff will prevail that he was just servant in the property in dispute. The receipts of the amount paid to him are on the file, it clearly shows that he was a Sewadar in the mandir who has received his salary. Now the present appellant filed a rent petition against Avinash Chander tenant, but the said petition was dismissed by Shri Gurbir Singh, the then Rent Controller. The appeal of the appellant was dismissed by Shri G.K.Rai, Appellate Authority, Jalandhar. There is nothing on the record to show that appellant has appealed from that judgment in Hon'ble High Court. So, that judgment has attained finality and the findings of the Rent Controller though not binding on the civil Court, but they give an inference that present appellant was not having any proprietary or possessory rights over the disputed property. On the contrary in a civil suit filed against Sham Lal appellant, he suffered statement that he will not raise any construction. Construction will be raised by Managing Committee. It is fully proved that he was not having any right in the disputed property. Moreover, there is a compromise on the file which is signed by Sham Lal and his wife. In the same, it was resolved that the rent of Rs.350/- will be collected by the existing committee of the Mandir and will be handed over to Sham Lal who is sewadar in the Mandir. So, keeping in view of this, I find that the present appellant has no right in the property in dispute. Evidence produced by him does not rebut the positive contentions taken in the evidence by the plaintiff/respondent. Mere fact that the address of the children is that of Mandir and whether electricity meter or water sewerage connection is in the name of the appellant does not make any difference. The appellant has miserably failed to prove that in which capacity he was in possession of the property. Neither, he has proved that in

which capacity his mother was in possession of property. So, it can be presumed that he was licensee of the respondent committee. The said license has been cancelled through a notice which has been proved on record. Now the license stands terminated and the appellant has no right in the property in dispute. So, he cannot remain in possession. So, Id. Trial Court while deciding issues No.1, 2 & 3 has rightly come to the conclusion that plaintiff society is registered body and suit has been filed through authorized person. Similarly, the plaintiff respondent was found entitled for decree for mandatory injunction and permanent injunction. So, findings on these issues are upheld. As far as issue no.4 is concerned, no argument has been advanced on these issues by the counsel for the appellant. Even though, the onus was upon the defendant/appellant, so the findings of the Id. Civil Judge (Jr. Divn.), Jalandhar on this issue are affirmed. So, in the totality of the circumstances, I find no merit in the appeal. Same is dismissed with costs.”

Having regard to the proper findings recorded by the trial Court and the lower Appellate Court, as reproduced above, the instant regular second appeal has no life.

The appellant does not have any proof of right, title or interest over the disputed property and only claimed possession from his mother, who was a Sewadar of a Mandir and a servant of the Society. The several litigations between the parties and third parties are noticed by the Courts below all adding up to defendant’s failure to hold on to the suit property as a matter of right.

In any case, as a licensee inducted to live in a small portion of the premises of the Mandir run by a registered society where his mother was given the license to reside as a Sewadar in a room, the appellant’s rights over

the room, if at all, are governed by the provisions of Sections 61 to 64 the Indian Easements Act, 1882 which deal with revocation of license, express or implied, and the procedure of eviction of a licensee. A licensee has not legs to stand on against the owner, the plaintiff in the suit for eviction by mandatory and permanent injunction.

Besides, there are concurrent findings of fact recorded by the Courts below against the appellant-defendant, which do not give rise to any substantial question of law for the consideration of this Court in the present regular second appeal. The suit was rightly decreed. There is no legal or factual infirmity in the findings recorded in the judgment in appeal.

Accordingly the appeal is dismissed.

12.07.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*