

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.2209 of 2013(O&M)

Date of Decision:7.11.2017

Mahant Vasudev Dass Mohtmim

...Appellant

Versus

Thakur Dawara Gaddi Bawa Lal Ji Maharaj Dhianpur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.G.K.S.Taank, Advocate for the appellant.

CM-6605-2013

For the reasons mentioned in the application, the same is allowed. Delay of 35 days in filing the appeal is condoned.

CM-6184-C-2014

For the reasons mentioned in the application, the same is allowed. Annexures A-1 to A-6 are permitted to be taken on record.

Main case

Plaintiff-appellant is in regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff filed a suit for permanent injunction, restraining the defendants from illegally and forcibly interfering with the possession of the plaintiff. The details of the property as described in the headnote of the plaint are extracted as under:-

- (A) Land measuring 40 Kanals 13 Marlas comprised in Khewat 82, 328, Khatauni 193, 653, Rect.158 Killa 7/2 (3-1), 8 (3-18), 13/1 (2-0), Rect. 285 Killa 7/2 (4-10), 2/2 (5-12), 3 (8-0), 4/1 (5-12), 8 (8-0), as entered in the

Jamabandi for the year 2002-2003 situated in Kalanaur

H.B. No.103, Tehsil Gurdaspur

(B) Mandir of Thakur Dawara Mohant Bhagwan Dass

bounded as below :-

North : Street, House of Piara Lal

East : Street

South : House of Sh. Mehnga Ram, Street

West : Haveli of Joginder Singh Mistry, Kothi of
Dharam Pal Vohra situated in Mohalla
Thaki Kalanaur.

(C) One plot having a boundary wall and gate and a room

constructed thereon bearing dimensions and boundaries

as follows :-

North : 38' Haveli of Pt. Hans Raj

East : 45' Public Street

South : 38' Public Street

West : 45' Kothi of Sh. Yash Pal Vohra
situated in Kalanaur Tehsil, Gurdaspur.

(D) One shop bounded as below :-

North : House of Des Raj

East : Shop of Khazan Chand

South : Bazar

West : Gali

situated in Kalanaur, Tehsil and District
Gurdaspur."

Plaintiff claims to be a Mohtmim of Thakur Dawara, a religious place. He had filed a suit against Thakur Dawara Gaddi Bawa Lal Ji, again a religious place.

Learned trial court after appreciating the evidence available on

the file held that the plaintiff has himself admitted that property mentioned

in the headnote under heading 'A' i.e. 40K-13M is not in his possession. Plaintiff also admitted that property in dispute is in possession of one Ashwani Kumar. Learned trial court further found that the property mentioned in the headnote with mark 'B' is part of a temple, where idol of Bawa Lal Ji is installed. Whereas, the property mark 'C' is being used as a Sarai i.e. place for the residence of devotees and visitors. Learned trial court also held that since the plaintiff has only filed a suit for permanent injunction and failed to prove his possession, therefore, he is not entitled for any relief. Plaintiff filed the first appeal. Learned first appellate court after re-appreciating the evidence available on the file dismissed the appeal and further recorded a finding, which is extracted as under:-

“Further more, it is an admitted fact that the appellant earlier also filed a civil suit for injunction against Mahant Narain Dass Chela Mahant Dawarka Dass, Mohtmim of Thakur Dawara Gaddi Bawa Lal Ji Maharaj, Dhianpur, with regard to the same properties, which are involved in this case. Copy of the plaint of said case is Ex.D-1. Above said Mahant Narain Dass died on 10.09.2011 and Defendant No.1 Mahant Ram Sunder Dass filed an application Ex.D-3 for impleading him as defendant in place of Mahant Narain Dass in that case on 24.10.2011, but instead of contesting that suit, the appellant got the said suit, dismissed as withdrawn by making a statement Ex.D-2 on 16.02.2005, and just after five days of the dismissal of the previous suit, the appellant again filed this suit and the plaint of this suit as well as plaint of previous suit are exactly the same. No explanation has been given qua filing of this suit by the appellant as he could have contested the previous suit also against respondent No.1. This shows that conduct of the appellant is not above board and he is trying to hid something somewhere from the court.”

Present suit is only for permanent injunction. Plaintiff has not

filed the suit for claiming possession on the basis of title. Learned trial court has framed the issues, but there is no issue with regard to the title of the property. Plaintiff can maintain a suit for permanent injunction only if he is in possession of the suit property.

If the plaintiff has any right/title in the property, he can maintain a separate suit. Still further learned counsel for the appellant could not point out any misreading, non-reading or non appreciation of the facts and the evidence available on the file.

For the reasons recorded above, this Court does not find any good ground to interfere with the impugned judgments passed by the courts below.

In view of the above, the instant regular second appeal is dismissed. Pending application(s), if any, also stands disposed of.

7.11.2017
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No