

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

**RSA No.2982 of 2013 (O&M)
Date of decision: 04.09.2017**

Hindu Sabha (Registered) Ambala City

... Appellant

Vs.

Faquir Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. C.B. Goel, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby its suit for perpetual injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 19.10.2006 and its appeal was also dismissed by the learned first appellate Court vide impugned judgment and decree dated 11.09.2012, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that Hindu Sabha (Regd.) Ambala City, through Dr. Siri Pal, Secretary and Dr. Om Parkash, Treasurer of the Sabha had filed a suit for permanent injunction against the defendants, thereby claiming

that they were in peaceful and legal possession of the suit property known as Ram Bagh and defendants be restrained from demolishing its part and they be directed to demolish the newly constructed portion as shown in the site plan with letters ABCDEFGHIJKLMNOPQR. Stated that they took the land measuring 20 bighas 12 biswas situated in Patti Mehar, Ambala City on perpetual lease on 30.12.1931 and in pursuant, they were given possession of it. They were in possession of it. They constructed Baradari and the boundary wall, around the leased property leaving sufficient open land, on the said property, for religious purposes. Claimed that continuous possession over it and maintaining it without any hindrance.

Defendants were duly served in the suit. Defendants No.1 to 5 did not appear despite service and they were proceeded against ex-parte. However, defendant No.6 put appearance and filed contesting written statement, raising more than one preliminary objections. Replication was filed by the plaintiff. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is registered body and the suit on its behalf has been filed by duly authorized persons? OPP.
2. Whether the plaintiff took 20 bighas 13 biswas land on perpetual lease on 30.12.1931 and came in possession thereof as lessee and raised construction thereon as alleged? OPP.
3. Whether the plaintiff is still in possession of the suit property, if so to what effect? OPP.
4. Whether defendants have encroached upon a major portion of the plaintiff's property and raised construction thereon without

plaintiff's consent and permission, if so to what effect? OPP.

5. Whether the suit is not maintainable in the present form? OPD.
6. Whether the plaintiff has no locus standi to file the present suit?
OPD.
7. Whether the plaintiff is estopped from filing the present suit? OPD.
8. Whether the suit is bad for mis-joinder and non-joinder of
necessary parties? OPD.
9. Whether this Court has no jurisdiction to try the present suit? OPD.
10. Whether the suit is not properly valued for the purposes of court
fee and jurisdiction? OPD.
11. Relief.

Vide order dated 24.08.1998, following additional issues were framed: -

- 4-A. If issue No.2 is proved, then whether plaintiff ever paid any lease
money to defendant No.6 or his predecessor-in-interest? OPP.
- 4-B. Whether the management of the affair of the Dera, open space and
other structures situated in Thakardwara had been with defendant
No.6 and his predecessor-in-interest? OPD.

In order to prove their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has failed to prove its case for want of cogent and sufficient evidence. Accordingly, suit for perpetual injunction filed by the plaintiff, claiming itself to be lessee, was dismissed by the learned trial Court vide its judgment and decree

dated 19.10.2006. Feeling aggrieved, plaintiff filed its first appeal, which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 11.09.2012. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that the entire case of the plaintiff-appellant was based on lease deed dated 30.12.1931 Ex.PW16/C. Said lease deed was allegedly executed by Sh. Keshwa Nand Puri, chela of Bhisham Puri. However, competence of Sh. Keshwa Nand Puri to execute the lease deed in favour of the plaintiff was not proved at the hands of plaintiff-appellant. Further, the area covered under the lease deed was 10 bighas 13 biswas, whereas the plaintiff-appellant was claiming perpetual injunction over an area measuring 20 bighas 13 biswas.

It has also not been proved on record by the plaintiff-appellant that plaintiff was the same Hindu Sabha, in whose favour the lease deed dated 30.12.1931 was executed. Since onus was on the plaintiff to prove all these aspects of the matter, but it failed to prove its pleaded case, plaintiff-appellant was bound to fail. That is what has been held by both the learned Courts below, while recording their concurrent findings of fact. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at his judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The

relevant and cogent findings recorded by the learned first appellate Court in paras 25 to 28 of the impugned judgment, which deserve to be noticed here, read as under: -

“It is to be noted here that first of all, it is incumbent upon the plaintiff to prove that it is a registered Society, registered under the Societies Registration Act and Sh. Pal Singh and Sh. Om Parkash, are the duly authorized persons to file the suit on behalf of Hindu Sabha. In the present case, there is no document on the case file to prove that Sabha was ever registered with the Registrar of Societies. The document i.e. certified copy of certificate, which has been shown to be exhibited as Ex.PW15/A, stated to be issued by the Registrar of Joint Stock Company, is not a certified copy and its exhibition has been objected to also at the time of tendering this document. Since it has not been exhibited as per law, it cannot be looked into. Even otherwise, there is no Memorandum and Article of Association of the Society on the file, the purpose for which the said Sabha was formed. There is nothing on record to show that what was main pre-dominant purpose of Sabha. In the absence of proof of registered society, it has no locus standi to file the present suit.

It would not be out of place to mention here that the plaintiff has miserably failed to prove that it is the same Hindu Sabha, in which Pal Singh and Om Parkash are the Secretary and Treasurer respectively, which is in continuity of the succession of the said society from one body to another. It is the case of the plaintiff that

Hindu Sabha had taken the suit property on the basis of lease deed dated 30.12.1931 from Mahant Keshwa Nand Puri Chela Shri Bhisham Puri, however, there is nothing on file to show that it is same Hindu Sabha or there is continuity of the succession of said Sabha from one body to another and at present Pal Singh and Om Parkash are Secretary and Treasurer of it. Unless, this fact is established on record, no locus standi is in favour of the plaintiff/appellant. It is not disputed that there are various Hindu Sabhas in India and in the present appeal also, one application was filed by some Akhil Bharat Hindu Maha Sabha, claiming itself that it used to look after the affairs of Hindu Sabha throughout India, which was directed to be dismissed vide order dated 14.6.2012 with the observations that mere on their plea that they are managing Hindu Sabha in State, they are not necessary party. Moreover, he himself was not clear in what capacity he wanted to come on file. It is plaintiff, for seeking relief in his favour, he will prove the existence of deed in his favour, as well as his possession over the suit property.

In the given facts situation, the burden heavily lies upon the plaintiff to prove that the society is the same one and occupying the land in question since 1931, in the wake of lease deed dated 30.12.1931. Except, Om Parkash, none has appeared as witness to prove the execution of the lease deed dated 30.12.1931. No details whatsoever where and in whose presence the lease deed has been executed has been given in the plaint. As per lease deed, land

measuring 10 bighas 13 biswas, khatoni No.374/631, Khasra No.559, situated in Patti Mehar, Ambala City was given on lease from June, 1932 @Rs.60/- per annum to Hindu Sabha, Ambala City. The condition No.2 of the said lease deed provided that in case of non-payment of rent for two years by Hindu Sabha, Ambala City, Mahant Keshwa Nand Puri or his successor can evict Hindu Sabha. As discussed above, the total area given on lease has been mentioned as 10 bighas 13 biswas in the lease deed, whereas in para No.3 of the plaint, the plaintiff has mentioned the said area to be 20 bighas 13 biswas.

For proving the lease deed dated 30.12.1931, in secondary evidence, plaintiff has examined PW23 Ved Parkash Sehgal, who has stated that there is entry of lease deed in the summoned record, which he produced. Though, this witness has been examined, however, under the law, first the plaintiff was required to prove the loss and destruction of the original lease deed and there is no evidence on record regarding loss of this document. As discussed above, in cross-examination, it was admitted by the plaintiff Om Parkash that original lease deed is with Ram Sarup, Advocate who had never appeared in the witness box to place on record the original lease deed. There is complete failure on the part of the plaintiff that the original lease deed had been lost. However, the fact regarding execution of lease deed is concerned, the same is totally in dispute. It is pertinent to mention here that at the time of examination-in-chief of PW16, he placed on record

copy of lease deed, which was exhibited, which was objected to by the ld. counsel for the defendant. Against that Hindu Sabha went in revision before the Hon'ble Punjab and Haryana High Court, Chandigarh and vide order dated 1.3.2006, passed by the Hon'ble Punjab and Haryana High Court, the present plaintiff/appellant was allowed to produce the lease deed in secondary evidence. In pursuant of that order, for adducing secondary evidence, Ved Parkash was examined as PW23, who stated that he did not know whether the same is correct according to original lease deed. One more witness PW24 Ram Sarup has been examined, who brought the summoned record and he proved the copy of judgment dated 26.9.1983 as Ex.PW24/1. Two more witnesses of the lease deed namely Inder Sain and Chatter Singh have not been examined by the plaintiff. The original copy has not been placed on record. No receipt regarding giving of rent to defendant No.6 has been produced on record. Even for the sake of argument, it is presumed that the lease deed was executed in favour of Hindu Sabha but there is nothing on file to show that present Hindu Sabha is the same and the registration of the Sabha is same one, which is in continuity of the original Hindu Sabha."

A bare combined reading of both the impugned judgments passed by the learned Courts below will make it crystal clear that neither anybody appeared as the concerned witness to prove due execution of the lease deed dated 30.12.1931 nor there was any relevant record brought on record by the plaintiff-appellant before the learned trial Court, so as to establish that Sh.

Keshwa Nand Puri was competent enough to execute the lease deed in favour of the plaintiff. Further, plaintiff was seeking injunction against the true owner, which was not permissible in the peculiar fact situation of the case in hand. Plaintiff also failed to prove any rent receipts and also the tenancy.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. *Premji Ratansey Shah Vs. Union of India, 1994 (5) SCC 547 (SC).*
2. *Mahadeo Savlaram Shelke Vs. Puna Municipal Corpn., 1995 (3) SCC 33 (SC).*
3. *Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner, 2004 (3) SCC 137 (SC).*
4. *Tikka Ram and another Vs. Kartara (deceased) through LRs and another, 2008 (12) SCC 634 (SC)*
5. *Jagadeesh and another Vs. State of Karnataka and others, 2008 (12) SCC 624 (SC).*
6. *Nazir Ali Mian Vs. Dokal Mian, 2010 (7) SCC 384 (SC).*
7. *S.R. Srinivasa Vs. S. Padmavathamma, 2010 (5) SCC 274 (SC).*
8. *Union of India Vs. Ibrahim Uddin and another, 2012 (8) SCC 148 (SC).*
9. *Jagjit Singh Vs. Financial Commissioner, Haryana and others, 1981 PLJ 367 (P&H).*
10. *Suraj Bhanand and others Vs. Mir Singh, 1987 R.R.R. 19 (P&H)*
11. *Gurdial Singh Vs. Ajmer Singh, 1987 PLJ 124 (P&H).*
12. *Gurdershan Singh and others Vs. Hardyal Singh and others,*

1992 (1) R.R.R. 243 (P&H).

13. Jagdish Vs. Mani Ram, 1997 (1) RCR (Civil) 278 (P&H).

14. Jit Singh Vs. Sardara Singh, 2000 (3) RCR (Civil) 566 (P&H).

15. Ram Lal and others Vs. Jagdish Singh and others, 2004 (3) RCR (Civil) 800 (P&H).

16. Jaspreet Singh Vs. Manoj Kumar, 2009 (4) Law Herald 2579 (P&H).

17. Jit Singh Vs. Umrao Singh and others, 2010 (4) PLR 550 (P&H).

18. Mohan Lal Vs. Union of India and another, 2012 (4) RCR (Civil) 160 (P&H).

19. Om Parkash Vs. Chaudhri Ram, 2013 (13) RCR (Civil) 297 (P&H).

20. RSA No.430 of 1991 (Singh Ram Vs. Surat Singh), decided on 19.4.2017.

It is also pertinent to note here that another Sabha like the appellant came forward and moved an application before the learned trial Court claiming that it was said Sabha known as Akhil Bharatiya Hindu Sabha, which was also looking after the affairs of the plaintiff-appellant. Although such application was dismissed by the learned trial Court, yet a serious doubt was created about the very existence of the plaintiff and its locus standi. Plaintiff-appellant failed to dispel the said suspicious circumstance that it was the same Hindu Sabha who was the original lessee on the suit land on the strength of lease deed dated 30.12.1931. In the absence of any such clinching evidence, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve

to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

04.09.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No