

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

**RSA No.921 of 2015 (O&M)
Date of decision: 12.09.2017**

Hans Raj

... Appellant

Vs.

Guga Mari Sabha, Village Jhanjeri through Dhoom Singh and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. M.S. Rai, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant No.2 is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for permanent injunction filed by the plaintiffs was decreed by the learned trial Court vide its impugned judgment and decree dated 21.01.2011 and first appeal of the defendants was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 18.07.2014, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that the plaintiff and other residents of village Jhanjeri had faith in Guga Mari situated within the area of village Jhanjeri and had their sentiments attached with Guga Mari and they

worshiped Guga Mari and were interested in its welfare. They were worshippers of Guga Mari and as such were interested in its up keeping and their religious sentiments were attached with Guga Mari and as such, they had got a right to file the suit being members of Guga Mari Sabha. The Guga Mari was situated in the land measuring 4 kanals out of the area of Khara No.99 (10-3) situated in the area of village Jhanjeri and all the residents of village Jhanjeri and residents of surrounding village had faith in the said Guga Mari. The right holders of the village had been managing the affairs of the said Guga Mari and in the month of August, 2003, the right holders of village Jhanjeri formed Guga Mari Sabha of village Jhanjeri for managing the affairs of Guga Mari. An annual fair was also being organized by the right holders of the village since the last more than 50 years. In the year 1990, the right holders of the village asked defendant No.1 to look after Guga Mari and maintain its cleanliness and in turn, he was allowed to take offerings such as food grains etc. so offered by the devotees and was further required to maintain account of the cash offerings, which were received from the general public. Defendant No.1 had been doing his duties properly for few years. Thereafter, defendant stopped keeping account of cash offerings, rather started mis-utilizing the same for his personal gain. Defendant No.1 and his son i.e. defendant No.2 instead of performing duties of cleanliness and worshipping of Guga Mari, started misusing the pious institution of Guga Mari for wrong purposes including drinking and gambling in the Guga Mari premises. The defendants started inviting and giving shelter to anti-social elements and started using the place of Guga Mari for consumption of intoxicants. The defendants even started spreading false rumours that

whosoever offers a bottle of whisky at Guga Mari, all his desires and ambitions would be fulfilled by Jahar Peer of Guga Mari. The true worshippers and residents of the village felt concerned over the wrong actions of the defendants and ultimately there arose a dispute between the office bearers of Guga Mari Sabha and the defendants. With the intervention of respectables, a compromise was arrived at between the office bearers of Guga Mari Sabha and the defendants on 04.06.2004. The original compromise was in the custody of Majat Police Post and photostat copy of the compromise was given to the office bearers of Guga Mari Sabha village Jhanjeri. Through the said compromise, defendant No.1 Kishori Bhagat undertook not to claim any right in the management of the affairs of Guga Mari and promised to hand over the charge of Guga Mari to Guga Mari Sabha. Defendant No.1 also promised that he would take away his personal belongings, if any, from the premises of Guga Mari and would have no concern whatsoever with the affairs of Guga Mari and he further undertook not to interfere in the peaceful working and management of Guga Mari by Guga Mari Sabha. The defendants further agreed through the said compromise dated 04.06.2004 that they would hand over the vacant possession of Guga Mari. Defendant No.1 was under a duty to keep regular accounts of the income of Guga Mari and he was responsible for the due application of the money so received as offerings from the general public and was bound to keep regular account of income and expenditure. Defendant No.1 started asserting hostile title and had started doing wrong actions in the area of Guga Mari and had failed to maintain accounts and as such, defendants were liable to be removed from the services of Guga Mari. In these circumstances,

the plaintiffs were entitled to a decree for removal of the defendants from the post of Sewadar/Bhagat Guga Mari because the defendants were not keeping accounts of income and expenditure of Guga Mari. The plaintiff requested the defendants many times to hand over the accounts of Guga Mari and also its assets to the plaintiff but in vain.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff Sahba has not come to the Court with clean hands? OPD
6. Whether the present suit is liable to be dismissed under order 7 Rule 11 CPC? OPD
7. Whether the plaintiff has been estopped under Section 11 CPC? OPD
8. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well 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 plaintiffs have duly proved their case by producing cogent and convincing evidence. Accordingly, suit for permanent injunction filed by the plaintiffs was decreed by the learned trial Court vide its impugned judgment and decree dated 21.01.2011. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate Court vide impugned judgment and decree dated 18.07.2014. Hence this regular second appeal at the hands of unsuccessful defendant No.2, as defendant No.1 was his father and he has passed away during pendency of the suit.

Heard learned counsel for the appellant.

Defendant-appellant is not claiming the ownership on the suit land. He is also not claiming to be lessee over the suit land. It could be at the most a case of licence in favour of father of the appellant. With the consent of residents of the village, a small religious place was agreed to be set up in the suit land. It was to be known as Guga Mari. The place was meant for performing worship and other religious rituals at the hands of residents of the village and father of the appellant was supposed to assist them in performing those religious activities. However, with the passage of time, sanctity of said place i.e. Guga Mari came to be violated by none else but the appellant. Allegation against the appellant was that he started gambling and drinking at Guga Mari, because of which residents of the village, including the plaintiffs, revoked the licence of father of the appellant.

Subsequently, a compromise Ex.P3 was arrived at between the

parties on 04.06.2004, wherein father of the appellant agreed that he would have no concern with the Guga Mari after 04.06.2004. However, when said compromise was also being violated by the defendants, including the present appellant, plaintiffs were left with no other option except to approach the learned trial Court by filing the suit for permanent injunction. On the basis of sufficient and cogent evidence brought on record by the plaintiffs, the learned trial Court rightly decreed the suit of the plaintiffs. Similarly, first appeal of the defendants was also rightly dismissed by the learned Additional District Judge recording cogent findings. 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 its judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in paras 16 to 20 of the impugned judgment, which deserve to be noticed here, read as under: -

“A conspectus of the record has shown that the respondent is a Sabha which has been constituted by the devotees of Guga Mari and right holders of village Jhanjeri for management of the affairs of Guga Mari and was duly registered under the Societies Registration Act. PW1 Dhoom Singh and PW2 Bharat Singh have stated that the appellants/defendants had started violating the

*sanctity of Guga Mari by way of gambling and drinking over there and had also started misutilizing the funds. PW2 Bharat Singh has also stated that a compromise dated 4.6.2004 Ex.P3 was entered into between appellants and the defendants Sabha wherein it was agreed that Kishori Bhagat will have no concern with the Guga Mari after 4.6.2004. Hon'ble Punjab and Haryana High Court in **Bhagwan Dass and Others Vs. Jai Ram Dass** 1964 PLR-1050 has taken the view:*

“that a Mahant, who has accepted the office or acknowledged himself as such, is incapable of asserting any hostile title against the trust, such disability being implicit in any person who holds fiduciary position in relation to another. It is also his duty to keep regular accounts of the income of the trust property, for he is responsible for the due application of the trust money and is bound to keep regular accounts of income and expenses. The manner of keeping accounts, of course, depends to a large extent on the custom obtaining in a particular institution but the obligation to maintain accounts is certainly implicit in the very office of a Mahant. An assertion of hostile title, unauthorised alienations of trust property and failure to maintain accounts, renders a Mahant liable to be removed”.

So, in this very case also, it was the duty of the appellants to keep accounts of the offerings received at Guga Mari but instead

of keeping accounts and presenting it before the Sabha, the defendants/appellants have asserted hostile title against the Guga Mari Sabha which is not permissible in the eyes of law and has made the appellants liable to be removed from the Managership of Guga Mari.

In this view of the matter, the learned court has rightly decreed the suit against the appellants/defendants.

Mr. Harbhinder Singh Advocate has further contended that the learned Court has relied upon the documents which are mere Photostat copies and could not have been exhibited but the lower Court has not only exhibited the said documents, rather has relied upon the said documents, so the judgment and decree are liable to be set aside only on this ground.

A perusal of the record has shown that although, the learned lower Court has relied upon the documents mentioned above, which are Ex.P1 to Ex.P3 on record but an appreciation of the material on record has shown that even if the said documents are excluded from the file and not taken into consideration, even then the respondent/plaintiff by way of its oral evidence has made out a case for removal of the defendants/appellants as Manager of the Guga Mari. Thus, the learned lower Court has not committed any illegality or irregularity in deciding the issues No.1, 2 and 3 and as such, the findings of the learned Court on these very issues are uphold.”

When confronted with the abovesaid cogent and convincing findings recorded by the learned first appellate Court and asked to point out any contrary evidence in favour of the appellant, learned counsel for the appellant had no answer and rightly so, it being a matter of record. Further, defendant-appellant had an opportunity to file his counter-claim, in case he was intending to raise any other claim over the land in question, however, he did not do so, for the reasons best known to him. In fact, once the defendant-appellant stopped performing the religious duties assigned to him by the village community and started gambling and drinking at the religious place, his services as Sewadar/Bhagat of Guga Mari were rightly removed, revoking the licence. Under these undisputed circumstances of the case, 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. 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 since no illegality and perversity has been found in the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. The 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

12.09.2017
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No