

**RSA No.4408 of 2017 (O&M) and
other connected appeals**

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

**RSA No.4408 of 2017 (O&M) and
other connected appeals
Date of Order: 5th December, 2017**

Sehdev Kumar and others

..Appellants

Versus

Grant Sahib Dera Devi Talab, Shahabad and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V.K.Jain, Sr. Advocate, with
Mr. Ravi Kadian, Advocate,
for the appellants.

Mr. Amit Jain, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

By this judgment, Regular Second Appeal Nos.3642, 3643 and 3661 of 2004 and Regular Second Appeal No.4408 of 2017 are being disposed of.

Dispute in the present case is with regard to validity of lease deeds executed by one late Sh. Harbhajan Dass as “Khidhmatgujar” (Obedient servant) of Dera Granth Sahib Dera Devi Talab, which is a religious institution, for a period of 99 years. These lease deeds were challenged by the plaintiff i.e. the religious institution on various grounds.

Both the Courts after appreciating the evidence available on the file decreed the suit filed by the plaintiffs. Hence defendants are in appeal.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and record of the case.

Learned counsel for the appellants has submitted as under:-

- (1) The permission granted by the trial Court while entertaining the suit under Section 92 of the Code of Civil Procedure was illegal;
- (2) Will-a testamentary document in favour of Taran Dass is not proved in accordance with Section 63(1)(c) of the Indian Succession Act, 1925 and, therefore, Mahant Taran Dass is not proved to be Mahant of the plaintiff-Dera;
- (3) Tenants have raised construction after getting the property on the lease and therefore, their rights cannot be prejudiced;
- (4) The suit filed by the plaintiffs is barred by limitation as lease deeds were in the knowledge of the plaintiffs and Article 59 of the Schedule to the Limitation Act provides for limitation of 3 years from the date cause of action first accrues;
- (5) The petitioners are tenants holding over and therefore, suit for possession was not maintainable.

On the other hand, learned counsel for the respondents has submitted that both the Courts have found that the lease deeds were executed by late Sh. Harbhajan Dass who had no authority to execute the lease deeds on behalf of the religious institution. He has further submitted that lease deeds for a period of 99 years amounts to permanent alienation of religious property which is not ordinarily permissible. He has further submitted that once the lease deeds were executed by unauthorised person,

therefore, the lease deeds were void-ab-intio and not required to be challenged. He has submitted that the suit filed by the plaintiffs is for possession and the alleged lease deeds can be ignored by the Courts as these were *void-ab initio*.

FINDINGS

With regard to first argument of learned counsel, it is relevant to note here that suits under Section 92 of the Code of Civil Procedure deals with certain specific reliefs. In the present case, plaintiffs had filed a suit claiming possession of the property on the ground that one “Khidhmatgajar” has acted against the interest of the religious institution and failed to take action to safeguard its interest. In the considered opinion of this Court, the suit filed by a religious institution for a declaration of its title to the property and for possession of the same from the defendants who are in possession thereof under a void lease deeds is not one of the relief found under Section 92 of the Code of Civil Procedure. Such a suit would fall outside the scope of Section 92 of the Code of Civil Procedure. Reference in this regard can be made to the judgment passed by the Hon'ble supreme Court reported as **Bishwanath and another v. Sri Thakur Radha Ballabhji and others, AIR 1967 SC 1044**. Hon'ble Supreme Court has held as under:-

“(7) It is settled law that to invoke s. 92 of the Code of Civil Procedure, 3 conditions have to be satisfied, namely, (i) the trust is created for public purposes of a charitable or religious nature; (ii) there was a breach of trust or a direction of court is necessary in the administration of such a trust; and (iii) the relief claimed is one or other of the reliefs enumerated therein. If any

of the 3 conditions is not satisfied, the suit falls outside the scope of the said section. A suit by an idol for a declaration of its title to property and for possession of the same from the defendant, who is in possession thereof under a void alienation, is not one of the reliefs found in S. 92 of the Code of Civil Procedure. That a suit for declaration that a property belongs to a trust is held to fall outside the scope of S. 92 of the Code of Civil Procedure by the Privy Council in Abdul Rahim v. Aby Mahomed Barkat Ali, 55, Ind App 96: (AIR 1928 PC16) and by this Court in Pragdasji Guru Bhagwandasji v. Ishwarlalbhai Narsibhai, 1952 SCR 513; (AIR 1952 SC 143), on the ground that a relief for declaration is not one of the reliefs enumerated in S. 92 of the Code of Civil Procedure. So too, for, the same reason a suit for a declaration that certain properties belong to a trust and for possession thereof from the alienee has also been held to be not covered by the provisions of S. 92 of the Code of Civil Procedure: See Mukhda Mannudas Bairagi v. Chagan Kisan Bhawasar, ILR (1957) Bom 809; (AIR 1959 Bom 491). Other decisions have reached the same result on a different ground, namely, that such a suit is one for the enforcement of a private right. It was held that a suit by an idol as, a juristic person against persons who interfered unlawfully with the property of the idol was a suit for enforcement of its private right

and was, therefore, not a suit to which s. 92 of the code of Civil Procedure applied: See (Darshon Lal v. Shibji MaharaJ Birajman, ILR 45 All 215: (AIR 1923 All 120); and Madhavrao Anandrao Raste v. Shri Omkareshvar Ghat, 31 Bom LR 192; (AIR 1929 Bom 153). The present suit is filed by the idol for possession of its property from the person who is in illegal possession thereof and, therefore, it is a suit by the idol to enforce its private right. The suit also is for. a declaration of the plaintiffs title and for possession thereof and is, therefore, not a suit for one of the reliefs mentioned in S. 92 of the Code of Civil Procedure. In either view, this is a suit outside the purview of S. 92 of the said Code and, therefore, the said section is not it bar to its maintainability.”

In view thereof, the suits are found to be outside the purview of Section 92 of Civil Procedure Code and hence the contention of learned counsel for the appellants is not required to be further dealt with.

Next submission of learned counsel is that the Will in favour of Mahant Taran Dass through whom the suit was filed.

In this regard, it is sufficient to note that the Civil Suit No.651 of 2000 was filed by three plaintiffs i.e., religious institution, Mahant Taran Dass and Shiv Kumar, who claims to be a worshiper of the religious institution. The suit can solely be maintained by a worshiper who is interested in the welfare of the religious institution. The Will in favour of Mahant Taran Dass was not the issue before the Courts below. In this case, the Court has not granted any declaration that Mahant Taran Dass is the

Mahant of the Dera.

Next argument of learned counsel for the appellants is that the appellants have raised construction and their interest cannot be prejudiced.

I have considered the submission of learned counsel for the appellants.

The appellants had taken on lease the property of a religious institution. The lease was for a period of 99 years, which is in the nature of a permanent alienation.

Still further the lease deeds were executed from 1980 onwards till 1989. The appellants have already enjoyed the possession of the premises for approximately 35 years. Once the lease deeds itself are void ab initio, the appellants cannot claim any equity in their favour.

Next argument of learned counsel for the appellants is that the suit filed by the plaintiffs was barred by limitation.

Learned counsel has referred to Article 59 of the Schedule attached to the Limitation Act, 1963. In the considered opinion of this Court, Article 59 would have no application in the facts and circumstances of the present case for two reasons; (i) there is a concurrent findings of fact arrived at by the Courts below that late Sh. Harbhajan Dass, the alleged executant had no authority to execute these lease deeds. Such finding of fact has not challenged before me. Once late Sh. Harbhajan Dass was having no authority and he was not a Mahant of the religious institution, the lease deeds executed by him are void ab initio; (2) the plaintiffs have filed a suit for possession. Such suit filed by the plaintiffs cannot be held to be barred by time. It has been held by the Hon'ble Supreme Court that such religious institutions are to be treated as a minor as they are not able to

manage the property themselves and they have to act through their manager or Mahant but such Managers have limitations under which they have to act. Reference in this regard can be made to the judgment passed by the Hon'ble Supreme Court reported as *Shiromani Gurudwara Prabandhak Committee v. Som Nath Dass, 2000(2) RCR(Civil)* Paragraph 12 of the judgment can be extracted for reference:-

“12. Thus, it is well settled and confirmed by the authorities on jurisprudence and courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living, inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor

cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for charitable purpose it can create institutions like a church, hospital, gurudwara etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such.”

In view thereof, once late Sh. Harbhajan Dass was not even the Manager/Mahant of the Dera, then any document executed by him would be deemed to be void ab initio and nullity.

Last submission of learned counsel for the appellants is that the appellants are tenants holding over and therefore, suit for possession is not maintainable. However, the argument of learned counsel for the appellants has no force because of the fact that once the document under which the appellants claims themselves to be tenants has been held to be void ab

initio, the possession of the appellants cannot be accepted as a tenant holding overs. The possession of the appellants is unauthorised and, therefore, the suit for possession is maintainable.

In view of the above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

The regular second appeals are dismissed.

C.M.No.13805-C-2017

This application stands disposed of in terms of the judgment referred to above.

C.M.No.11471-C-2017

This application is for condonation of delay of 4789 days in filing the appeal.

In view of the detailed judgment passed above, no separate order in this application is required.

The application stands disposed of accordingly.

**5th December, 2017
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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No