

CR No.6708 of 2014 (O&M)

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

CR No.6708 of 2014 (O&M)

Date of decision:06.04.2018

Mahant Surjit Singh Chela Baba Mahant Ram Singh ... Petitioner

Vs.

Baba Gandha Singh Education Trust and others ... Respondents

CR No.2318 of 2016 (O&M)

Narpinder Singh Dhillon ... Petitioner

Vs.

Baba Gandha Singh Education Trust and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Bahl, Senior Advocate with
Mr. Sapan Dhir, Advocate
Ms. Balpreet Sidhu, Advocate
Mr. Arun Jindal, Advocate and
Ms. Aarzoo B. Grewal, Advocate
for the petitioner.

Mr. Binat Sharma, Advocate, for
Mr. P.S.Mattewal, Advocate
for respondents No.1, 4 and 5 in CR No.6708 of 2014.

Mr. Tushar Sharma, Advocate
for respondent No.2.

Mr. M.S.Virk, Advocate
for respondents No.6 and 7.

AMIT RAWAL J.

This order of mine shall dispose of two revision petitions bearing Nos.6708 of 2014 and 2318 of 2016.

Civil Revision bearing No.6708 of 2014 (hereinafter called “first revision petition”) has been preferred against the order dated 16.08.2014 passed by the Civil Judge (Senior Division) Barnala, in a Civil Suit No.841 dated 07.08.2007, whereby, an application under Order 1 Rule 10 of Code of Civil Procedure (hereinafter called “CPC”) filed by the petitioner to be arrayed as defendant, was dismissed and Civil Revision bearing No.2318 of 2016 (hereinafter called “second revision petition”) has been preferred by petitioner-defendant No.2- Narpinder Singh Dhillon against the order dated 29.02.2016 (Annexure P-1) in a Civil Suit No.841 dated 7.8.2007, whereby, an application under Order 1 Rule 10(2) read with Section 151 CPC for striking out name of plaintiff no.1 and for arraying it as defendant No.6, was declined .

Both the aforementioned orders were passed in the applications submitted in Civil Suit No.841 dated 7.8.2007. The civil suit aforementioned with the following 'Memo of Parties':-

- “1. Baba Gandha Singh Education Trust Regd., Barnala through its Chairman cum Managing Trustee Mahant Piara Singh Chela Late Mahant Gurbachan Singh Chela Mahant Raghbir Singh, Mohatmim Dera Baba Gandha Singh, Barnala.*
- 2. Mahant Piara Singh Chela late Mahant Gurbachan Singh Chela Mahant Raghbir Singh, Mohatmim Dera Baba*

*Gandha Singh, Barnala and Chairman cum Manaing Trustee
Baba Gandha Singh Education Trust Regd., Barnala.*

.....Plaintiffs

Versus

- 1. Baba Tek Singh Chela Mahant Jagat Singh, Gurudwara
Gurusar, Dhanaula, Tehsil and District Barnala;*
- 2. Narpinder Singh Dhillon son of Baldev Singh Former
Principal of Baba Gandha Singh Public School, Barnala;*
- 3. Mahant Hakam Singh Chela Mahant Zora Singh, Dera
Jhir (Gandha Singh Wala), Tehsil Dhuri, District Sangrur.*

....Defendants

was filed by the plaintiff Mahant Piara Singh to the effect that he was the Chairman-cum-Managing Trustee of the plaintiff Trust i.e. Baba Gandha Singh Education Trust Regd. Barnala by challenging the resignation letter dated 30.04.2007 being false, fabricated and forged document and not binding upon the rights of the plaintiffs as Mahant Piara Singh was managing and controlling all the affairs of plaintiff-Trust regarding management, finances and all the properties of all the Institutions having schools situated at two different places in Punjab.

It was averred that Trust is a public charitable trust created by late Mahant Gurbachan Singh Chela Mehant Raghbir Singh, the then Mohatmim of Dera Baba Gandha Singh, Barnala of Nirmala Bheikh by executing a registered Instrument Deed dated 01.02.1999 which was registered on 04.02.199. The Trust was created qua the property owned by

Dera Baba Gandha Singh (hereinafter called “Dera”) to perpetuate the memory of late Baba Gandha Singh Ji, who was very pious and widely respected person. As per the trust deed, plaintiff- Piara Singh was the Life Member of Trust and Mahant Gurbachan Singh was the Chairman-cum-Managing Trustee and was also person and President of Board of the Trust. Every Mohatmim of Dera was the Chairman-cum-Managing Trustee of the Trust and Patron and President of the Board on the plaintiff Trust. After the demise of Mahant Gurbachan Singh Ji on 10.02.1999, plaintiff Mahant Piara Singh became the Mohatmim of Dera in place of Mahant Gurbachan Singh Ji and as such also became the Chairman-cum-Managing Trustee of the plaintiff Trust and since then, Mahant Piara Singh had been performing the duties and working as Chairman-cum-Managing Trustee of the plaintiff Trust.

Defendants No.1 and 2 were also the trustee of the Trust. Defendant Narpinder Singh had also been serving as Principal of Baba Gandha Singh Public School at Barnala and indulged into illegal activities. In order to avoid disciplinary action, they submitted their resignation and were removed from the membership of the Trust on 03.01.2006. Since their removal from the membership of the plaintiff Trust, defendants No.1 and 2 had been nursing grudge against Mahant Piara Singh and managed to involve defendant Hakam Singh in their conspiracy for forging the letter dated 30.04.2007 purporting it to be resignation letter of Mahant Piara Singh. Under the garb of resignation letter, the defendants started claiming that defendant Tek Singh was elected as Chairman of the Trust, whereas,

Tekh Singh had no concern at all with Dera and even with Nirmala Bheikh. Even he was not a member of Trust after 03.01.2006. In order to accomplish the aforementioned conspiracy, the defendants had been trying to interfere in the affairs of the Trust, necessitating the plaintiff to institute the suit.

The suit was contested by defendant no.1 challenging the locus standi of plaintiff no.2-Piara Singh to file the suit on the premise that he was neither the Manager of Dera nor Chairman-cum-Managing Director. Piara Singh illegally claimed himself to be Manager of Dera. The suit was not maintainable as it was found that Mahant Piara Singh resigned on 30.04.2007. On merit, it was stated that after the demise of Mahant Gurbachan Singh on 10.02.1999, petitioner-Mahant Surjit Singh (disciple of Manant Ram Singh) had become the Manager of Dera. On receipt of resignation of plaintiff no.2, Secretary Sher Jang Singh Chahal convened the emergency meeting of trustees of Trust. Even intimation in this regard was sent to plaintiff no.2-Piara Singh and various other persons. The aforementioned meeting took place on 04.05.2007 at 5.00 p.m in the office of Baba Gandha Educational Trust in which Baba Tek Singh, Mahant Hakam Singh, Sher Jang Singh Chahal, Narpinder Singh and Joginder Kaur Tohra Trustees were present. In the said meeting, resignation of plaintiff no.2-Piara Singh, was accepted.

Mr. Vikas Bahl, learned Senior counsel assisted by Mr. Sapan Dhir, Advocate appearing on behalf of the petitioner submitted that in the year 1974, one Mahant Bhan Singh was Mohatmim of Dera and upon his death, Mahant Gurbachan Singh was appointed as Mohatmim Mahant of

Dera. There was a litigation between Nirmala Sect. and Shiromani Prabandhak Gurudawara Committee (for short “SGPC”) pertaining to the Dera pending before the Sikh Gurudwara Tribunal bearing Petition No.290 of 1963 for adjudication of the question as to whether Dera and its properties belonged to the SGPC or not which was decided in favour of the SGPC because of the statement given by Mohatmim Mahant Gurbachan Singh on 11.07.1975 which culminated into various litigation, i.e., FAO No.222 of 1975 pending admitted before this Court. Owing to aforementioned alleged mischievous activity of Gurbachan Singh, vide writing dated 05.10.1975 (Annexure P-1), he was removed from Mohatmim Mahantship of Dera and appointed one Mahant Ram Singh Chela Mahant Bhan Singh as Mohatmim Mahant of Dera Baba Gandha Singh.

He submitted that written statement filed by Tek Singh was also based upon the distorted facts. It is also a matter of fact that Mahant Ram Singh died in the year 1983. The petitioner Mahant Surjit Singh being Chela of Mohatmim Mahant Ram Singh was appointed as Mohatmim Mahant of Dera by Nirmala Bheikh/Sect which ultimately was scribed in the bahi vide writing dated 20.10.2000 (Annexure P-2).

In the year 1999, the Nirmala Sect/Bheikh decided to use the land/properties of Dera in question for helping the general public and with that aim in view, created a Charitable Trust in the name of “Dera Baba Gandha Singh Educational Trust, Barnala” and accordingly, Trust Deed dated 01.02.1999 (Annexure P-3) was registered.

The Dera owned land measuring 157 kanals 16 marlas apart from the school and buildings constructed thereon. As per the terms and conditions of the Trust Deed, i.e., para 3(a)(b), Mohatmim of Dera Baba Gandha Singh shall be the Chairman-cum-Managing Trustee. On 01.02.1999, Gurbachan Singh himself acted as Mohatmim of Dera. It was he who executed the Trust Deed by virtue of which the Trust was declared as Public Charitable Trust. In the Board of Trustees, Mahant Gurbachan Singh was shown as Trustee at Sr. No.1 being the author of Trust Deed and under para 3(c) of the Trust Deed, Mahant Gurbachan Singh was said to be a life member. Gurbachan Singh did not relinquish his charge as Mahant/Mohatmim of Dera upto 11.02.1999 and he as a Mahant gave land to the Trust. He was author of the Trust Deed in the capacity of Mahant/Mohatmim despite the fact that he had already been removed from Mohatmim Mahantship. Piara Singh/plaintiff/respondent no.2 thus ceased to be Mohatmim Mahant.

After demise of Gurbachan Singh on 11.02.1999, plaintiff/respondent no.2 Piara Singh started claiming himself to be Mohatmim Mahant and used filthy languages against the Head Mahants of the Nirmala Sect and in this process, illegally created a resolution of the Trust and indulged into malpractice and mischievous acts against the Trust for which action was taken against him by Nirmala Bheikh/Sect but in order to save himself, he submitted a resignation letter dated 30.4.2007 which accepted in the resolution dated 04.05.2007 [Annexure P-4 (colly)].

It is settled law that as far as religious institutions are concerned, Bheikh (Sects) appoints Mohatmims through proper gathering of almost all the Nirmals, Sadhus etc. Plaintiff/respondent No.2 claimed himself to be Chairman of the Trust on 15.05.2007 filed a CRM-M-31566 of 2007 before this Court claiming himself to be Mahant of Dera for protection of his life and liberty as his resignation was forged and fabricated. This Court, vide order dated 17.05.2007, dismissed the aforementioned petition but in the same fashion, he also preferred CWP No.8114 of 15.05.2007 claiming identical direction to the police authorities to protect his life and liberty.

During the pendency of the said writ petition, respondent no.2 also filed civil suit aforementioned, i.e. 841 dated 7.8.2007 against some of the trustees before the Civil Court, Barnala by incorporating the Trust as a plaintiff and posing himself to be Chairman of the Trust.

Since the petitioner was appointed as Mohatmim Mahant of Dera, he had every right to manage and control the said Dera but respondent no.2 objected to the peaceful working of the petitioner being Mohatmim Mahant of Dera and hotly opposed the litigation for sanctioning mutations of all the Dera properties in the name of petitioner before the revenue authorities, the petitioner had to file a civil suit no.437 dated 16.10.2006 but since the revenue authorities upto the level of Financial Commissioner, Punjab had mutated all the Dera properties in the name of petitioner being Mohatmim Mahant of Dera Baba Gandha Singh, as per the orders dated 06.01.2004, 24.08.2005 and 13.05.2008 [Annexure P-7 (collectively)] and

copy of the plaint dated 16.10.2006 and order dated 21.10.2010 [Annexure P-8 (collectively)].

In the meantime, aforementioned writ petition was withdrawn vide order dated 10.12.2013. Despite the dismissal of the writ petition, plaintiff no.2, filed two civil miscellaneous applications bearing Nos. 17829 and 17848 of 2013 in CWP No.8114 of 2007 seeking recalling of the order and impleadment under Order 1 Rule 10 CPC as co-petitioner in the said writ petition, wherein the notice was issued, vide order dated 16.12.2013. In the meantime, petitioner who was the actual Mohatmim Mahant of Dera as well as Chairman of Baba Gandha Singh Educational Trust also filed a C.M.No.1424 of 2014 dated 30.01.2014 (Annexure P-9) for his impleadment as party respondent. This Court, vide order dated 21.03.2014 (Annexure P-10) disposed of all the applications by relegating all the parties including the petitioner to the Civil Court for moving application in the instant civil suit no.841 dated 07.08.2007. It is in this background, the petitioner moved the application dated 13.03.2014 (Annexure P-11) under Order 1 Rule 10 CPC before the trial Court and the same was contested by filing a reply dated 28.05.2014 (Annexure P-12). However, the trial Court dismissed the application without commenting upon whether the petitioner was a proper and necessary party, therefore, the impugned order is not sustainable in the eyes of law. In order to challenge the aforementioned order, he raised the following submissions:-

- i) Plaintiff/respondent No.2 did not have any record to show his alleged appointment as Mohatmim Mahant of Dera,

whereas, petitioner/applicant has ample evidence to show that he had been appointed as Mohatmim Mahant of Dera by Bheikh through proper rituals and ceremonies.

ii) The Trust Deed clearly revealed that Chairman of the Trust can only be the same person, who is the Mohatmim Mahant of Dera and in case of Mahant of Dera dies without appointing any Mohatmim during his life, the Mohatmimship of the said Dera can only be given by Bheikh.

iii) Respondent/plaintiff no.2 could not claim Chairmanship of Trust as Trust Deed dated 01.02.1999 reflected that till 01.02.1999, he was only a Chela of Mahant Gurbachan Singh. "Chela" and "Mahant" are two distinct entities. 'Chela' is a disciple, learner, pupil, follower and apprentice, whereas, 'Mahant, is who have the services of 'Chela'. Mahant is elected and appointed by Bheikh (Sect) in accordance with customs governing the institution.

iv) The petitioner was duly appointed as Mohatmim Mahant of Dera in question by Nirmala Sect. and there are large number of litigation with regard to the mutation of Dera properties which also reached from the low level of revenue authorities upto the level of Financial Commissioner, Punjab and in all those proceedings, it was specifically held that petitioner was the only Mohatmim Mahant of Dera in question.

v) The suit was filed by the plaintiff/respondent no.2

claiming himself to be Chairman of Trust. He had also filed CWP No.8114 of 2007 and this Court, vide order dated 21.03.2014, granted liberty to both petitioner as well as respondent no.2 to assert/claim their rights over the Trust before the Civil Court in the pending suit so, at the back of the petitioner, suit filed by respondent no.2 branding himself to be Mahant and Manager of Trust, could not proceed and independent suit will result into multifariousness of litigation.

vi) The reason assigned by the trial Court is that civil suit filed by the petitioner bearing No. 437 dated 16.10.2006 was dismissed in default on 21.10.2010 and another civil suit at Patiala was withdrawn on 04.10.2012 but fact of the matter is that instant suit was filed in the year 2007, whereas, the application for impleadment was moved in the year 2014, therefore, the reasons are not plausible but totally baseless.

For the purpose of seeking impleadment, there must be right to claim some relief against other party in respect of the controversy involved in the proceedings or effective decree can be passed. In support of his contention, relied upon the judgments rendered by the Supreme Court of India in **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. And others 2013(2) RCR (Civi) 875** and of this Court in **Nitin Goyal Vs. Ramesh Aggarwal and others 2017(1) PLR 68**. The rule of dominus litus is not an absolute rule as facts and circumstances of each and every

case had to be seen whether the person sought to be impleaded is a necessary or proper party and in this regard, reliance has been placed upon the judgment rendered by this Court in **Smt. Vidya Devi Vs. Shruti Choudhary and others 2009(5) RCR (Civil) 751**. Since the petitioner had a direct interest in the litigation, he cannot be prevented from coming on record not to safeguard his interest but the interest of Dera, therefore, would be a proper party. The basic purpose under law is interest of justice. If the Court is convinced that in the interest of justice, the party is required to be impleaded, technical stand would not be allowed to come in his way.

He further submitted that the Deputy Commissioner had passed the order dated 06.01.2004 (Annexure P-7) ordering the mutation in favour of the petitioner. FAO aforementioned was decided on 23.02.2017 holding it to be property of SGPC and Special Leave Petition was filed which is pending adjudication. The appeal was allowed and the order of Tribunal was rejected.

In the aforementioned FAO, two civil miscellaneous applications, i.e.C.M.No.6572-CII of 2017 by Piara Singh/plaintiff no.2 and C.M.No.6352-CII of 2017 by Surjit Singh were moved for correction of 'Memo of Parties' in the appeal and in the said applications, this Court, vide order dated 7.4.2017, after noticing the contention, much less the meeting dated 05.10.1975 of Nirmala Bheikh held that there was sufficient material to indicate the claim of applicant/petitioner-Surjit Singh as conduct of Gurbachan Singh in alienating the land in favour of SGPC was castigated

and was removed from the affairs of Dera which was duly approved in the order dated 18.10.1976 passed by this Court and in view of that finding, the application of the petitioner was allowed. The application for being legitimate of Dera had been accepted by ordering the correction in the Memo of Parties. Though the SGPC preferred an SLP bearing No.12936 of 2017 and vide order dated 01.05.2017, while issuing notice of motion status quo as it exists today was ordered to be maintained by the parties and thus, urged this Court for setting aside the order under challenge.

He also drew the attention of this Court to the order dated 22.09.2000 (Annexure P-16), whereby the appeal preferred against the judgment and decree dated 26.04.1997 by SGPC through Manager of Dera against Mahant Surjit Singh, was dismissed by the Lower Appellate Court.

Per contra, Mr. Tushar Sharma, learned counsel appearing on behalf of respondent No.2/plaintiff submitted that no person can be foisted upon until and unless he has deep and pervasive interest in the outcome or pending litigation. Surjit Singh had already availed the remedy as one suit had already been dismissed in default and another had been withdrawn and therefore, in order to circumvent that order, with malafide intention moved the application. Mahant Gurbachan Singh was the author of Trust Deed dated 01.02.1999. He died on 10.02.1999, whereas, Piara Singh on 20.03.1995 was appointed as Chairman till April, 2017 when defendant no.2 in the suit managed to forged a resignation letter. However, it was not Surjit Singh/applicant-petitioner, who was appointed as Chairman but Baba Tek Singh.

He drew the attention of this Court to the resolution dated 04.05.2007 to buttress his argument that plaintiff no.2-Piara Singh was appointed as Chairman of the Trust and on his resignation, it was Tek Singh who managed to appoint Surjit Singh Chela of Mahant Ram Singh Dera but the petitioner while making the submissions had lost sight of the fact that resignation of respondent no.2-Piara Singh was stage managed. The suit was not filed for claiming declaration with regard to properties of the Trust but its personal dispute between the Trust and plaintiff no.2, for, it is a resignation letter which was challenged. The possession is not with Surjit Singh which is evident from the order dated 18.10.1976 (Annexure P-13), wherein possession had been sought. The aforementioned suit was withdrawn and second suit claiming Chairman was dismissed in default, vide order dated 21.10.2010, Annexure P-8 .

In the civil suit filed by the petitioner-Surjit Singh which was dismissed in default, it was categorically pleaded in paragraph 20 that name of respondent No.2 -Piara Singh and defendant no.1 in the aforementioned suit was wrongly entered in the record of Trust as Chairman-cum-Managing Trustee and Patron but it was Surjit Singh who continuously remained the Chairman cum Managing Trustee and Patron and President of the Board of plaintiff no.1.

The application (Annexure P-1) filed under Order 1 Rule 10 CPC seeking impleadment is bereft of any explanation as to when the petitioner became the Chairman. If at all, the petitioner had any grouse, he had an independent cause of action but not in the manner and mode as

sought to be projected. There is already a status quo order dated 09.05.2017 passed by the Supreme Court of India. Attention of this Court was drawn to the written statement filed by Baba Tek Singh from where it was pleaded that there was an apparent collusion of defendant no.2 with petitioner by ousting plaintiff/respondent no.2. In fact, Ram Singh was claiming the said property to be personal property. However, the Tribunal, vide decision dated 11.10.1977 held otherwise. The interest of Ram Singh was adverse to the interest of Dera, though the petitioner had been claiming himself to be Chela of Ram Singh but now claimed the interest in the property. The order of the Tribunal was challenged by Ram Singh in FAO No.25 of 1978 wherein the petitioner had moved an application for impleadment as party in the said appeal being Chela of Ram Singh. It cannot remain oblivious of the fact that the petitioner wanted to step into shoes of a person whose interest in the property was adverse to Dera and at the same time, he was claiming himself to be Mahant of Dera, therefore, he was not a proper and necessary party. His application before the Land Acquisition Tribunal for disbursement of compensation owing to acquisition of land of Dera was also dismissed as no documentary evidence was placed on record prima facie to establish that he was Mahant of Dera, whereas Mahant Piara Singh/plaintiff no.2 was held entitled to receive the compensation on behalf of Dera. The said award was challenged by only SGPC and not by the petitioner. The resolution of Bheikh established that plaintiff/respondent no.2 was appointed as Mahant of Dera which completely demolished the case of petitioner that plaintiff no.2 was never appointed as Mahant of Dera.

In support of his contention, relied upon paragraphs 13 to 17 of the judgments rendered by the Supreme Court of India in **Kasturi Vs. Iyyamperumal and others 2005(6) Supreme Court Cases 733**; paragraphs 13, 14, 15, 16, 18 and 22 to 25 of **Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and others 2010(7) Supreme Court Cases 417** and paragraphs 16, 17 and 18 of **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others 1992(2) Supreme Court Cases 524** to contend that a person sought to be impleaded as proper and necessary party must have a direct or legal interest in the litigation, in other words, he submitted that a person who claimed independent title, the possession adversely through title of the vendor, would not be necessary party as effective decree can be passed in his absence. It is discretion of the Court to add parties or delete. As per the principle of *dominus litis*, the plaintiff may choose defendants and he cannot be compelled to sue a person against whom no relief had been sought and thus, urged this Court for dismissal of the revision petition.

In C.R.No.2318 of 2016, petitioner-defendant Narpinder Singh in the aforementioned suit preferred by Piara Singh/plaintiff no.2 submitted an application dated 18.02.2015 (Annexure P-4) under Order 1 Rule 10 (2) CPC on the premise that main claim of plaintiff no.2-Piara Singh was to the resignation dated 30.04.2007 to be forged and fabricated document being illegal, null and void and whereas, specific stand of the Trust and

defendants had been that Piara Singh was no more Chairman of the Trust as he had already resigned and therefore, Educational Trust cannot be arrayed as plaintiff together and thus, name of the Trust may be ordered to be struck out from the array of parties and transpose as defendant. The aforementioned application was contested by plaintiff no.2 by filing a reply (Annexure P-5) on the ground that application was not maintainable and the Trust has no such stand in the present case as mentioned in the application. The application was filed just to cause delay in adjudication of the suit, for, even though issues had already been framed.

Mr. Vikas Bahl, learned Senior counsel assisted by Mr. Sapan Dhir, Advocate appearing on behalf of the petitioner submitted that from the perusal of Memo of Parties extracted above, it appeared that Mahant Piara Singh had attempted to sue the defendants in two ways; one in personal capacity as Mahant Piara Singh/plaintiff no.2 and secondly arrayed Baba Singh Educational Trust as plaintiff no.1, whereas, as per the provisions of Order 1 Rule 1 CPC, any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative and if such persons brought separate suits, any common question of law or fact would arise. Since the relief of declaration had been sought by Piara Singh to the effect that he was entitled to the office of Chairman which was being signed by himself, whereas defendants were in the management and control of Trust, therefore, he cannot espouse the relief on behalf of the Trust as his

grievance in the suit is personal. The Trust is not legal entity in the eyes of law nor Corporation. The Trust cannot be sued as per the definition of Section 3 of Indian Trust Act, thus, for all intents and purposes, Mahant Piara Singh cannot be permitted to act as an agent of the Trust as he is claiming interest against the Trust. It would be totally impermissible to permit Mahant Piara Singh to act as an authorized signatory or Chairman or agent of Trust in the array of parties. The relief of declaration is governed by Section 34 of Specific Relief Act. It contemplates a person who is entitled to legal interest or right in property, is not a person but body and Trust only acts through trustees and therefore, Trust cannot function through one person exclusively. Even provisions of Section 48 of Indian Trust Act leave no manner of doubt that all the trustees must join in execution of the Trust which also apply to the Charitable Trust.

The aforementioned prayer of Mr.Bahl, has been opposed by Mr. Tushar Sharma, Advocate by adopting the similar arguments of first revision petition and thus, urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book, much less judgments above cited at bar and of the view that there is force and merit in the submissions of Mr. Bahl, for, the impugned order dated 16.08.2014 in the “First Revision” is bereft of any reasons as to whether the petitioner/applicant was a proper and necessary party. The entire thrust before the Court below was for adjudication of the application filed under Order 1 Rule 10 CPC but the Court has not even uttered a

whisper with regard to the expression “necessary and proper party”. The law on impleadment of necessary and property party is no longer res integra, in view of the ratio laid down by the Hon'ble Supreme Court in paragraph 22, 27 and 28 of **Thomson Press (India) Ltd**, wherein, while interpreting the provisions of Order 1 Rule 10 CPC, both the phrases “necessary” and “proper” party have been deliberated upon. It has been held that the Court at any stage of the proceedings either on an application by the parties or otherwise direct the impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit. A necessary party is the person who ought to be jointed as party to the suit and in whose absence an effective decree cannot be passed by the Court. A proper party is a person whose presence would enable this Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

The aforementioned principle directly apply to the facts and circumstances of the present case, for, the Division Bench of this Court, vide C.M.No.6352-CII-2017 moved by the petitioner after adjudication of the controversy in the following lines allowed to amend the memo of parties and held that there was sufficient material to indicate the claim of Mahant, for, Gurbachan Singh, whose conduct in alienating the land in favour of SGPC was castigated and in that regard, was removed from Dera approved

by this Court, vide order dated 18.10.1976 to be valid claim, for, Mahant Piara Singh had claimed his right against Gurbachan Singh on the basis of the Will, whereby predecessor in interest of petitioner, namely Ram Singh, whose Chela petitioner-Surjit Singh was appointed as Mahant in the ceremony of Bheikh held on 17.10.2017. For the sake of brevity, order dated 17.04.2017 reads as under:-

“C.M.No.6352-CII of 2017 has been filed by Mahant Surjit Singh for correction of Memo of Parties in the appeal which now stands disposed of. As against this, there is CM

No.6572-CII of 2017 moved by Mahant Piara Singh claiming that he was the successor to Mahant Gurbachan Singh on the basis of Will and also the Bhekh.

Learned counsel for the applicant (Mahant Surjit Singh) in CM No.6352-CII of 2017 has contended while asserting his own right that this amendment was carried out by the Hon'ble Supreme Court as well which is reflected from the order passed in Civil Appeal No.606 of 1982. It has further been averred that Mahant Gurbachan Singh's conduct came under scrutiny when he alienated some land in favour of Shiromani Gurdwara Prabandhak Committee virtually creating the ground for the present dispute. It is averred that this Court has now negated the action of Mahant Gurbachan Singh by holding that the property is not of Shiromani Gurdwara Prabandhak Committee and is of Dera Nirmala Sadhus. Learned counsel

for the said applicant also draws the attention of this Court to some earlier proceedings where this Court had the occasion to approve

the removal of Gurbachan Singh as Mahant. This fact is adequately noticed in the order passed by the revenue authorities in the proceedings under Section 26 of the Sikh Gurdwara Act which is extracted as under :-

“....On 5-10-1975 a meeting of the Nirmala Bhekh was held at Dera Baba Gandha Singh in village Harike Kalan Tehsil Mukatsar to the effect that present Mohant Gurbachan Singh of Dera Baba Gandha Singh is causing great damage to the Dera and the Bhekh and out of his greed, he has got the Dera declared as Gurudwara. After full consideration, it was decided in the interest of the Dera that Mohant Gurbachan Singh be removed from mohantship forthwith. In fact he be deemed to have been expelled from the Bhekh and the Dera with effect from 21-7-1975 because his misdeed of that day of trying to hand over the property of the Dera to the Gurdwara Committee was treacherous for the Bhekh and Dera. Subsequently, the Bhekh unanimously decided to appoint Sant Ram Singh chela of Mahant Bhan Singh as mohant of the Dera. This was rectified by the above

said congregation, sants mohants, faithfuls and Panchayats unanimously. Hon'ble Mr. Justice Gurnam Singh vide his order dated 18-10-1976, the appointment of mohant Ram Singh was held to be correct and removal of Gurbachan Singh was approved. Mohant Ram Singh died on 11-2-1983 and after his death mohant Surjit Singh was appointed Mohant of the Dera Baba Gandha Singh. Mohant Surjit Singh filed a suit No.680 of 18-11-1992 against SGPC and its Manager for permanent injunction that he is the mohant and SGPC should not demolish Samadh. This suit was decreed on 26-4-1997 by the Civil Judge (Junior Division) Barnala holding he has locus standi to bring the suit. The aforesaid decree dated 26-4-1997 was upheld by the Addl.Distt. Judge Barnala vide judgment dated 22-9-2000. Vide Resolution No.2 dated 20-10-2000 passed by Nirmala Bhekh that Nirmala Bhekh as a whole appreciates such efforts made by Mohant Surjit Singh in this regard and approved his Mohantship of the Dera.....”

Apart from asserting their own right to be impleaded as party-respondent this fact has been pressed into service to counter the application filed by Mahant Piara Singh who claims his right under Gurbachan Singh on the basis of Will and Bhekh. It

is contended that if Mahant Gurbachan Singh stood removed and the action approved as would be evident from the aforeextracted paragraph, applicant Mahant Piara Singh would have no surviving claim and would thus not be a necessary party at all.

Learned counsel appearing for Shiromani Gurdwara Prabanchak Committee contends that they would have no interest at least in this controversy raised in the applications.

After hearing the learned counsel for the parties, we are of the considered view that prima facie there is sufficient material to indicate the claim of Mahant Surjit Singh, while

Gurbachan Singh, whose conduct in alienating the land in favour of Shiromani Gurdwara Prabandhak Committee was castigated and was also removed from the affairs of the Dera duly approved by the order passed by Justice Gurnam Singh on 18.10.1976, to be a valid claim warranting acceptance of his application which is also fortified by another fact of filing civil suit for permanent injunction against the Shiromani Gurdwara Prabandhak Committee which was decreed and has attained finality as after the first appeal no other appeal was filed.

Accordingly, finding these pieces to be materially relevant to support the claim of applicant Surjit Singh as legitimate Mahant of the Dera, we would accept his application and order the correction of Memo of Parties.

The application moved by Mahant Piara Singh who has been unable to establish any claim of his being a Mahant with no interest in the dispute is, however, declined.”

The Deputy Commissioner, vide order dated 6.01.2004 (Annexure P-7) after noticing the objections of SGPC in a petition titled as SGPC vs. Mahant Gurbachan Singh, sanctioned the mutation of the property in favour of Mahant Surjit Singh. The decree passed by the Civil Judge (Junior Division), Barnala in favour of Surjit Singh was upheld by the Additional District Judge, Barnala, vide order dated 22.09.2000. The aforementioned order was assailed before the Divisional Commission, Patiala Division, Patiala and the said appeal was dismissed, vide order dated 24.08.2005. The second appeal was preferred before the Divisional Appeal S-I, Punjab Chandigarh but the same was also dismissed, vide order dated 13.05.2008. All these factors though would be subject matter of adjudication before the trial Court but for adjudication of the controversy in hand, it is to be seen as to “whether Surjit Singh would be proper and necessary party”, I am of the view that finding of the trial Court is not sustainable, for, it has not noticed all the aforementioned facts, i.e., the orders passed by this Court and as well as revenue Court orders ordering the mutation of the properties of Dera in favour of Surjit Singh.

It is also matter of record that Trust was only created by Gurbachan Singh on 01.02.1999. The things of past i.e., prior to Trust, is required to be looked into and cannot be ignored. The only reasoning assigned by the Civil Judge for non-suiting the applicant was that he did not

disclose about the dismissal of the suit in default and another civil suit which was dismissed as withdrawn on 04.10.2012 but did not address the main issue with regard to impleadment.

Be that as it may, plaintiff/respondent no.2 was claiming himself to be Mohatmim and as per the provisions of Trust Deed, Mohatmim has to be Chairman of the Trust and for that, evidence has to be led, where he was appointed by Nirmala Bheikh or Surjit Singh so the relief is not only confined to the resignation of Piara Singh but with regard to appointment of Mahant of Dera as well.

On the contrary, the petitioner has placed on record the decision of Bheikh, whereby, Mahant Ram Singh was appointed as Mohatmim and on his demise, Surjit Singh-petitioner was appointed as Mahant. The apprehension expressed in the present petition is that in the absence of petitioner, respondent/plaintiff no.2 would not succeed in obtaining the decree and fall out of that would have far reaching consequences and in order to prevent multifariousness of litigation, it would be in the fitness of things to allow the petitioner to be impleaded as defendant no.4. Since both the parties have raised issue as to whether Piara Singh was Chela or Mahant as there are two different persons and factum of Chela is also one of the off shoot for adjudication of the suit

There is no dispute to the ratio decidendi culled out in the judgment relied upon by Mr. Tushar Sharma with regard to decision rendered in Kasturi (supra), it was a case where in suit for specific performance, it was held that only parties to the contract or parties claiming

under them or a person who had purchased the contracted property from the vendor with or without notice of the contract, would have a right to be party but third party cannot claim. However as noticed above, the aforementioned law was matter of debate in Thomson Press (India) Ltd. (supra), wherein it was held that such party would be necessary and required to be impleaded. As per the facts emanated from the judgment rendered in Mumbai International Airport Private Limited (supra), it was a case where in a dispute between the Airport Authority and Regency Conventional Centre and others, a question raised whether a plaintiff can be compelled to implead a person against whom no relief had been sought but that was debated upon the touchstone of facts in that case, for, party sought to be impleaded was given a right for operation, maintenance, development and expansion. By noticing the aforementioned facts, though the Supreme Court, referred to expressions “necessary party” as to whether he could be joined as a party or in whose absence no effective decree could be passed, found that it is the discretion of the Court either to allow or reject the application of the person claiming himself to be a necessary party or proper party depending upon the facts and circumstances of the case, but there is a caveat that no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.

It would be apt to reproduce the guidelines laid down by the Supreme Court of India in Thomson Press (India) Ltd. (supra) which reads as under:-

“1. The Court can, at any stage of the proceedings, either on

an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the Suit.

2. A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.

5. In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.”

In my view, presence of the petitioner would enable the Court to completely, effectively and properly adjudicate upon all matters and issues that may not be in favour of or against whom a decree is to be made. Resultantly, the impugned order is set aside and revision petition No.6708

of 2014 is allowed. The applicant/petitioner is allowed to be impleaded as defendant no.4.

Coming to other revision petitioner, Memo of Parties extracted above would reveal that Piara Singh is not only trustee of Trust but there are other trustees and the suit was filed against other trustees and for that he cannot be permitted to implead plaintiff no.1 as a Trust whereas it should have been defendant, for, he is claiming to be Chairman and Manager of the Trust by virtue of his appointment as Mahant, in view of Clause 3(b) of Trust Deed which reads as under:-

“3(b) Secretary Dera Baba Gandha Singh shall be the Chairman cum Manager Trustee while the Principal Baba Gandha Singh Public School, Barnala (Ex.Officio) shall be Secretary/Treasurer/Custodian, Shri Parminder Singh Bhathal, Advocate, Barnala will be Legal Adviser at Barnala.”

The trial Court, in my view, has committed fallacy in not noticing the aforementioned fact, as a person having an independent claim in individual capacity cannot array the Trust by treating it to be personal as Trust is consisting of number of trustees who have been named in paragraph 2 of the Trust Deed, whereas, Gurbachan Singh was one of the Mahants and name of Piara Singh at one point of time was written as Chela of Mahant Gurbachan Singh and by virtue of Chela, on demise, he was claiming to be Mahant of Dera by implication of provisions of Clause 3(b), in my view, the plaintiff cannot be permitted to espouse his grievance by impleading Baba Gandha Educational Trust as plaintiff no.1. The provisions of Order 1 Rule

1 CPC read as under:-

“1. Who may be joined as plaintiffs— All persons may be joined in one suit as plaintiffs where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.”

From the perusal of the aforementioned provisions, it is evident that Trust cannot be arrayed as plaintiff no.1 as plaintiff no.1 Piara Singh sought the relief with regard to removal as Chairman and Managing Director-cum Trustee. It is not his personal Trust but as noticed above, Trust consisted various trustees. The Court below has also not interpreted the provisions of Order 1 Rule 10(2) CPC which enable the Court to strike out the name of any party or add any party. For the sake of brevity, provisions of Order 1 Rule 10(2) CPC read thus:-

“(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence

before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

From the cumulative reading of the aforementioned reasoning of mine, prima facie I am of the view that impugned order is not sustainable and is hereby set aside. Revision petition No.2318 of 2016 stands allowed. Baba Gandha Singh Educational Trust is ordered to be struck out from the array of parties as plaintiff no.1.

Nothing observed herein above shall be construed as an expression of opinion on the merit and demerit of the suit pending adjudication before the trial Court.

(AMIT RAWAL)
JUDGE

April 06, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No