

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

105

CR No.8331 of 2014 (O & M)
Date of Decision:13.03.2018

Thakur Dwara Saroud through Lekh Ram and others ...Petitioners

Versus

Labh Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goyal, Advocate
for the petitioners.

Mr. S.D. Sharma, Senior Advocate with
Mr. K.R. Sharma, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.(Oral)

Decree-holder is in the revision petition against the order dated 04.10.2014 (Annexure P-6) passed by the learned Executing Court dismissing the execution petition. A decree for possession was filed by Thakur Dwara Saroud. The suit was filed by a religious institution i.e. Thakur Dwara Saroud through Jamna Dass claiming himself to be Mohtamim of the religious institution. Decree was passed by the learned trial Court, which was affirmed in appeal. Regular second appeal was dismissed as withdrawn. Hence, the decree became final. Jamna Dass died. His children on the basis of a Will were impleaded as LRs of Yamuna Dass. The execution petition was filed by Thakur Dwara Saroud, the religious institution through children of Jamna Dass. Objections were filed to the aforesaid execution on the ground that Mahantship cannot be willed away and the Mahantship can only be conferred through Bhekh. On the basis of these objections the learned Executing Court has dismissed the execution petition.

learned Executing Court was erroneous. The execution has been filed by a religious institution, which is a decree-holder i.e. Thakur Dwara Saroud. It is Thakur Dass Saroud, which is owner of the property. Since the religious institution cannot act on its own, it has to act through somebody.

In the present case, it has acted through the children of earlier Mahant. The learned Executing Court is to execute the decree. The Executing Court can neither keep the execution pending nor deny execution on the ground that the question “who is the Mahant”, has not been adjudicated upon. Judgment-debtors are not claiming to be a Mahant of the Dera. After the passing of the decree, the possession of the judgment-debtor is unauthorized. Lease deed in their favour has already been set aside. The aforesaid judgment setting aside the lease deed has become final between the parties.

Such being the position, learned Executing Court committed a material and serious irregularity in refusing to execute the decree. Dispute with regard to who is the Mahant of the religious institution would have to be decided in a separate proceeding. However, on that pretext the execution of the decree cannot be kept in abeyance.

In view thereof, the order under challenge is set aside.

On the previous date, the maintainability of the revision petition was objected but during the course of hearing today counsel for the parties are ad idem that the revision is maintainable.

Parties through their counsel directed to appear before the learned Executing Court on 04.04.2018.

13.03.2018
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(ANIL KSHETARPAL)
JUDGE