

422

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

**RSA-1085-1996 (O&M)
Date of decision : 02.04.2018**

State of Punjab and others

... Appellant(s)

Versus

Mahant Sadhu Ram and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Devki Anand Sullar, AAG, Punjab.

Mr. S.K. Singla, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellants-State of Punjab are aggrieved of the judgment and decree dated 26.09.1994, whereby the suit of respondents-plaintiffs for permanent injunction seeking restraint order against the appellants-defendants/State from interfering with their possession, management, administration and control of Dera Baba Ram Dass Ji, Chaura Wala, Chaura Tehsil Patiala, has been decreed by the trial Court and affirmed by the lower Appellate Court.

It would be apt to give preface of the matter before adverting to the rival contention of learned counsel for the parties.

The respondents-plaintiffs instituted the suit on the premise that Dera Baba Ram Dass Chaura Wala was a non-Sikh Samparda belonging to Udasi Bhaikh Sadhus as the suit property belonged to the Dera. Originally, Mahant Charan Dass was the Mohitmim of the Dera, who died on

30.08.1988. During his life time, he executed a registered Will dated 27.02.1986 and nominated his first Chela Sadhu Ram/plaintiff as his successor Mahant. The plaintiff was installed as Mahant of the Dera according to customs of Udasin Sampardai in the Congregation of Bhekh udasian on 16.09.1988 and mutation of succession was sanctioned. However, the defendants/State passed an erroneous order for freezing all the accounts of the Dera and order for attachment of the same, which was in utter abuse of the executive powers and without compliance of the principles of natural justice.

The aforementioned suit was contested by the defendants by raising various preliminary objections qua non-maintainability of the suit for want of notice under Section 80 of the Code of Civil Procedure. On merits, it was submitted that the appointment of Mohitmim was governed by Shahi Pharman dated 21.04.1921. The plaintiff had already applied for the appointment of Mohitmim of Mahant by the Government. The Mohitmim appointed by the Government was not empowered to execute a Will or nominate anyone as his successor. The defendants/State were competent to regulate the appointments of Mohimims.

On the basis of the pleadings of the parties, the trial Court framed the following issues:-

1. *Whether plaintiff No.1 has any right to file the present suit and he had been appointed as Mohitmim/Mahant of the plaintiff Dera as alleged, OPP*
2. *Whether notice u/s 80(1) C.P.C. is necessary and essential to be served on the defendants before filing of the present suit? OPD*
3. *Whether the plaintiff is entitled to the injunction prayed for?*

OPP

4. *Whether the State can interfere in the appointment of Mahant and management of Dera including the freezing of the accounts and appointment of supervisor as alleged?*

OPD

5. *Relief.*

The trial Court on the basis of the preponderance of evidence decreed the suit restraining the defendants/State from interfering with the possession, management, administration and control of Dera with a rider to the plaintiff shall not alienate the property of Dera for his personal use. The appeal preferred before the lower Appellate Court also met with the same fate.

Ms. Devki Anand Sullar, AAG, Punjab, appearing on behalf of the appellants-defendants/State submitted that the suit for possession was not maintainable, for, there was a specific pleading in the written statement that the defendant/State had no intention to take possession of the Dera, but it was submitted that the appointment of Mohitmim was governed by Shahi Pharman and the matter with regard to the decision of *Farman-i-shahi* had already been decided by the Division Bench of this Court in **“State of Punjab and others V/s Mahant Jatinder Dass Chela Mahant Narotam Dass, Mahant, Mandir Dun, Patiala” 2015 (3) RCR (Civil) 476** and the matter is subjudiced before the Hon'ble Supreme Court.

On merits, she submitted that Dera property could not be alienated by way of Will as there was no procedure for succession. Mahant was only appointed by Congregation of Bhekh udasian, thus, urges this Court for setting aside the concurrent findings, under challenge.

Mr. S.K. Singla, learned counsel appearing on behalf of the

respondents-plaintiffs submitted that the suit, aforementioned, was not for declaration, but for injunction. Once, the defendants had given the statement that they had no intention to take the possession of the property, it could not have attached the accounts. It is, in that backdrop of the matter, injunction was granted for not interfering with the possession, management, administration and control of Dera with the with a rider to the plaintiff not to alienate the property for his personal use, thus, urges this Court for upholding the concurrent findings of fact as the decision rendered in the judgment cited supra is not applicable to the facts and circumstances of the present case, for, no declaration on the basis of, Shahi Pharman, had been sought for appointment of Mohitmim.

I have heard the learned counsel for the parties, appraised the paper book as well as the records of the Courts below and of the view that there is no merit and force in the submissions of Ms. Sullar, for, the controversy involved in the present suit was not with regard to the declaration for appointment of Mohitmim as per Shahi Pharman, but for restraining the Deputy Commissioner and the Executive Magistrate not to interfere in the possession of the Dera as well as freezing of the accounts. Once the plaintiff had categorically given a statement that it had no intention to take the possession, the trial Court rightly decreed the suit. The issue of appointment of Mohitmim by Shahi Pharman has not been touched nor any such issue was framed, therefore, in my view, *ratio decidendi* culled in the judgment cited supra and the pendency of the matter before the Hon'ble Supreme Court would not come in the way of a person seeking injunction as found to be in long and settled possession. There would have been some force and merit in the submissions of Ms. Sullar, for, had the suit

been for declaration claiming appointment of mohitmim on the basis of the Shahi Pharman.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees rendered by both the Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination, accordingly the present regular second appeal is dismissed.

02.04.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No