IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **RSA No.2637 of 2006 (O&M)**
Date of Order:30th October, 2018

Dharamshala Loh-Langar Sudhar and Managing Committee, Badla

..Appellant

Versus

Pritam Dass (since deceased) through his LRs and others

..Respondents

(2) **RSA No.2638 of 2006 (O&M)**

Dharamshala Loh-Langar Sudhar and Managing Committee, Badla

..Appellant

Versus

Pritam Dass (since deceased) through his LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Garg, Advocate,
for the appellant.

Mr. Amit Jain, Advocate,
for respondents no.1 and 2.

Mr. N.K.Banka, DAG, Punjab.

ANIL KSHETARPAL, J.

By this judgment, Regular Second Appeal Nos.2637 and 2638 of 2008 shall stand disposed of as two suits filed by late Shri Pritam Dass, one for possession and second for permanent injunction were disposed by

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2018.11.12 14:42
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the learned trial court as well as by the learned first appellate court by consolidated judgments. The property in dispute in both the cases is common and by and large parties are also same. Counsels representing the parties are also agreed that these appeals can conveniently be disposed of by a common judgment.

Defendant no.1-appellant, a Managing Committee of a society is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, decreeing the suit filed by respondent no.1-plaintiff for possession as well as for permanent injunction. In the considered view of this court following substantial question of law arise for determination:-

> *"Whether a gift of property for construction of Dharamshala (place for shelter of religious tourists) along with the agricultural land for ensuring regular supply of the food for religious tourists coming to stay therein under the management of a particular Sadhu (religious man) results in gift in favour of the institution to which the aforesaid Sadhu belongs?"*

Some facts are required to be noticed.

FACTS

It may be noted here that defendant-respondent no.1(who has already died) filed two suits, one for possession and second for injunction with respect to land measuring 62 kanals and 17 marlas. There are three separate portions of the aforesaid land, one measuring 58 kanals 1 marla, recorded in the revenue record as Dharamshala Ba-Ihtmam (under the management of Sewa Dass Chela Kahan Dass, (ii) land measuring 3 kanals

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14 marals recorded under the owner ship of Sewa Dass Chela Kahan Dass (3) land recorded as "gair mumkin Samadh (burial place of a religious saint). Plaintiff claims that the aforesaid property belongs to Dera of Udasi Sadhus and he was appointed as General Power of Attorney by Mahant Sewa Dass on 31.03.1976 as Sewa Dass was not in a position to manage the property. Mahant Sewa Dass has expired and plaintiff being General Power of Attorney of Mahant Sewa Dass mortgaged the land measuring 58 kanals 1 marla to Gurmukh Singh. Ajaib Singh, father of Gurmukh Singh got mortgaged deed executed in favour of his son Gurmukh Singh for a consideration of Rs.35,000/-. Ajaib Singh put his signatures on the mortgage deed. Ajaib Singh also agreed to pay Rs.25,000/- as balance mortgage amount by 20.02.1987. After mortgaging the above property, Ajaib Singh paid Rs.21,000/- in small installments. The plaintiff got the land redeemed on payment of Rs.31,000/- to Ajaib Singh. Ajaib Singh was further paid a sum of Rs.1000/- as compensation for the crop and Rs. 2700/- was paid as expenses for installing a bore for drawing water. Receipt was obtained for the payment. Thereafter, plaintiff made improvement in the land and made it cultivable. Ajaib Singh also executed a lease deed in favour of plaintiff on 24.06.1984. Plaintiff -respondent claimed that the land belongs to Udasi Sect. and plaintiff has succeeded to the property on the basis of a registered will executed by Mahant Sewa Dass and thereafter plaintiff was appointed as Mahant in general meting of the Udasi Sect. It is claimed that defendants threatened to dispossess the plaintiff, forcing the plaintiff to file Civil Suit No.187 of 1988. However, the application for injunction was dismissed and the appeal filed by the plaintiff was also dismissed and in the meantime defendant forcibly and illegally took

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possession of the property.

On the other hand, defendant contested the suit and pleaded that land measuring 58 kanals and 1 marla is recorded as Dharamshala Ba Ihtmam by Mahant Sewa Dass Chela Kahan Dass. However, it has been submitted that land measuring 1 kanal 2 marla, which is under a gair mumkin Samadh is ownership of the Gram Panchayat. It is claimed that the Managing Committee is in possession of the aforesaid land. Ownership of land measuring 3 kanals 14 marals of Mahant Sewa Dass was not disputed. It was further claimed that the land in question belonged to 3 Pattis, namely, Patti Budh Singh, Patti Tek Singh and Patti Ajaib Singh and 1/4th share belong to Kapoor Singh, Nambardar, who had gifted the property in favour of Dharamshal so as to ensure regular availability of food to the tourists and this gift was made in favour of Dharamshala in the year 1912 and not in favour of any Udasi Sect. or a particular Mohatmim. Since, the Dharamshal was demolished in the year 1985 and debris of the entire building had been sold by the plaintiff, therefore, a Society i.e defendant-appellant was constituted by the proprietors of the aforesaid Pattis and hence, in possession and management of the aforesiad property.

It may be significant to note that land of Patti is a joint land of a particular community which normally isnot divisible, utilized for common purposes of the residents of that community or caste. Such type of land, if fulfill the requirement of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter referred to as the Act of 1961) vest in the Gram Panchayat, if it is proved that the land is being recorded and used for the benefit of the village community. However, in this case since before coming into force of Act of 1961 the land was used for religious purpose,

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2018.11.12 14:42
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hence it would not fell in the definition of "Shamilat Deh".

Since, fundamental dispute between the parties was stemming out from the oral gift in the year 1912 as recorded in revenue record Ex.D8 therefore, it was considered appropriate to get the aforesaid entry translated from a official translator attached to this Court, lest this court may not commit any mistake. The translation of the aforesaid mutation of the oral gift is extracted as under:-

> "*Sir,*
>
> *Sarv/Sh. Mukand Singh son of Narain Singh and Deva Singh, Mit Singh etc. owners have stated that they have gifted ¾ share of land in the name of Dharamshala to be managed by Garib Dass Chela Daya Ram. Whatsoever would be the produce from the land would be used through Garib Das for the expenditure to be incurred for the visitors. In case Garib Das would not serve food etc. to the visitors then the person whosoever would be nominated in his place, the expenditure would be incurred through him. As per statement of Narain Singh etc. the mutation regarding gift having been entered in mutation register, is submitted for favour of orders.*
>
> *Sd/- Chaanan Ram-Patwari in Urdu*
>
> *Seal of Deva Singh-Nambardar*
>
> *Seal of Mukand Singh-Nambardar*
>
> *Seal of Narain Singh-Nambardar*
>
> *On perusal of the documents the proposed mutation is correct.*

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2018.11.12 14:42
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Sd/- Kanugoo/07.02.12"

<u>In the presence of owners:</u>

Narain Singh, Mukand singh, Deva Singh-Nambardars and Didar Singh, Buta Singh, Puran Singh, Bir Singh, Sampuran Singh, Rur Singh, Nand Singh, Smt. Jai Kaur, Neta Singh, Dal Singh, Sohail Singh, Jatta Singh, Basant Singh, Kishan Singh, Harnam Singh identified by Narain Singh-Nambardar, Sammat Singh, Bir Singh, Mangal Singh, Lal Singh, Deva Singh, Mit Singh, Ishar Singh, Smt. Ind Kaur identified by Nambardars have verified the event regarding gift to the extent of ¾ share of the land in the name of Dharamshala and the management thereof has been entrusted to Garib Das Nath. During his lifetime he would serve the food to the visitors and after him the person taking over would manage the Dharmshala and would incur the expenditure in the manner Garib Dass was doing. Kapoor Singh Nambardar is owner of 1/4th share who has no objection and his 1/4th share would remain as before. The remaining owners have bequeathed their share in the name of Dharamshala and the others have no objection thereto. The mutation in respect of ¾ share of entire khasra measuring 15(B)-13(B)-5(B) for grant in favour of Dharamshala is submitted for appropriate orders.

Sd/- Dinbagh Singh, Tehsildar

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2018.11.12 14:42
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The matter regarding git be submitted before the Deputy Commissioner/09.12.12.

Sd/- Revenue Officer

Order- The mutation by way of gift deed is sanctioned as proposed.

Sd/- District Collector/Deputy Commissioner/11.05.12

Land measuring 58 kanals and 1 marla is in the revenue record under the ownership of Dharamshala and not Udasi Sect. or a Dera. It is not in dispute that Dharamshala which was constructed has ceased to exist and now only plain agricultural land is available.

Both the courts below after appreciating the evidence have recorded a finding that the oral gift in the year 1912 is in favour of a Udasi Institution/ Dera and therefore, defendant-appellant-Managing Committee of a registered Society has no right to continue in possession. Thus, the suit filed by the plaintiff has been decreed.

It may be noted that learned counsel for the parties did not address arguments with regard to two small pieces of land one measuring 1 kanal 2 marlas which is under Burial place of a religious saint and 3 kanals 14 marals which is in individual ownership of Mahant Sewa Dass Chela kahan Dass, therefore, the findings on the aforesaid two pieces of land is not being challenged.

However, question which has been posed in the earlier part of this judgment, is required to be answered with respect to land measuring 58 kanals 1 marla.

Both the courts while appreciating the evidence have found as a

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2018.11.12 14:42
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matter of fact that the land measuring 58 kanals 1 marla is recorded as Dharamshala under the management of different Mohtamims-Sadhu Udasis. On careful examination of the oral gift, which is undisputed between the parties, it is apparent that the gift was for Dharamshala and the agricultural land was gifted to the Dharmshala for ensuring regular supply of food to the religious tourists coming to stay in the Dharamshala. It was specifically provided in the oral gift recorded in the year 1912 that if Garib Dass, a religious man belonging to Udasi Sect. does not manage the affairs properly and does not provide a food to the religious tourists, than proprietary body would be entitled to nominate anyone else in his place.

In view of the aforesaid provision which has clearly been overlooked by both the courts below, it is apparent that gift was neither in favour of a particular saint (religious man) or in favour of a particular set namely Udasis. The gift was for a charitable purpose i.e. to ensure regular supply of the food to the visitors/tourists coming to stay in the Dharamshala. It is undisputed that the aforesaid Dharamshala does not exists. Hence, the plaintiff-respondent has no right to claim possession of the property in dispute from the Managing Committee.

This aspect can be examined from another angle. It is the case of the plaintiff that he was appointed as a General Power of Attorney by Mahant Sewa Dass in the year 1976 as Mahant Sewa Dass was unable to manage the property and the land was mortgaged in favour of Gurmukh Dass through his father Ajaib Singh which of course later on claim to have been redeemed. It is further pleaded cases of the plaintiff that a lease deed was also executed in favour of Ajaib Singh. Thus, it is apparent that the agricultural land (property in dispute measuring 58 kanals 1 marla) fully

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2018.11.12 14:42
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described in the plaint is no longer being used for the purpose it was gifted. The building of the Dharamshala has already ceased to exist. Therefore, the management of the agricultural land which was for a charitable purpose only under the management of a particular Saint has come to an end. Late Sh. Pritam Dass, the plaintiff or his successor has no right, title or interest in the property gifted. Now, it is not possible for them to manage the property for the purpose it was gifted. Hence, plaintiff has no right to seek possession of the aforesaid agricultural land.

In view of the aforesaid discussion, the judgments passed by both the courts below are partly modified and the suits filed by the plaintiff with respect to land measuring 58 kanals 1 marla is dismissed while keeping in view the decree intact with regard to remaining 2 parcels of land.

It may be noted that during the pendency of the suit, twice efforts were made to make a scheme for management and proper utilisation of the suit land and two proposed schemes have been submitted by the officials of the State of Punjab under Section 92 of the Code of Civil Procedure. However, on perusal of the both the schemes, it is apparent that the officials have suggested that a committee be formed of officials representative of the Udasi Bhake and Nambardars of the village and income derived from the land be used for common public welfare, however, the aforesaid both the schemes were not acceptable to any of the parties. Hence, this court has proceeded to decide the appeal on merits.

Both the appeals are partly allowed and the judgments and decrees passed by both the courts are partly set aside.

30th October, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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

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