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

**RSA-3907-2010 (O&M)
Date of decision : 02.04.2018**

Nazir Khan

... Appellant(s)

Versus

Dera Baba Ram Dass Ji, Chaura Wala and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Sharma, Advocate
for the appellant.

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

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the judgment and decree dated 04.12.2007, whereby the suit of respondents-plaintiffs for possession of agricultural land measuring 0B-6B situated at Village Chaura, Tehsil and District Patiala with consequential relief of permanent injunction restraining the defendants from alienating the land or any part thereof, has been decreed by the trial Court and affirmed by the lower Appellate Court vide judgment and decree dated 10.08.2010.

The aforementioned suit was contested by the defendants on the premise that the suit was not maintainable. The lease deed was for 99 years and therefore, the plaintiffs had no right or title to retain the ownership of the property, much less, the possession.

On the basis of the preponderance of evidence, the trial Court decreed the suit and the appeal preferred before the lower Appellate Court also met with the same fate.

Mr. A.K. Sharma, learned counsel appearing on behalf of the appellant-defendant submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law, for, the defendant is in possession of the suit land on the basis of lease deed dated 15.04.1988 duly registered in the office of Sub-Registrar, Patiala. The mutation in respect of the land had also been sanctioned. The appellant-defendant had built up a house over the land by spending ₹7-8 Lacs. Both the Courts below ignored the jamabandi for the year 1995-96 (Ex.P-3), which clearly showed the defendant had been in cultivating possession of the suit land. The jamabandi carries a presumption of truth unless rebutted. The plaintiff was not duly appointed as Mahant as his application dated 08.01.1989 for appointment was still under consideration, therefore, the suit was not maintainable. The lease deed was not challenged by any of the plaintiffs, whereas on the other hand, the Will dated 27.02.1986 was challenged in RSA No.1085 of 1996, which is pending, thus, urges this Court for setting aside the concurrent findings, under challenge.

Mr. S.K. Singla, learned counsel appearing on behalf of the respondent submitted that there is no illegality and perversity in the judgments and decrees rendered by the Courts below. It was suit for possession filed on the premise that the lease deed was forged and fabricated document and therefore, did not confer any title, right and authority on the defendants. The possession of the defendants was illegal and under the garb of the Will executed by Charan Dass, who was previous Mahant and Mohitmim of the Dera. He was neither authorised to execute or sign any such lease deed. The concurrent findings cannot be interfered until and unless there is gross illegality and perversity, thus, urges this Court for

dismissal of the present regular second appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sharma, for, once Mahant has already been restraint from alienating the property, he could not have executed a lease deed dated 15.04.1988 as the property was vested with Dera only. It is, in this backdrop of the mater, the trial Court decreed the suit for possession and upheld by the lower Appellate Court. In the other appeal bearing RSA No.1085 of 1995, this Court had uphold the findings of the Courts below restraining the Mahant from alienating the property. The lease deed executed by the previous Mohitmim/Mahant could not have been created in favour of defendant. His possession was unauthorized . In that aspect of the matter, the possession was sought, therefore, the appellant-defendant cannot take the aid of the lease and protect his possession on the basis of the terms and conditions, which could not have been granted.

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

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No