

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

RSA No.328 of 2011

Date of Decision.13.03.2018

Mahant Puran Dass and others

Vs

.....Appellants

Tarsem Dass and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. Abhimanyu Singh, Advocate
for the appellants.

Mr. Vaibhav Sharma, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are in regular second appeal against the judgment and decree dated 26.07.2005 rendered by the Civil Judge (Sr. Division), Fatehgarh Sahib whereby the suit filed under Section 92 of Code of Civil Procedure had been dismissed and the appeal preferred against the same had also been dismissed vide judgment and decree dated 22.02.2008.

The plaintiffs instituted the suit on 24.1.1984 under Section 92 of Code of Civil Procedure for removal of the defendants from office of trustee and for appointment of new trustee with further relief of issuing of direction to render the account in respect of income of the Trust and for delivery of trust property to the new trustee on the premise that the plaintiff No.1 and 2 were residents of village Baher, Tehsil Sirhind whereas plaintiff No.2 to 6 were also residing in Sirhind and were Udasi Mahants. They were all worshippers of Dera Baba Budh Dass Baher and therefore, had interest in the suit property. It was pleaded that a Public Trust of charitable nature was created regarding the suit land described in the head note X of the

plaint in the name of Dera Baba Budh Dass Baher by Government of Patiala and Narain Dass Udasi Mahant Chela of Baramn Dass was appointed for the office of trustee. Mutation No.265 dated 18.4.1921 was sanctioned in his favour regarding the trust property i.e. the suit property. The terms and conditions of the trust property were envisaged to spend the income of the trust property for the benefit of the Dera but not for personal use. Narain Dass, Trustee/Mohitmin of the said Dera died in Magh 1994 B.K. and mutation of inheritance was sanctioned in favour of Bhagwan Dass vide mutation No.383 dated 11.1.1995. However, Mutation No.413 was implemented by the order of District Nazim dated 22 Chet 1992 B.K. in favour of Bhagwan Dass and his nephew Bhajan Dass. The said entry of mutation was not made in jamabandi, therefore, only Bhagwan Dass remained Trustee/Mohitmin of the Dera. Said Bhagwan Dass Trustee died on 3.11.1978 and mutation No.1040 dated 17.9.1979 was sanctioned in the name of the present defendants as Trustees, Dera Baba Budh Dass. Since the defendants were not adhering to the terms and conditions of trust deed, therefore, were liable to be removed. It was agitated that they were not utilizing the income of the Trust for the purpose of upliftment of the Trust but for personal use. The defendants as Trustees never maintained Dera Baba Budh Dass, much less, served food to the persons who visited the Dera.

Upon notice, the defendants contested the suit and filed joint written statement by taking customary pleas of non-maintainability. On merits, it was stated that the suit property was secular property and its conversion into religious property vide mutation No.275 was illegal and null and void and in the alternative, it was pleaded that in case it was taken

to be taken as religious property even then it was a private endowment because there exists Samadhs of their ancestors alone which are worshipped by the defendants. The public at large had no interest in the said Samadhs. The suit was not maintainable due to lack of sanction regarding defendant No.1 (i), (ii), 2(i), (ii) and (iii) because allegations in the plaint were against original defendant No.1 and 2. The office of Mahant may be hereditary but the mismanagement at the hands of the defendants as alleged by the plaintiffs could not be cause of action for filing the suit. There was no dedication of the suit property. No ceremonies were performed for dedication and no document regarding the dedication was ever executed, therefore, it could not be said to be religious one. The defendants and their predecessors used the suit property for agricultural purposes for their livelihood and it was never used for religious and charitable purposes.

On the basis for aforementioned pleadings, the trial Court framed the following issues:-

- “1. Whether Dera Baba Budh Dass Baher has been created as Public Trust of Charitable of Patiala State? OPP*
- 2. Whether Narain Dass was appointed as Trustee and mutation was sanctioned on 18th April, 1921? OPP*
- 3. Whether Bhagwan Dass inherited property of the Trust vide mutation No.383 on 11.1.1995 B.K. and it was implemented in Chet 1992 B.K.? OPP*
- 4. Whether after the death of Bhagwan Dass Mutation No.1040 dated 17.9.1979 was sanctioned in the name of present defendants as trustees of Dera Baba Budh Dass? OPP*

5. *Whether the defendants are liable to be removed as trustees of Dera Baba Budh Dass of Baher? OPP*
6. *Whether suit of the plaintiff is maintainable in the present form? OPP*
7. *Whether the suit has been filed by the plaintiffs at the instance of plaintiff No.6 and is liable to be dismissed? OPD*
8. *Whether mutation No.275 is illegal, null and void? OPD*
9. *Whether the disputed property was secular property and it is not religious one by mutation No.275? OPP*
10. *Whether the suit property is a private endowment? OPD*
11. *Whether the plaintiffs are entitled to removal of the defendants from the office of Trustee? OPP*
12. *Whether the defendants are liable to rendition of accounts? OPP*
13. *Whether new Trust is liable to be appointed, if so, in what manner? OPP*
14. *Relief.”*

Following additional issues were also framed on 10.09.04:-

- “13A. *Whether the order granting leave to prosecute the suit is invalid as alleged? OPD.*
- 13B. *Whether there is no leave to prosecute this suit qua defendants No.1(i), (ii), 2(i) to (iii) and suit is liable to be dismissed against them? OPD”*

In support of their case, the appellants-plaintiffs examined

PW-1 Baldev Singh, PW-2 Kirpal Singh, PW-3 Tara Singh, PW-4 Kartar Singh, PW-5 Sandhu Singh, PW-6 Sher Singh, PW-7 Puran Dass, PW-8

Mehar Singh and PW-9 Sant Munni and tendered into evidence Ex.P1 to Ex.P5 i.e. jamabandi for the year 1980-81 as Ex.P1, copy of mutation No.383 dated 11.1.95 Ex.P2, copy of mutation No.275 dated 11.1.95 Ex.P4 and copy of mutation No.413 dated 7.10.96 Ex.P5. On the other hand, respondents-defendants examined defendant No.2(i), Mahant Jaspal Dass as DW1, DW-2 Amrit Lal Verma Draftsman, DW-3 Mohinder Dass, DW-4 Ajmer Singh and DW-5 Nirmal Dass and tendered into evidence Ex.D1, site plan.

On the basis of aforementioned evidence, the trial Court found that the suit was not maintainable under Section 92 of Code of Civil Procedure, much less, the plaintiffs did not have any locus standi, as the suit property was recorded in the ownership of Dera, which was under the management of its Mahant since the sanction of mutation bearing No.275, which was never challenged. In the appeal preferred against the same, the lower Appellate Court reiterated the finding of the trial Court.

Mr. Sanjeev Manrai, learned Senior Counsel assisted by Mr. Abhimanyu appearing for the appellants-plaintiffs submitted that the judgments and decrees rendered by the Courts below are not sustainable in the eyes of law, for, while returning the issues the Courts below have erroneously held that the mutation No.275 sanctioned on 18.04.1921 was legal and valid and the suit land was religious property and not private endowment. It further held that rather the land in dispute was a public endowment but the fact of the matter is that the Courts below did not appreciate that the admitted facts are not required to be proved. It has come on record that the respondents-defendants were not maintaining the suit property, therefore, the plaintiffs had discharged the onus under Section 101

of the Indian Evidence Act. Once the suit land has been held to be a religious endowment, the locus standi of the plaintiffs could not have been held to be not maintainable, thus, urges this Court for setting aside the judgments and decrees under challenge by determining the substantial questions of law as carved out in the memorandum of appeal.

Per contra, Mr. Vaibhav Sharma, learned counsel appearing on behalf of the respondents-defendants submitted that the judgments and decrees under challenge are perfectly legal and justified and rightly found that the appellants-plaintiffs did not have locus standi. The revenue record established that the mutation of the property had been inherited way back in the year 1921 in favour of the predecessor in interest of the defendants and successors, therefore, the plaintiffs had no right and claim. Copy of trust deed had also been placed on record to establish that there was no violation of the terms and conditions of the trust deed, thus, urges this Court for dismissal of the appeal.

I have heard 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. Manrai. Ex.P1 i.e. jamabandi for the year 1980-81 in respect of land measuring 171 kanal 14 marlas was recorded in the ownership of Dera Baba Budh Dass Ba-itmam, Bhagat Ram, Lachhman Dass, Sewa Dass, Sant Ram. Ex.P3, copy of mutation No.275 dated 18.4.1921 and subsequent entries recorded ownership of Narain Dass Chela Baram Dass Sadhu Udasi Sakan Bahar leads to irresistible conclusion that the property was not a trust property but religious endowment. Having failed to prove the nature and character of trust, in my view, the suit was rightly held to be not maintainable under Section 92 of Code of Civil Procedure. The Samadh

could not be said to be a temple and therefore, to be treated property of trust. The land of the Dera was personal property of Narain Dass, which was not a religious property at all but was agricultural land. The aforementioned evidence has gone unrebutted. No contrary evidence has been placed on record to prove that the ownership of Dera was illegal and mutation was, erroneously, sanctioned.

In view of the aforementioned, the submissions made by Mr. Manrai have not been able to cut ice to form a different opinion than the one arrived at by the Courts below as the findings of the Courts below are based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 13, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No