

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1012-2012 (O&M)
Date of decision: 03.05.2018

Bal Krishan Sharma and others

.....Appellants

versus

Raja Ram Aggarwal Dharmshala Trust (Registered) Mandi Dabwali

.....Respondent

RSA-4181-2013 (O&M)

Raja Ram Aggarwal Dharmshala Trust (Registered) Mandi Dabwali

.....Appellant

versus

Bal Krishan Sharma and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Ashok Singal, Mr.Aakash Singla and
Mr.Ankush Singla, Advocates for the appellants
in RSA No.1012 of 2012 and
for the respondents in RSA No.4181 of 2013
Mr.Ashok Sharma Nabhewala, Advocate for the appellant
in RSA No.4181 of 2013 and
for the respondents in RSA No.1012 of 2012

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

This judgment shall dispose of two cross appeals bearing RSA No.1012 of 2012 and RSA No.4181 of 2013, arising out of the same judgment and decree dated 26.11.2011, passed by learned Additional District Judge, Sirsa, whereby the appeal filed by Bal Krishan Sharma and another against the judgment and decree dated 29.11.2006 passed by learned Additional Civil Judge (Senior Division), Dabwali was partly allowed to the extent that though the claim of the defendants qua ownership of the suit land was dismissed but it was held that they shall have only right

of maintenance through cultivation of suit land till they or their next generation perform Pooja in the Mandir subject to final control of plaintiff Raja Ram Aggarwal Dharamshala Trust. Learned Additional Civil Judge (Senior Division), Dabwali vide judgment and decree dated 29.11.2006 had decreed the suit of the plaintiff with costs to the effect that Mandir Dharamshala, Mandi Dabwali is the owner of the suit land measuring 121 kanals 10 marlas situated at village Goriawala, Tehsil Dabwali, District Sirsa as per Jamabandi for the year 1993-1994 and that defendants have no concern with the same and entries in the revenue record like Jamabandi in column No.5 and 9 together with entries in Khasra Girdawari standing in the names of the defendants are wrong, illegal, void abinitio, nonest and contrary to the facts because the defendants are not legally appointed Pujaris of the temple of Dharamshala after the death of Luxmi Narain Sharma and the same are liable to be corrected in favour of the plaintiff. Defendants were held to be tress-passers and they were directed to hand over the possession of the suit land to the plaintiff within a period of three months.

Facts of the case are that Lala Raja Ram Aggarwal resident of village Goriawala was owner in possession of huge land at village Goriawala. He was issueless. He donated some land in village Goriawala Tehsil Dabwali for the establishment of temple in village Goriawala, Tehsil Dabwali vide registered gift deed No.364 dated 8.12.1909. He also donated some agricultural land to one Thakur Dass son of Sh.Khazana Mal, who was purohit of the family, vide registered gift deed No.362 dated 8.12.1909. Lala Raja Ram Aggarwal then shifted to Mandi Dabwali. With a view to establish one Dharamshala and temple, he purchased some land and got constructed Dharamshala and temple of Radha Krishan at Mandi Dabwali.

He also got constructed Satsang Bhawan in the memory of his late wife Smt.Radha Rani in the year 1935. For the smooth running of temple, Lala Raja Ram Aggarwal had donated 25 bighas of agricultural land in the name of Mandir Dharamshala situated at Mandi Dabwali by way of oral gift deed and a Rapat No.282 on 18.4.1937 was recorded and mutation No.133 was sanctioned on 30.5.1937. Lala Raja Ram Aggarwal also donated some of his land to Madhu Sudan son of Sh.Ram Ratan, Brahman by caste, by way of oral gift vide Rapat No.281 dated 18.4.1937. Lala Raja Ram Aggarwal expired on 6.12.1944. His wife had expired earlier. He was issueless. Therefore, a dispute arose between legal heirs of Lala Raja Ram Aggarwal, which was ultimately resolved in the year 1945 and the legal heirs of Lala Raja Ram Aggarwal decided that the property of Lala Raja Ram Aggarwal shall be utilized for charitable purposes and for the general benefit of the man kinds and therefore, they created a trust of the property of Lala Raja Ram Aggarwal as per his wishes. Mutation no.308 of 1945 was accordingly sanctioned. Kasturi Lal and Mohan Lal sons of Paras Ram, who were claiming to be legal heirs of Lala Raja Ram Aggarwal, executed a registered trust deed No.286 dated 30.7.1945 and appointed some more trustees. It was mentioned in the trust deed that 25 bighas of land which was gifted for expenses of temple is to be spent by Pujari on its development. As the Pujari was not given any salary for the services which were rendering to the temple, of which he was made incharge, management of Dharamshala Trust passed a resolution No.7 on 6.9.1945 and it was decided that Laxmi Narain Sharma Pujari will get a salary of Rs.15/- per month. It was done taking into consideration the wishes of Lala Raja Ram Aggarwal so that the income of property of the temple may not be misappropriated or misused.

Laxmi Narain Sharma as a Pujari of the temple never cultivated the suit land. Defendants are sons of said Laxmi Narain Sharma. Laxmi Narain Sharma continued to be paid salary of Rs.15/- per month from 6.9.1945. Defendants are also residing at Dabwali. Except Garish Kumar, who is paid Pujari of Saraswatimata Temple and his salary is shown to have been paid from the funds of Shri Raja Ram Girls Senior Secondary School, Dabwali, which is being run by management of Raja Ram Aggarwal Dharamshala Trust. It was stated that after the gift of land in the year 1937 and prior to the 1945, land used to be under cultivation of the tenants on 1/3rd Batai and thereafter also, it remained under the cultivation of tenants for the year 1961-1962 when the suit land was converted to Killa numbers from old Khasra numbers and shown to be under the self cultivation of plaintiff which continued till the year 1973-1974. However, in the year 1978-79 part of the suit land measuring 102 kanals 8 marlas was shown to be in the cultivation of Laxmi Narain Sharma, though he had expired on 12.3.1977. Said entries are incorrect. In the year 1981, for the first time, khasra girdawaries were got changed in the names of the present defendants by defendant no.1 in equal shares for the land measuring 102 kanals 8 marlas and remaining land measuring 19 kanlas 2 marlas was shown to be still under cultivation of Laxmi Narain Sharma Pujari though he had already died on 12.3.1977. It is stated that entries in the Jamabandi and Khasra girdawaries were changed without the notice of the plaintiff and are liable to be corrected. It is further averred that on 15.6.1993, Managing Committee of the plaintiff trust adopted resolution No.1, in which it was decided that after the death of Laxmi Narain Sharma Pujari in the year 1977, no regular appointment of Pujari of Mandir at Mandi Dabwali had been made. Bal

Krishan defendant no.1 is the eldest son of Laxmi Narain Sharma Pujari and customary honoured with turban. However, he is regular employee of Maharana Partap College, Mandi Dabwali and could not devote time to look after the affairs of the temple and perform Puja, therefore, it was resolved to get consent of the defendants for appointment of regular Pujari from the family members of Laxmi Narain Sharma deceased Pujari. Garish Kumar, defendant no.2 was also summoned to the meeting. However, the matter regarding appointment of regular Pujari had to be kept in abeyance till the retirement of Bal Krishan Sharma from the service of M.P. College for Women, Mandi Dabwali. It is further stated that the regular Pujari could not be appointed due to differences between the defendants as Bal Krishan Sharma who is eldest in the family, will not tolerate appointment of any other member of his family as Pujari. It is further stated that in the year 1999, plaintiff Trust came to know about the wrong entries in the Jamabandi. On these facts, Raja Ram Aggarwal Dharamshala Trust filed the suit.

When the defendants were put to the notice, they took the stand that Lala Raja Ram Aggarwal constructed a Dharamshala as well as Temple in the name of Mandir Radha Krishan at Mandi Dabwali in the memory of his wife late Smt.Radha Rani about 65 years back. Lala Raja Ram Aggarwal who was deeply religious mind person, specifically brought Laxmi Narain Sharma, deceased father of the defendants, from village Goriawala and appointed him as Pujari of the temple and entrusted him with the complete control, arrangements and supervision of the temple. At the time of installation of Murti, Lala Raja Ram Aggarwal donated the land measuring 25 bighas (i.e. land measuring 121 kanals 10 marlas) situated in

village Goriawala to Laxmi Narain Sharma by way of *Sankalap* in lieu of his services to the Mandir. Donation of land was permanent in character. At the time of donation, Lala Raja Ram Aggarwal had assured that land so donated to be continued to be enjoyed by successors-in-interest of Laxmi Narain Sharma after the death of Laxmi Narain Sharma. After the *Sankalap*, Laxmi Narain Sharma came in possession of complete control of temple as Pujari and also came in possession of suit land which has now been inherited by the defendants and their mother. Defendants admitted that Lala Raja Ram Aggarwal died issueless. They claimed that they have no knowledge of the creation of trust. It was stated that the trust does not represent true wishes of Lala Raja Ram Aggarwal. It was stated that resolution no.7 dated 6.9.1945 fixing Rs.15/- per month salary of Pujari was never executed or acted upon and was never conveyed to Laxmi Narain Sharma, deceased. It was only a paper work. Reference to gift deed no.364 dated 8.12.1909 made by the plaintiff is also irrelevant. It was stated that for sometime Girdawari entries were wrongly carried out in the name of the temple but later on correctly recorded in favour of Laxmi Narain Sharma and were incorporated in the Jamabandi for the year 1977-78. It was stated that Laxmi Narain Sharma died on 12.3.1977 and after his death, defendants and their mother had been rendering services to the temple. Laxmi Narain Sharma has been enjoying the income of the suit land in lieu of the services rendered by him as a Pujari of the temple. Plaintiff never objected to the entries in the girdawari and Jamabandi. Now, plaintiff wants to dislodge the defendants from the seat of Pujari on one pretext or the other. Defendants prayed for dismissal of the suit.

From the pleadings, following issues were framed:-

1. *Whether the entries in the Jamabandi for the year 1993-94 along with the entries in the revenue record in the names of the defendants are wrong, null and void? OPP*
2. *Whether the defendants are not legally appointed priests of the temple of plaintiff Dharamshala after the death of Shri Luxmi Narain Sharma? OPP*
3. *Whether the plaintiff is owner in possession of the suit property? OPP*
4. *If issue no.3 is not proved than in the alternative, whether the plaintiff is entitled for decree of possession of the suit property? OPP*
5. *Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP*
6. *Whether the plaintiff has got no cause of action and locus standi to maintain the present suit? OPD*
7. *Whether the suit is bad for non-joinder of necessary parties and mis-joinder of parties? OPD*
8. *Whether the civil Court has no jurisdiction to try and entertain the present suit? OPD*
9. *Relief.*

Trial Court took up issue No.3 in preference to the other issues and held that vide Rapat No.282 (Ex.P6) 25 bighas of land was donated by Lala Raja Ram Aggarwal to Mandir Dharamshala. It was an oral gift. On the same day, another parcel of land measuring 5 bighas 19 biswas of land, situated in village Goriawala was gifted to Madhu Sudan son of Ram Rattan, Brahman, regarding which Rapat No.281 was recorded. Mutation of

donation of 25 bighas of land to the temple (Ex.P6) was sanctioned. It was observed that prior to the execution of gift deed, suit land was under the cultivation of Nanu Ram Gujjar, who was the maternal uncle of Laxmi Narain Sharma. After the donation, the land was recorded as self cultivation as per mutation as per mutation no.133 dated 23.5.1937 (Ex.P7). Land never came in hands of Laxmi Narain Sharma. In the Jamabandi for the year 1961-62 (Ex.P11), land is shown in self cultivation and the payment of rent etc. is shown to be nil. In the Jamabandi for the year 1973-74 (Ex.P12), Mandir Dharamshala is shown to be owner of the suit land and is shown to be in self cultivation and land revenue is shown to be nil. Therefore, it is clear that from the year 1937, till the year 1944, when Lala Raja Ram Aggarwal expired, the land was shown in the self cultivation of Mandir Dharamshala. It also comes out that upto the year 1973-74, land was to be shown in self cultivation of Mandir Dharamshala and it was thereafter that for the first time, the entries appeared in the names of the defendants. However, no land revenue is recorded to have been paid by the defendants or their deceased father Laxmi Narain Sharma. Laxmi Narain Sharma expired on 12.3.1977 but still in the Jamabandi for the year 1978-79 (Ex.P4), Laxmi Narain Sharma is shown to be in the column of cultivating possession despite his death. Trial Court also observed that except the self serving statement of Bal Krishan defendant no.1, there is nothing on record to show that Lala Raja Ram Aggarwal gifted the suit land measuring 25 bighas i.e. 121 kanals 10 marlas to Laxmi Narain Sharma in the year 1937. In fact, Mandir Dharamshala Mandi Dabwali is recorded as owner of the suit land. Therefore, the trial Court held that the suit land was never gifted to Laxmi Narain Sharma in the year 1937. Trial Court also held that till the

year 1973-74, the Mandir Dharamshala was recorded as self cultivation and no rent is recorded to be paid. It was after 1973-74 that the entries were changed and Laxmi Narain Sharma was shown in possession of the suit land, which entry continued even after the death of Laxmi Narain Sharma and thereafter, it has been changed in the names of the defendants being his legal heirs. Trial Court also found that there is nothing on file to show as to how the entries were changed from self cultivation of Mandir Dharamshala to Laxmi Narain Sharma and then in favour of the defendants. Therefore, it was held that the said entries are liable to be corrected. The trial Court also recorded the findings that vide resolution no.7 dated 6.9.1945, Laxmi Narain Sharma, who was not earlier paid any salary, was decided to be paid salary @ Rs.15/- per month by the trust. The trial Court also noticed that vide trust deed No.286 dated 20.7.1945 (Ex.P9), it is recorded that 25 bighas of land was being managed by Poojari for the upliftment of the temple. Trial Court also noticed that it is proved that there is only one electric meter of temple and Dharamshala and all the bills of electricity of temple are being paid by the trust. The plea of the defendants that they are Dholdars, was also declined. It was observed that if they were Dholdars and performing Pooja of the temple then they would not be looking towards the plaintiff trust for making payment of expenses of Pooja, electricity etc. Trial Court also noticed that from the receipts of Abiana and land tax (Ex.D2 to D15), it is clear that land was owned by Mandir Dharamshala and land tax and Abiana was paid through Bal Krishan. In Ex.D9 dated 2.1.1991, the payment is made by Mandir Dharamshala, Dabwali and name of the defendants is not appearing. Therefore, it was held that the defendants are merely tress-passers and want to usurp the land of the Mandir

Dharamshala. Therefore, suit for possession was decreed and the Mandir Dharamshala Mandi Dabwali was declared to be owner of the land.

The lower appellate Court, while holding that defendants have failed to prove the gift of land in favour of Laxmi Narain Sharma and also holding that plaintiff trust is the owner of suit the land, held that Poojari was meeting with the expenses from the land measuring 25 bighas. He was not getting any salary. 25 bighas land was attached with the Dharamshala for meeting the expenses of Dharamshala. Therefore, it was held that whosoever shall be performing the Pooja of the mandir, shall have right of maintenance from 25 bighas of land subject to control of management of plaintiff trust. It was further held that defendants are in cultivating possession of suit land. Therefore, they shall remain in cultivating possession of suit land and keep getting the crop from it but the land shall remain under the control of plaintiff trust for the upliftment and welfare of the temple Dharamshala. Defendants shall have no right to alienate, transfer or sell the suit land. As after the death of Laxmi Narain Sharma, Pujari, the post of Pujari is not heritable, therefore, the revenue entries are liable to be corrected in favour of plaintiff Raja Ram Aggarwal Dharamshala Trust while defendants shall receive the maintenance out of the crop of 25 bighas land for them and their families subject to the control of plaintiff trust during the period if they perform Pooja of the temple. Judgment and decree of trial Court was accordingly modified.

Not satisfied with the said judgment, both the parties have come in cross-appeals. Whereas, the plaintiff trust claims that decree of the trial Court should be restored in total, the defendants claim that suit of the plaintiff should be dismissed.

I have heard learned counsel for the parties and have also carefully gone through the record.

It is to be noted that both the Courts below on the basis of the sound reasoning have come to the conclusion that the land was never gifted to Laxmi Narain Sharma in the year 1937. Except the statement of Bal Krishan Sharma, there is no other document on file to show that Lala Raja Ram Aggarwal ever gifted the land to Laxmi Narain Sharma in the year 1937, as claimed in the written statement. However, it is noticed that he had donated the land measuring 25 bighas in the name of Mandir Dharamshala and he also donated some land to one Madhu Sudan in the year 1937, regarding which, Rapat No.281 and 282 were recorded. It is also to be noticed that in the year 1909 also, Lala Raja Ram Aggarwal had donated some land to Thakur Dass, regarding which, mutation was also entered. Thereafter, the suit land was recorded to be under ownership and self cultivation of temple and Dharamshala. The absence of mutation of gift as claimed by the defendants goes to show that Lala Raja Ram Aggarwal, who was very particular about the entries of gift made by him, did not make any report of oral gift to the revenue authorities. Therefore, both the Courts below have rightly held that the suit land was never gifted to Laxmi Narain Sharma, as claimed in the written statement.

It also comes out from the revenue record, as discussed by the trial Court above that from the year 1937 till the death of Raja Ram in the year 1944, land was recorded to be in self cultivation of temple Dharamshala, without paying any rent etc. Therefore, it is clear that till the death of Lala Raja Ram Aggarwal, Laxmi Narain Sharma did not make any claim that the land should be recorded to be gifted to him or at least should

be recorded to have given to him in lieu of maintenance of temple. Raja Ram died in the year 1944 and Laxmi Narain Sharma himself expired on 12.3.1977. It also comes out from the revenue record that till the year 1973-74, suit land was recorded as self cultivation of temple Dharamshala without paying any rent etc. Laxmi Narain Sharma who was admittedly working as a Pujari of the temple Dharamshala did not raise any objection to the said entries from the year 1937 till 1973-74 i.e. for about 37 years. Meaning thereby that he admitted that the suit land is owned and in possession of the temple Dharamshala, which means that the land was never given in lieu of maintenance to Laxmi Narain Sharma on account of services being rendered by him as Pujari. Though it is possible that being the incharge of the temple, he was getting income from the crop of the said 25 bigha land and using it for the upliftment of the temple and might be appropriating some income for himself for his maintenance. However, this does not give him vested right.

When after the death of Lala Raja Ram Aggarwal, a trust was created in the year 1945, a question arose that Laxmi Narain Sharma is not being paid any salary, therefore, vide resolution no.7 dated 6.9.1945, it was decided that Laxmi Narain Sharma shall be paid Rs.15/- per month as salary being Pujari. Rs.15/- per month was a big amount in the year 1945. Laxmi Narain Sharma did not raise any objection to the payment of salary of Rs.15/- per month, which was a big amount in those days till his death 12.3.1977. The defendants claim their right through their father, therefore, after his death, they cannot claim that salary was not being received by their father Laxmi Narain Sharma as Pujari. It appears that towards the end of his life, when his children became young, Laxmi Narain Sharma developed

vested interest and after 1973-74, he got the entries of khasra girdawaries changed. However, the said entries could not be changed without the consent of the true owner i.e. Mandir Dharamshala, which was being controlled by the plaintiff trust. Therefore, the trial Court rightly held that the entries in Jamabandi and Khasra Girdawari after the year 1973-74, are liable to be corrected.

Learned counsel for the defendants-appellant has vehemently argued that plaintiffs are Dholidars and become owners of the land being Dholidars in view of the Dholidar (vesting of Proprietary Rights) Act, 2010.

I am of the view that it is proved on record that the land was not gifted by Lala Raja Ram Aggarwal to Laxmi Narain Sharma, therefore, Laxmi Narain Sharma never became owner of the land. There is no record that Raja Ram ever allotted the land to Laxmi Narain Sharma for his maintenance. From the year 1937 till the year 1944, when Raja Ram died, Laxmi Narain Sharma never claimed that the land was given to him in lieu of the maintenance, nor any such claim was made by Laxmi Narain Sharma till his death on 12.3.1977. It was after the death of Laxmi Narain Sharma that a dispute arose regarding appointment of Pujari of the temple, in which, now, the claim is being made that the land was given in lieu of the maintenance to Laxmi Narain Sharma as Pujari and therefore, he was Dholidar and had become owner of the suit land in view of the Dholidar (vesting of Proprietary Rights) Act, 2010.

I am of the view that from the year 1945 when the trust was created, Laxmi Narain Sharma accepted the salary of Rs.15/- per month offered by the trust. He never claimed that salary is not being paid to him. He did not raise any objection to the payment of salary till his death i.e.

12.03.1977. Therefore, question of land being given for maintenance and in lieu of the services rendered by him as Pujari does not arise. Lower appellate Court fell in error by holding that the land was given as maintenance in lieu of the services rendered by Laxmi Narain Sharma as Pujari and after his death, sons of the defendants are entitled to use the same for their maintenance subject to the control of the plaintiff trust.

The judgment of the Learned Additional Civil Judge (Senior Division), Dabwali is well reasoned. Findings of the lower appellate Court vide which suit land was allowed to be used by the defendants for maintenance, if they perform Puja subject to the control of the plaintiff trust, are illegal and without any basis. Since, Pujari is getting salary, he is not entitled to any maintenance from the suit land. Suit land is in fact dedicated to temple Dharamshala and is to be used for the maintenance, upliftment and other purposes for the benefit of temple Dharmshala only.

In view of the foregoing discussion, judgment and decree dated 26.11.2011, passed by learned Additional District Judge, Sirsa is set aside and the judgment and decree dated 29.11.2006 passed by learned Additional Civil Judge (Senior Division), Dabwali is restored. Resultantly, RSA No.1012 of 2012 filed by Bal Krishan Sharma and others stands dismissed and RSA No.4181 of 2013 filed by Raja Ram Aggarwal Dharamshala Trust (Registered) Mandi Dabwali is allowed.

Since the main cases have been disposed of, therefore, the pending CM, if any, also stands disposed of.

A copy of the order be placed on the connected case file.

03.05.2018

gk

(Kuldip Singh)

Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No