

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

Date of decision: 28.11.2018

1.

RSA No.1735 of 2012(O&M)

*Dera Nandiana Faridkot (Dadu Panthi) through its Mohitmim Mahant
Gopal and another*Appellant

VERSUS

Punjab State and anotherRespondents

2.

RSA No.2389 of 2012(O&M)

*Dera Nandiana Faridkot (Dadu Panthi) through its Mohitmim Mahant
Gopal and another*Appellant

VERSUS

Punjab State and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.K. Chopra, Senior Advocate with
Mr. Ankit Midha, and
Mr. Vivek Suri, Advocate and
Ms. Eesha Khanna, Advocate for the appellant.

Mr. Ashok K. Singla, Sr. DAG, Punjab.

Mr. Ravish Bansal, Advocate and
Mr. Akash Singla, Advocate for respondent No.2.

REKHA MITTAL, J.

This order will dispose of RSA Nos.1735 and 2389 of 2012 as these have emerged out of the same decree and involve identical questions of law and fact for adjudication. For sake of convenience, facts are taken from RSA No.1735 of 2012.

The present appeal directs challenge against judgment and decree dated 28.02.2012 passed by the District Judge, Faridkot whereby two appeals preferred by the defendants/respondents against judgment and decree dated 16.03.2009 passed by the then Civil Judge (Junior Division), Faridkot (hereinafter to be referred as the trial Court) were allowed, judgment and decree passed by the trial Court were set aside and suit filed by the appellants/plaintiffs for declaration, consequential relief of possession and permanent injunction restraining the respondents from raising construction over suit land was dismissed.

The facts relevant for disposal of appeal are that *dera* Nandiana Faridkot (Dadu Panthi) through its Mohitmim staked claim of ownership qua land measuring 15 kanal 7 marlas bearing khasra No.6580 min (8-16) and 6582 min (6-11) as per jamabandi for the year 1994-95 situated in the revenue estate of Faridkot. It is averred that *dera* is a Dadu Panthi Sect and Samadhs of Mahants namely Bawa Dhani Ram, Lachhman Dass and Bawa Keshwa Nand are located there. The *dera* was founded by Mahant Dhani Ram since time immemorial more than 70-80 years ago. There is residential house of Mohitmim attached to the *dera* and there is mandir of Shiv Ji and Hanuman Ji along with a pond. Before consolidation, the then Ruler of State of Faridkot dedicated this land to the *dera* without lagan on account of muafi. The said land was occupancy holding known as chakotedar nauhtor, in Faridkot State vide rapat No.74 dated 22 Kattak 1991 BK. The amount of nauhtor was exempted by the State vide Resolution No.721 of the Council Alia of Faridkot State as is clear from the remarks in the jamabandi for the year 1986-87 BK. In pre-consolidation jamabandi for the year 1969-70 BK, the land was recorded to

be in possession of makan nandiani. In jamabandi for the year 1992-93 BK, land is recorded to be in possession of *dera* Nandiani Ram as chakotedar nauhtor. His Highness, the then Raja of Faridkot exempted payment of Chakot vide rapat No.207 of 30 Faggan 1992 BK, as recorded in remarks column of jamabandi for the year 1991-92 BK. Vide notification No.8B dated 28.04.1951, Pepsu Government conferred proprietary rights upon various categories of special type of occupancy tenants including chakotedar nauhtor. *Dera* Nandiana being a chakotedar became proprietor of pre-consolidation land but the Mohitmim did not get mutation entered and sanctioned on the basis of aforesaid notification and land continued to be recorded in the name of State – defendant No.1. The entries in the revenue record reflecting defendant No.1 as owner are legally and factually incorrect.

After consolidation of holdings, land measuring 45 kanal 18 marlas comprising post-consolidation khasra No.6580 (11-6), 6581 (1-0), 6582 (26-11) and 6580/1 (7-1) was carved out and in column of cultivation, it is recorded as maqbuza *dera* nandiana zera tamam hasat Keshwa Nand. *Dera* Nandiana remained in possession as owner continuously and openly as borne out from post-consolidation jamabandi for the year 1957-58. In the alternative, it is claimed that if the plaintiff/*dera* is not held to be owner of land in question, it has become owner thereof by way of adverse possession being in possession of suit land for the past more than 50 years.

Mahant Keshwa Nand died in November 1981 and left behind registered Will dated 06.11.1981 whereby Mahant Gopal Dass was nominated as his successor and the property was given to his wife

Kaushalya Devi and disciple Gurubhai Mahant Nija Nand. On the occasion of last rites of mahant on 20.11.1981, in a gathering of the Dadu Panthi Bhekhs, respectables of Faridkot town and devotees, Mahant Gopal Dass was elected as Mohitmim of the *dera* in accordance with wishes of Mahant Keshwa Nand. Mahant Nija Nand died on 31.03.2000 and is succeeded by his Chela Mahant Rajwinder Dass in the gathering of Dadu Panthi Bhekhs and respectables. It is further averred that the defendants/respondents have no right or interest in the suit property but by exercising political influence, the then Deputy Commissioner and other functionaries of Revenue Department forcibly took possession of suit land on 07.10.1996 by ordering correction of khasra girdawaris without notice and knowledge of the appellants. The defendants have no right to remain in possession of suit land nor can be permitted to raise construction thereon. Hence, the suit.

The defendants filed joint written statement seriously contesting claim of the appellant/plaintiff. They have denied the *dera* to be owner of suit land on any of the grounds raised by the plaintiff. They have also denied that suit land was in possession of *dera* and forcible possession has been taken in the year 1996. It is averred that in fact there is no *dera* at the spot. There is one residential house in the area of 1 kanal. It is admitted that there is mandir of Shiv Ji and Hanuman Ji and a pond (talaab) is attached to the mandirs. The land in question is gair mumkin and as such shall be presumed to be in possession of the State Government being owner thereof. Column No.5 of the jamabandi showing reference to a *dera* is wrong. They have denied the allegations that either land was dedicated to *dera* or the plaintiff was chakotedar nauhtor or vested with

proprietary rights in the land comprising khasra No.2026/1, 2048/1, 2084/1, 2036 to 2043. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The plaintiff/appellant preferred replication reiterating its stand and controverting the defence plea.

The controversy between the parties led to framing of following issues by the trial Court:-

1. Whether the plaintiff's *dera* was founded by Dhani Ram since the time and land attached to *dera* was dedicated by the then Ruler of Faridkot state, as alleged in para No.1 of the plaint? OPP
2. Whether the plaintiff is entitled to the declaration, as prayed for? OPP
3. Whether the plaintiff has become owner of the suit land by adverse possession as alleged in para No.6B of the plaint?OPP
4. Whether Keshwa Nand had executed a will dated 06.11.1981 and he nominated Mahant Gopal Dass as successor and also gave property to Kaushalya Devi his wife and Gurbhai Mahant and Niza Nand and Gopal Dass was appointed Mahant of *dera* by gathering of Dadu Panthi Bhekh on 20.11.1981.
5. Whether Rajeshwar Dass was appointed as successor of Niza Nand by Bhekh and respectables? OPP
6. Whether defendant No.1 was owner in possession of the suit land? OPD

7. Whether suit is bad for misjoinder of parties, as well as cause of action? OPD
8. Whether the plaintiff is estopped by their act and conduct to claim ownership as alleged in para No.4 of written statement? OPD
9. Whether the suit is not maintainable and Civil Court is not competent to grant relief of declaration? OPD
10. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. The parties led oral and documentary evidence referred to in paras 4 and 5 of the judgment of Court in appeal. Having heard counsel for the parties in the light of materials on record, the trial Court decreed the suit primarily in view of its finding on issues No.1, 2, 3 and 6, recorded in para 13 of the judgment. A relevant extract therefrom reads as follows:-

"Contention of learned counsel for the plaintiffs is plausible that erstwhile Maharaja of State Faridkot, brought the various religious people in his State and various *Deras* were allowed to be set up in his State and land was allotted to them and no lagan and rent was ever received or recovered from them. Here it is pertinent to mention that in the year 1984 Record room pertaining to revenue record was burnt and taking the judicial notice of the same, I am of the considered view if some of the jamabandis are not produced or record of consolidation is not produced, even then it is established that the land was dedicated by the then Ruler of Faridkot State to

the plaintiffs. Possession of the plaintiffs is fully established from the revenue records. Consolidation book Ex.PX, shows the fact that numbers were changed to the present numbers after consolidation and this document is not prepared by the plaintiffs themselves. It is prepared by the Revenue officials who were on duty during consolidation proceedings and this document was prepared in discharge of their duty and this document was supplied to each and every owner of the land only to enable him to keep the record of the land allotted to him after consolidation.”

The Court further held that the plaintiffs have been declared owner of the suit land from the date of notification No.8B dated 28.04.1951 although post consolidation entries in the revenue record shows the State as owner. Defendants took possession of suit land vide rapat dated 07.10.1996, to be considered as that of tress-passer and without any right.

Issues No.1 and 2 were decided in favour of the plaintiffs. Issue No.3 was left unanswered and issue No.6 was decided against the defendants and in favour of the plaintiffs. As a consequence, suit filed by the plaintiff was decreed and the plaintiff was declared owner of land, being occupancy tenant and entitle to possession of the same.

As has been noticed hereinbefore, the judgment and decree passed by the trial Court led to filing of two separate appeals, decided vide common judgment and decree impugned passed by the District Judge, Faridkot. The Appellate Court set aside findings on issues No.2, 3 and 9.

Issues No.4 to 6 are stated to have become redundant but findings on issues No.1, 7 and 8 were upheld.

Counsel for the appellant has assailed the decree and judgment of the Appellate Court on several counts. The first submission made by counsel is that findings of the Appellate Court on issue No.9 with regard to jurisdiction of the Civil Court cannot be allowed to sustain in the light of Full Bench decision of this Court in **Shiv Charan Vs. Financial Commissioner, Haryana and others along with connected cases, 2004(4) RCR (Civil) 543.**

Counsel would urge that the Appellate Court has affirmed findings of the trial Court on issue No.1 pertaining to *dera* being founded by Dhani Ram and land attached to *dera* was dedicated by the then Ruler of Faridkot State, as alleged in para 1 of the plaint. It is further argued that in the Jamabandi for the year 1986-87 BK Ex.P9/A, *dera* is recorded to be chakotedar nauhtor and an entry to the similar effect has been made in Ex.P10/A. It is argued with vehemence that the Pepsu Government issued notification No.8B dated 28.04.1951 whereby proprietary rights were conferred on various special type of occupancy tenants including chakotedar nauhtor prevalent in Faridkot State and as such *dera* being chakotedar nauhtor of land comprising khasra No.2026/1, 2028/1, 2034/1, 2036 to 2043 became owner thereof, later changed to khasra Nos.6580 to 6582 in consolidation, therefore, the trial Court has rightly held the *dera* to be owner of suit land comprising khasra No.6580-min and 6582-min by relying upon document Ex.P6. It is further argued that Appellate Court despite having affirmed findings of the trial Court on issue No.1 had failed

to appreciate the materials on record in right perspective and committed a gross error by reversing findings on issue Nos.2 and 3.

Another submission made by counsel is that since *dera* was in possession of suit land being occupancy tenant, it has acquired ownership right to the suit land in view of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (in short 'the Act') being in possession of suit land since 1938-39 BK, as per jamabandi Ex.P5 (translated copy Ex.P5/A).

Counsel for the appellant has referred to statement of Bikker Singh, Revenue Patwari DW-1 to contend that he had made admissions viz land in dispute is in possession of *dera* Nandiana prior to consolidation as well as after consolidation as per record and there is no government building constructed in the land in dispute. It is argued with vehemence that in view of clear admissions made by Bikker Singh, Revenue Patwari, the only witness examined by the respondents/defendants, it stands established that suit land is the same land which was in possession of *dera* in pre-consolidation era.

Counsel representing the respondents has not disputed that findings recorded by the Appellate Court on issue No.9 with regard to jurisdiction of the Civil Court cannot be affirmed in the light of Full Bench judgment of this Court in **Shiv Charan's case** (supra). However, he has supported findings of the Appellate Court on issues No.2 and 3 whereby plea of the appellant with regard to its having become owner of suit land and entitle to be declared as such have been reversed. It is argued that though the Appellate Court in concluding lines of para 15 has mentioned that findings of the trial Court on issues No.1, 7 and 8 stand upheld but the Court in para 13 itself at internal page 21 has recorded that stray entries in

revenue record which are not consistent with the other entries need to be outrightly ignored especially in absence of any order either of Maharaja of State of Faridkot or the government giving grant of this land to the plaintiffs and there is not even an iota of evidence how or by virtue of what document they have come to be in occupation of the land through legal means. It is further argued that in the face of clear observations made by the Appellate Court highlighted hereinbefore, findings on issue No.1 with regard to suit land having been dedicated by the then Ruler of Faridkot City to *dera* cannot be allowed to sustain.

Counsel would further argue that in the first jamabandi for the year 1938-39 BK Ex.P5/A, *dera* is recorded to be in possession of land comprising khasra No.2026/1, 2028/1, 2034/1, 2036 and in the remarks column, there is an entry of Bila Lagaan Bawaja Muafi with reference to rapat No.207 of 30 Fagun 1992. It is argued that rapat No.207 aforesaid has not seen the light of day in the present case. In the jamabandis for the year 1945-46 BK, Ex.P6/A, 1969-70 BK Ex.P7/A, 1975-76 BK Ex.P8/A, there is reference to certain khasra numbers from 2038 onwards which do not find reference in the first jamabandi for the year 1938-39 BK. The area to which jamabandi for the year 1938-39 BK pertains is only 6-8 whereas the other three jamabandis pertain to area 44-7 and in the aforesaid three jamabandis, in the column of possession, makan nandiani is recorded. In the Jamabandi for the year 1986-87 BK Ex.P9/A, there is again reference to khasra numbers which were reflected in the jamabandi for the year 1938-39 BK Ex.P5/A and the area in both the jamabandis is the same and it is for the first time that *dera* is recorded to be chakotedar nauhtor in column of possession but in the remarks, chakota is shown to be Bashra

Rs.30/-. In the jamabandi for the year 1991-92 BK Ex.P10/A, khasra numbers and area is the same as shown in the jamabandi for the years 1938-39 BK and 1986-87 BK and the *dera* is stated to be chakotedar nauhtor in column pertaining to possession. In the remarks column, chakota is Bashra Rs.30/- per khasra with reference to rapat No.207. It is further argued that in the jamabandi for the years 2003-04 BK i.e. for the years 1946-47 Ex.P11/A, khasra numbers and area is the same as recorded in Ex.P5/A, P9/A and P10/A but in the column pertaining to possession, there is no entry of chakotedar nauhtor whereas in column No.9, it is bila lagan bawaaja muafi. A similar entry has been made in the jamabandi for the year 1950-51 Ex.P12. It is argued that taking into consideration the entries in the jamabandi for the year 2003-04 BK equal to the year 1946-47 Ex.P11/A and 1950-51 Ex.P12, the appellant even cannot claim that *dera* was chakotedar nauhtor at the time when the alleged notification No.8B dated 28.04.1951 was purportedly issued by Pepsu Government conferring proprietary rights upon chakotedar nauhtor. In addition, it is argued that since the aforesaid notification has not seen the light of day, the appellant otherwise cannot claim to have become owner of land of aforesaid khasra numbers of pre-consolidation period either by claiming to be chakotedar nauhtor or having been conferred with proprietary rights in view of notification No.8B of Pepsu Government.

Counsel for the respondents would point out that in all the jamabandis of the post-consolidation period starting from the year 1957-58 Ex.PY, P14, P15, P13, P16 to P19 pertaining to khasra Nos.6580 to 6582 measuring 38 kanal 17 marlas recording *dera* to be in possession but in column No.9, there is an entry of 'kharaj partha'. According to counsel,

the appellant has failed to connect the old khasra numbers shown to be in possession of *dera* with new khasra No.6580 to 6582 as the appellant did not produce the documents of consolidation namely khatauni istemal, misal haqiyat, naksha haqdarbar and khatauni pamaish. It is further argued that findings recorded by the trial Court on the basis of inferences, presumptions and assumptions have rightly been set aside by the Appellate Court when otherwise the plaintiff has to stand on its own legs and cannot derive strength from weakness of defence.

Another submission made by counsel is that document Ex.PX relied upon by the trial Court to accept plea of the appellant that khasra Nos.6580 and 6581 have been allotted in lieu of land comprising khasra number 2026/1 etc. is the result of misreading of the document and has rightly been set aside by the Appellate Court on due consideration of contents of Ex.PX. The last submission made by counsel is that as the appellant has miserably failed to prove that land comprising khasra numbers of pre-consolidation period was either dedicated to the *dera* or the *dera* was chakotedar nauhtor in that land prior to issuance of alleged notification by the Pepsu Government (not produced on record) coupled with failure of the appellant to connect the old khasra numbers with the khasra numbers in dispute, no error much less perversity can be found in the judgment passed by the Appellate Court, warranting intervention.

I have heard counsel for the parties, perused the paper-book and the records.

Before advertng to the submissions qua merits of the case, it is pertinent to mention at the outset that in view of concession recorded by counsel for the respondents that Civil Court has the jurisdiction to entertain

and try the present suit, without examining that issue, findings of the Appellate Court on issue No.9 qua jurisdiction of the Civil Court are set aside. As a natural corollary, Civil Court is held to be competent to entertain and try the present suit whereby the appellant has claimed itself to be owner of suit land comprising khasra No.6580-min (8-16) and 6582 (6-11) total measuring 15 kanal 7 marlas.

The appellant/plaintiff *dera* has staked its claim to be owner of suit land on three counts. The first plea of the appellant is that land comprising khasra No.2026/1, 2048/1, 2084/1, 2036 to 2043 was dedicated to *dera* without lagan and on account of muafi by the then Ruler of Faridkot before consolidation of holdings. Counsel for the appellant, in response to a query, would fairly inform that there is no document on record to prove any such dedication to *dera* by the then Ruler of Faridkot. Even in the jamabandi for the year 1938-39 BK, the oldest document on record, there is no reference to any such dedication or muafi but it appears that in column No.9, there is reference to muafi qua payment of lagan. However, it remains a fact that rapat No.207 of 30 fagun 1992 referred to in column No.9 of the said jamabandi has not been produced on record for perusal and appreciation. No doubt, the Court in appeal in para 15 in the concluding lines has held that findings on issue No.1, 7 and 8 stand upheld but the Court in para 13 at internal page 21 (as pointed out by counsel for the respondents) has noticed that there is no order either of the Maharaja of State of Faridkot or the Government declaring grant of this land to the plaintiff. That being so, contention of the appellant that land comprising aforesaid khasra numbers of pre-consolidation period was dedicated to *dera* by the then Ruler of Faridkot State is unfounded and cannot be

allowed to sustain. In the given circumstances, the appellant cannot derive any advantage to its contention from affirmation of findings on issue No.1 to the extent of dedication of land to *dera* by the then Ruler of Faridkot State.

This brings the Court to second contention that *dera* was chakotedar nauhtor and became proprietor of land comprising khasra No.2026/1 etc. on the basis of notification purported to be issued by the Pepsu Government. As has been rightly argued by counsel for the respondents, *dera* was recorded to be chakotedar nauhtor only in respect of 4 khasra numbers i.e. 2026/1, 2028/1, 2034/1 and 2036 in jamabandi for the years 1986-87 BK and 1991-92 BK with area measuring 6-8 as against plea of the appellant pertaining to khasra No.2048/1, 2084/1, 2037 to 2043 as well. This apart, in the jamabandi for the year 2003-04 BK/1946-47 Ex.P11/A and 1950-51 Ex.P12, there is no entry in the column of possession recording *dera* to be chakotedar nauhtor of land measuring 6-8 of the aforesaid 4 khasra numbers. As the *dera* was not recorded to be chakotedar nauhtor in the latest jamabandi which was in force at the time when the alleged notification No.8B dated 28.04.1951 was issued by the Pepsu Government (though not produced on record), the Appellate Court has rightly refused to accept plea of the appellant that *dera* acquired proprietary rights even qua land comprising the aforesaid four khasra numbers being chakotedar nauhtor.

It is not pleaded in the plaint that *dera* has become owner of suit land being occupancy tenant but it appears that such a contention was sought to be raised for the first time before the first Appellate Court and has been rejected in view of findings recorded in para 13 of the judgment.

Counsel for the appellant has failed to advance any arguments much less meaningful to assail findings of the Appellate Court on this aspect of the matter nor could point out any materials on record on the basis whereof he can substantiate this beyond pleadings contention that *dera* has become owner of suit land being an occupancy tenant, defined in Punjab Tenancy Act, 1887. On the contrary, perusal of entries in the jamabandis exhibited on record makes it apparent that chakota was Rs.30/- as per jamabandi for the year 1986-87 BK and 1991-92 BK. There is no evidence that chakota, at that rate, was less than the land revenue and cesses payable on the land in question. This apart, it has never been case of the appellant that *dera* was inducted as a tenant in the khasra numbers in question in pre-consolidation era by its owner with a promise not to get the land vacated. Furthermore, entries in the jamabandis do not support contention of the appellant that land was ever under cultivation and the *dera* was an occupancy tenant thereof. On the contrary, it is consistent stand of the appellant that in the land, there was a *dera* i.e. residence of Mohitmim, mandir of Shiv Ji and Hanuman Ji with a pond attached thereto. It has also come on record that Dadu Panthi Bhekh did not believe in worshipping Deities/Idols. Analyzed from any angle, the appellant has miserably failed to plead and prove that it has become owner of suit land by claiming to be occupancy tenant.

The present litigation is pertaining to khasra numbers 6580 and 6582. Counsel for the appellant has failed to point out, if document Ex.PX can connect the old khasra numbers with the khasra numbers in dispute or any other material on record to connect the old khasra numbers with the khasra numbers in question. That being so, the Appellate Court

has rightly held that land in question comprising khasra Nos.6580 and 6582 cannot be connected with the old khasra numbers either on the basis of document Ex.PX or otherwise. No sooner the appellant failed to connect the khasra numbers in dispute with the old khasra numbers, any such plea raised by it with regard to dedication or chakotedar nauhtor etc. becomes inconsequential and meaningless to assert right of ownership over the suit land on the basis of averments made in paras 1 to 4 of the plaint. Counsel for the respondents is right in his submissions that the appellants have failed to adduce satisfactory much less cogent and clinching evidence to establish their plea that *dera* has become proprietor/owner of suit land on any count whatever. Since the appellant has failed to establish its ownership of suit land, on the basis of documents on record, it cannot derive any advantage to its contention from the statement of DW-1 particularly in the circumstances that there is nothing on record suggestive of the fact that Bikker Singh DW-1 was either born or a Revenue Patwari either at the time of consolidation in the village or even prior thereto. In view of the above, I do not find any justifiable reasons to interfere in the judgment and decree passed by the Appellate Court except to the limited extent that findings of the Courts on issue No.1 qua dedication of land to *dera* by the then Ruler of Faridkot cannot be allowed to sustain.

In view of what has been discussed hereinabove, finding no merit, the appeals fail and are accordingly dismissed with costs.

NOVEMBER 28, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no