

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

RSA No.2765 of 2016 (O&M)
Date of Decision.19.11.2018

Swami Tyaga Nand Puri

...Appellant

Vs

Master Girdhari Lal and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.D. Sharma, Senior Advocate with
Mr. Ved Priya Malik, Advocate
for the appellant.

Mr. Sandeep Kumar Sharma, Advocate
for caveator-respondent No.2 (ii)

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AMIT RAWAL J. (ORAL)

From the adumbration of facts as culled out in the memorandum and borne out from the preliminary decree and final decree in the suit filed under Section 92 of the Code of Civil Procedure vis-à-vis the property in donation given to the Shri Hira Nand Puri Satsang (Mission) Nangal Bihalan, Tehsil Dasuya, District Hoshiarpur, following preliminary decree dated 24.05.1976 was passed.

a) *Satsang Bhawan free kitchens (langar) and rooms attached to these Satsang Bhawan situated at Nangal Bihalan, Miani (Chail), Sangrur and Naba and the site thereunder shall be the trust properties and shall vest in the Gaddi known as Gaddi of Swami Hir Nandji Puri existing at Nangal Bihalan.*

b) *Agricultural land measuring 122 kanals and 8*

marlas situated at Nangal Bihalan, 70 bighas and 10 biswas being half share of 141 bighas situated at Barkatpur and 2 bighas comprised in khasra no.56, 57 and 165/51 situated at village Miani (Chail) shall also be trust properties meant for public purposes of religious or charitable nature and shall vest in the Gaddi mentioned above.

- c) There shall be a managing committee consisting of 7 members. This committee shall administer the aforesaid properties and utilize their income for running free kitchens spreading the mission and ideology of Late Swami Hiranandjipuri and other allied public purposes.*
- d) Shri Bodha Nand defendant No.1 will be the first President of the Managing Committee. After his death, every Mahant of the Gaddi shall be officio President of this Managing Committee by virtue of his office of Mahant. The office of Mahant shall continue from Guru to Chela.*
- e) Out of the remaining members of the Managing Committee, two members shall be from the public. These shall be persons of established integrity, reputation and honesty shall be residents of Hoshiarpur District. Name of one of them shall be suggested by the plaintiffs and that of the other by Shri Bodha Nand defendant No.1.*

- f) *The other four members of the Managing Committee shall be from amongst the Mahatams and Sadhus of Sanyasi Sect. These members shall also be Sadhus of reputation, integrity and spiritual scholars and unmarried. Names of two of them will be suggested by the plaintiffs and the names of the other two by Swami Bodha Nand defendant No.1.*
- g) *Whenever a vacancy occurs on account of the death of a member or for any other reason, the same shall be filled up by the court, by appointing a suitable person of the public or sanyasi sect, as the case may be, in his place. The vacancy shall not remain in abeyance and shall be brought to the notice of the court either by the President or any other member of the Managing Committee or of the public.*
- h) *The decision of the 3/4th majority of the members of the Managing Committee shall be final. However, the members of the Managing Committee can seek guidance from the court on vital matters and important issues in case any such necessity arises.*
- i) *Shri Bodha Nand defendant No.1 shall render the accounts of the trust properties to the other members of the Managing Committee when this*

Managing Committee starts functioning. He shall, however, start keeping writing accounts of the trust properties from 1st June, 1976 and shall submit the same to the court for its approval at intervals of every six months till the Managing Committee is set up and start functioning.

- j) The Managing Committee or Shri Bodha Nand defendant till the setting up of that committee shall not be entitled to alienate any of the properties held to be trust properties in this suit except for the benefit of the trust and with the prior permission of the court.*
- k) The members of the Managing Committee or Shri Bodha Nand defendant No.1 till this committee starts functioning, shall spend the income of the aforesaid trust properties only for public purposes or charitable, religious or other allied nature and for no other purpose.*
- l) Both the parties shall suggest the name of the six members to be appointed as the members of the Managing Committee for the proper administration of the trust properties in suit as suggested above by 26th July, 1976. If any party fails to do so, the Court shall be entitled to make the appointment from amongst Sadhus and Mahatmas of Sanyasi Sec and the public of*

Hoshiarpur District as the case may be, of its own choice. In case of difference of opinion also between the parties over the names of the persons to be appointed members of the Managing Committee, the Court shall appoint persons of its own selection, from amongst the public and Sanyasi Sect. as members of this committee.

m) The full and complete details of the scheme shall be stated in the final decree. Parties are left to bear their own casts.”

The aforementioned preliminary decree was assailed before this Court in RFA No.741 of 1976 and vide order dated 17.04.1986, the same was modified in the following manner:-

“23. For the aforesaid reasons, I partly accept the Regular First Appeal No.964 of 1976, modify the decree of the trial Court and hold that the properties mentioned in Annexure ‘A’ except the land measuring 70 bighas 10 biswas shown as non-trust property at serial No.2 and one trunk mentioned at Serial No.5 are properties of the trust. However, I dismiss the Regular First Appeal No.741 of 1976. No order as to costs.”

Mr. S.D. Sharma, learned Senior Counsel assisted by Mr. Ved Priya Malik representing the appellant submitted that pith and substance of the preliminary decree of 1976 merged into the order of this Court, was that in case, there was any flaw in the scheme that would be seen in the final decree. Certain items of the scheme

already framed were against the ideology of the Mission and given undue advantage to Bodha Nand. Bodha Nand claimed entire property of the Trust to be his personal property. Bodha Nand was directed to maintain accounts of the Mission w.e.f. 01.06.1979 and submit to the Court in every six months but he did not comply with aforementioned direction therefore, rendered as disqualified. History of Satsang Mission was very old, therefore, question of inheritance from Guru to Chela would be involved. The Satsang Mission has been functioning beyond District of Hoshiarpur and the person belonging to another place cannot be eligible to become a member, therefore, number of members should be increased to 12.

During the course of hearing, it was also submitted that defendant No.1 after passing the preliminary decree had sold the property and this Court vide order dated 01.06.2016 stayed further alienation of the suit property. Both the courts below have erred in not rectifying the flaws in the scheme by way of final decree.

Per contra, Mr. Sandeep K. Sharma, learned counsel appearing on behalf of caveator-respondent No.2(ii) submitted that the scheme could not be tinkered with unless and unless increase in the number of members and non-filing of the accounts cannot be termed as flaw. The appellants had a separate remedy elsewhere. During the pendency of appeal, defendant No.1 has also died. No evidence qua alienation of the property had been brought on record.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of learned senior counsel. It is

settled law that preliminary decree while preparing the final decree cannot be tinkered with unless and until flaws had been pointed out. Increase in the numbers and non-maintainability of the account cannot be said to be a flaw. It was not an attempt to change the constitution of the scheme *ibid*. The appellants have failed to place on record any material evidence with regard to alienation. Even if some property had been alienated, the remedy was to seek implementation of the preliminary decree in accordance with law. The final decree, thus, drawn by the Courts below is correct approach. I am in agreement with the findings rendered by the Courts below.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding 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 is dismissed.

(AMIT RAWAL)
JUDGE

November 19, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No