

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

RSA No.2413 of 2015 (O&M)

Date of decision : 10.08.2018

Shri Brahmin Avam Tirhodhar Sabha and another

...Appellants

Versus

Pandit Ram Jawaya and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Rajesh Arora, Advocate for the appellants.

Mr. Puneet Bali, Sr. Advocate with
Mr. Ranjit Saini, Advocate and
Mr. Arun Gupta, Advocate for respondent Nos.1 and 2.

Mr. Namit Gautam, Advocate for respondent No.3.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

The defendants-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the trial Court.

In the considered opinion of this Court, the question of law which arises for determination is as under:-

1) Whether a '*priest*' who has been permitted by the society managing the affairs of religious place, can claim any right in the property or claim

any right to continue to perform 'pooja' although licence in his favour has been terminated?

FACTS:-

The plaintiffs-respondents (although plaint is presented by one person but he has been shown twice over) filed a suit for declaration that notice dated 30.07.1997 relieving him from the post of the priest (Pujari) and appointing a new one is illegal, null and void and thus setting aside the same being not binding on the rights of the plaintiffs with consequential relief of permanent injunction restraining the defendants from interfering in any manner in the performance of duties and obligation of '*priest*'/shebait.

It is claimed that two old temples, one known as *Prachin Hanuman Mandir* and second *Durga Mandir*, consisting of idols of Shri Hanuman Ji and Goddess Durga are situated in Kurukshetra City.

The plaintiff filed a suit claiming that he is performing the duties of '*pujari*' by conducting all the affairs of the idols. He further claimed that election of the office of President of the society were held on 20.04.1997. The plaintiff opposed defendant No.1, in these elections, who came to be elected and, therefore, the defendants including Sabha are bent upon in grabbing these temples by ousting the plaintiff. The plaintiff also alleged that on 30.07.1997, he was served with a communication dated 30.07.1997 relieving him from his duties of '*pujari*' and appointing one Balramji Gautam as a new '*pujari*'. The plaintiff claims that defendants demanded the keys of the temple from the plaintiff but he avoided and thereafter he filed the present suit for declaration with consequential relief of permanent injunction.

The defendants filed written statement pleading that the plaintiff was only appointed as a '*pujari*' being a licensee and he is a member of the society (Sabha) which manages the affairs of the temple. The licence was given to him in May, 1980 and he use to deposit the entire offerings made by the devotees with the society. Hence, the plaintiff has no right to continue once licence in his favour has been revoked and a new '*pujari*' has been nominated in his place.

Learned trial Court after examining the pleadings of the parties framed the following issues:-

- “1. Whether the plaintiff is a Pujari in the Mandir in dispute? OPP*
- 2. If so, whether the notice dated 30.7.1997 relieving him from the job of Pujari and appointing a new Pujari in his place is illegal, void ab initio, null and void and not binding on the rights of plaintiffs?OPP*
- 3. If so, whether the plaintiff is entitled to injunction against the interference being done by defendants? OPD*
- 4. Whether the plaintiffs have no locus standi to file the suit?OPD*
- 5. Whether the suit is bad for mis-joinder of the parties? OPD*
- 6. Whether the suit is not maintainable in the present form? OPD*
- 7. Whether the suit is hit under Section 91/92 of CPC? OPD*
- 8. Relief.”*

Learned trial Court after appreciating the evidence, dismissed the suit filed by the plaintiff which, as noted above, has been reversed by the First Appellate Court.

During the evidence, the defendants-appellants produced a letter written by the plaintiff wherein he admits that he is performing the duties of '*pujari*' since May, 1980 and he undertakes to strictly follow the instructions given by the then Panchayat (later on converted into society). Letter alongwith list of articles is Ex.D1 on the file. It may be significant to note that the plaintiff had died and the present litigation is being contested, son of the plaintiff claiming to have inherited the office of '*pujari*' on the basis of a testament (Will) executed by late Sh. Ram Jawaya, the original plaintiff.

It may further be significant to note that the plaintiff when appeared in the evidence, admitted that previously he was running a tea shop. He also admitted that he had signed Ex.D1 to Ex.D3. He also admitted that he was permitted by the worshippers to perform the duties of '*pujari*' since 1981. He also admitted that the society was formed and he is member of the aforesaid society which manages the affairs of the temple.

Learned First Appellate Court while reversing the judgment, has totally gone on a wrong direction. Learned First Appellate Court has relied upon the judgments Ex.P100, Ex.P101 & Ex.P102. Judgment Ex.P100 is between the Panchayat Brahmanan Vs. Tirath Sudhar Brahmanan but no issue of title was involved. It is also not in dispute that the parties to this litigation later on merged and the defendants-appellants' society was formed. Judgment Ex.P101 is not connected with the property in dispute and is related to some other temple in which none of the party to this litigation was party in the aforesaid case. Judgment Ex.P102 is between the appellant's society and Kurukshetra Development Board but that is also

with regard to the rights of the society to auction and receive the amount for lotus stems flowers in the Brahm Sarovar (Pious water body). This Court had carefully gone through the judgments Ex.P100, Ex.P101 and Ex.P102. None of the judgment is even remotely connected to the property in dispute.

On reading of the judgment passed by the First Appellate Court, it is apparent that the First Appellate Court not only overlooked documents i.e. Ex.D1 to Ex.D3 which are admittedly signed by the plaintiff but the Court also overlooked the significant admissions made by the plaintiff to the effect that he is member of defendant No.6-appellant-Sabha and previously, he was running a tea shop and thereafter he was permitted to perform the duties of '*pujari*' since 1981. Of course, it is the case of the plaintiff that he was permitted to perform the duties of '*pujari*' by the worshippers.

No doubt, Kurukshetra Development Board has been constituted to develop the religious place, however, Memorandum of Association of the Kurukshetra Development Board does not provide for taking over of all the religious institutions situated in Kurukshetra city. The judgments which have been produced by the plaintiff also does not lay down that on the constitution of the Kurukshetra Development Board, the properties of all the religious institutions would vests in the Board.

Now the stage is set for considering the question of law.

Priests can be of various types. It would always depend upon the facts and circumstances of each case. In the present case, from the reading of Ex.D1 to Ex.D3 and the statement of the plaintiff, it is proved that it is defendant No.6-appellant society which had permitted the plaintiff

to perform the duties of a '*pujari*'. In a way, a licence was given to the plaintiff to perform the duties of the Pujaries. It is also undisputed that the plaintiff was also member of the defendant-appellant society.

It is not the claim of the plaintiff that he was employed in service. In such circumstances, obvious inference is that the plaintiff was only a licensee. A licensee is estopped from denying the title of his licensor. Reference in this regard can be made to Section 116 of the Evidence Act. In any case, it is also admitted fact that before plaintiff, there was another '*pujari*' namely Banarsi Dass. It is not even the case of the plaintiff that he is Chela (disciple) of Banarsi Dass, the previous priest. No evidence has been led that the licence granted was heritable. The plaintiff, as noticed, has died during the pendency of the suit.

In view thereof, the question of law as framed above is answered in favour of the appellants. The judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

10.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No