

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

RSA No.3694 of 2015 (O&M)

Date of decision : 21.05.2018

Murti Shri Dwarka Dhish Ji Maharaj

...Appellant

Versus

Nagar Mal Ghoriwala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sudeep Mahajan, Advocate for the appellant.

Mr. V.K. Sandhir, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.9085-C of 2015

For the reasons stated in the application, which is duly supported by an affidavit, delay of 16 days in filing the present appeal is condoned.

Application is allowed.

Main Case

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit filed by the plaintiff for possession and recovery of mesne profits with respect to the property i.e. plot No.19.

The plaintiff claims that a Trust was created in the year 1904 for the management of the charitable Trust and other properties attached

thereto. It is further the case of the plaintiff that in the year 1972, it was resolved in the meeting of the Trust that plot No.19 would be leased out to defendant No.1 for a period of 30 years at lease money of ₹600/- per month. The defendants would be entitled to raise construction. It is further pleaded that the defendants somehow got introduced a clause that the tenant will be entitled to sublet.

The lease deed executed in the year 1972 is being challenged in the year 1986 with the allegation that the lessee has transferred his rights under the lease to someone else.

The defendants contested the suit and pleaded that the lease deed has been acted upon and more than 14 years had elapsed. It was further pleaded that as per the lease deed, lessee was given right to sublet and in fact there is no sub lease as the property is under the control of close relatives of the lessee.

Both the Courts after examining the evidence available on the file, have dismissed the suit by holding that the lease is valid and defendant No.1 had the power to sub lease the property as provided in the lease deed.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has tried to submit that distinction exist between the Trust created for religious and charitable purposes and a Trust created for the management of the religious and charitable properties. He has submitted that since this Trust was created only for the management of the religious and charitable properties,

therefore, it will not fall in the definition of the religious or charitable Trust and hence, lease beyond a period of 21 years from the date of execution of the lease deed was barred under Section 36 of the Indian Trust Act, 1882. He has further submitted that the possession of leased property was parted with by defendant No.1 in favour of his close relatives and, therefore, such parting of possession is in violation of the lease deed and hence, they are entitled to possession of the property.

On the other hand, learned counsel for the respondents has submitted that the lease was created for 30 years and the aforesaid period is already over as 46 years have elapsed. He has further submitted that the distinction being drawn by the learned counsel for the appellant does not exist as from the reading of the Trust Deed, the translation whereof has been produced on file, it is proved that the Trust was created for the religious and charitable purposes and it was provided that the entire income from the property shall be utilized to meet with the expenses of the temple, school and kitchen. The creator of the Trust even contributed certain cash for meeting with the expenses of the temple and kitchen. Hence, he submitted that the distinction being sought to be drawn by the learned counsel for the appellant, does not exist.

This Court has considered the submission of the learned counsel for the parties. The distinction being sought to be drawn by the learned counsel for the appellant is only imaginary. It is not in dispute that the Trust was created for the management of the temple and other properties which were being used for religious and charitable purposes. As pointed out by the learned counsel for the respondents, on the entire reading of the Trust

Deed which was created in the year 1904, it is apparent that the Trust was created for the religious and charitable purposes. Therefore, the argument of the learned counsel that the lease beyond a period of 21 years, was not permissible, does not stand close scrutiny. Still further, as noticed by this Court, the period of lease is already over. In fact, 46 years had elapsed. The lease deed has been acted upon. The lease was challenged by filing the suit in the trial Court after a period of 14 years. He constructed the buildings according to his convenience which was permissible under the lease deed. The distinction being drawn by the learned counsel for the appellant between a Trust created for the religious and charitable purposes and a Trust created for the management of the religious and charitable purposes, in the considered opinion of this Court, does not exist.

Still further, as noticed, once since as the terms of the lease deed, the lessee had a right to sublet the property, no violation of the lease deed is proved.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

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

21.05.2018

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No