

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5356 OF 2015 (O&M)
Date of Order:18.04.2018

Siri Guru Granth Sahib Dharamshala Jaitu
through its Mohtmims

..Appellants

Versus

Balwinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sarwan Singh, Sr. Advocate, with
Mr. N.S.Rapri, Advocate,
for the appellant.

Mr. Parampreet S. Brar, Advocate,
for respondent nos.1, 5 and 6

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants are in the regular second appeal against the
concurrent findings of fact arrived at by the courts below.

Even on the first date of hearing, this court was not *prima-facie*
in agreement with the learned counsel for the appellants. The order dated
01.03.2016 is extracted as under:-

*“Though I am, prima facie, not in disagreement with
what has been held by the lower appellate Court with
regard to the two persons through whom the suit and the
appeal was filed, i.e. Paramjit Singh and Balwinder
Singh, not having been validly appointed as 'Mohtamims'
upon the death of Surjit Singh, stated to be their father,
as also to the effect that the suit was not maintainable*

being one for declaration only, not claiming possession, however, the fact remains that the suit land is stated to belong to the Siri Guru Granth Sahib Dharamshala, Jaitu, having been donated by the proprietors of the village approximately 50 or more years ago. The respondents herein (defendants in the suit), prima facie, also do not seem to be in legal possession of the suit land.

The question therefore is, as to whether, in the absence (again prima facie) of a valid and legal order of appointment of Paramjit Singh and Balwinder Singh as 'Mohtamims' of the Dharamshala, by an order of the Financial Commissioner/Deputy Commissioner, in terms of Paragraph 44 of Standing Order 7, the Financial Commissioner Revenue, Punjab, can the land be allowed to continue to be in illegal possession, or would it escheat to the State. On the above question of law, let notice be issued to the respondents as also to the Financial Commissioner Revenue, Punjab, who is directed to be impleaded as respondent No. 7 in the present appeal.

Notice be also issued to the respondents in the application for condonation of delay in filing the appeal, both returnable on 07.04.2016.

Dasti also.”

Notice was issued to the State of Punjab. However, no one has

come present on behalf of the State of Punjab.

There is a religious institution with the name of Siri Guru Granth Sahib Dharamshala, Jaitu, property whereof is the bone of contention between the parties. Plaintiffs, namely, Siri Guru Granth Sahib Dharamshala, Jaitu, filed a suit through its two alleged “Mohtamims”, namely, Paramjit Singh and Balwinder Singh sons of Surjit Singh, who was erstwhile “Mohtamims” of the Institution. It was claimed that after the death of their father late Sh. Surjit Singh, both the sons have been appointed as “Mohtamims” by the “Bhekh” of respectable of the village.

Defendants contested the suit and pleaded that the plaintiffs are not the “Mohtamims” of the religious institution and it is being managed by defendant no.1-the Managing Committee. Defendants no.1 to 6 were the members of the aforesaid Managing Committee. It was further pleaded that there is no Dera on the property. It was further pleaded that 15 to 20 shops have been got constructed by the Managing Committee, which have been leased out and the plaintiffs have no concern with the same.

Both the courts after appreciation of the evidence available on the file and after discussing the admissions made by the plaintiffs, dismissed the suit.

This court has heard 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 appellants has submitted that the learned first appellate court erred in dismissing the suit for declaration on the basis of proviso to Section 34 of the Specific Relief Act as the plaintiffs are not in possession and also no relief of possession has been sought for.

He submitted that in case of religious institutions, Section 34 of the Specific Relief Act would not come into play. He has further submitted that the learned first appellate court has not given the judgment after discussing all the issues which have been framed by the learned trial court. He submitted that since the judgment passed by the learned first appellate court is non-speaking, therefore, it is liable to be set aside.

A careful reading of the judgment passed by the learned first appellate court proves that the learned first appellate court after noticing various documentary evidence and oral evidence led by the parties, framed an issue for adjudication. The court recorded that the main dispute involved in the present case is whether Paramjit Singh and Balwinder Singh were actually appointed as “Mohtamims” or not? The court noticed that initially the mutation was sanctioned as sons of late Sh. Surjit Singh. The court further noticed that the plaintiffs have admitted that they had not informed the revenue authorities about the fact that they had been appointed as “Mohtamims” at the time of “Bhog Ceremony” of late Sh. Surjit Singh. In such circumstances, the contention of learned counsel for the appellants that the judgment passed by the learned first appellate court is non-speaking and does not stand close scrutiny.

No doubt, it is desirable for the first appellate court to return issue-wise finding while adjudicating upon the first appeal, however, judgment of the learned first appellate court cannot be set aside merely on the basis of the aforesaid irregularity. Learned first appellate court has discussed the evidence and given its conclusion along with the reasons.

Second argument of learned counsel that the suit could not be dismissed on the ground that relief of possession has not been sought for is

just to be noticed and rejected.

First of all this is not the only ground on which the learned first appellate court has dismissed the appeal. In any case, it is admitted by learned counsel for the appellants that the plaintiffs are not in possession of the property. Such being the position, it was incumbent on the plaintiffs to seek further relief as provided under Section 34 of the Specific Relief Act. Learned counsel for the appellants also admitted that there are 15 to 20 shops constructed on the property and these shops have not been constructed by the plaintiffs or their predecessor.

In view of the aforesaid, there is no scope for interference in the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

C.M.No.12753-CII-2015

The condonation of delay of 2925 days has been sought for. It has been pleaded that the plaintiffs could not file the appeal due to poverty.

Since, the appeal has been decided on merits, therefore, no order is required to be passed on the application.

C.M.No.7860-C-2016

Prayer in this application is for bringing on record the legal representatives of Baldev Singh-respondent no.4.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representative mentioned in paragraph 3 of the application is brought on record for the purpose of prosecuting this appeal only.

Amended memorandum of parties filed along with the application is taken on record.

April 18, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No