

102.

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

RSA-6264-2015 (O&M)

Date of decision:12.02.2018.

**UNITED CHURCH OF NORTHERN INDIA TRUST ASSOCIATION
AND ORS**

... Appellants

Versus

SHIV RAJ MASIH AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sanjay Jain, Advocate,
for the appellants.

HARI PAL VERMA, J.(Oral)

CM-15802-C-2015

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 44 days in re-filing the present appeal.

For the reasons stated in the application, same is allowed and
the delay of 44 days in re-filing the appeal is condoned.

RSA-6264-2015

Appellants-plaintiffs have filed present regular second appeal
against the judgment and decree dated 16.05.2015 passed by learned
Additional District Judge, Hoshiarpur, whereby their appeal against the
judgment and decree dated 08.04.2013 passed by learned Additional Civil
Judge (Senior Division), Mukerian, was dismissed.

Briefly stated, the appellants-plaintiffs (herein called as
“plaintiffs”) had filed a suit for permanent injunction restraining the
defendants (respondents herein) from causing any sort of obstruction in the

management, protection, repairs and maintenance of the church measuring 4 Kanals-14 Marlas, as detailed in the plaint. In the suit, the plaintiff No.1-Church has claimed to be owner in possession of the suit property on the basis of a copy of jamabandi for the year 1998-99 and a copy of judgment dated 08.08.2001 passed by the then Additional Civil Judge, Senior Division, Dasuya in Civil Suit No.433/92 titled as “United Church of Northern India Versus Umar Draz Khan etc.” It has been further averred that earlier some unscrupulous persons fraudulently alienated some portion of the suit property in favour of some other persons through a sale deed and it is on the basis of that sale deed those persons got a mutation sanctioned, but in appeal the mutation was set aside by the Collector, Mukerian vide order dated 23.07.1999 and, therefore, entry of Mutation No.1823 in jamabandi for the year 1998-99 which was declared as non-est and inoperative and does not effect the ownership right of plaintiff No.1 over the suit property. Plaintiff No.2-Major Masih has claimed that he has been authorized by plaintiff No.1-United Church of Northern India through its letter dated 10.05.1993 for proper management, protection, repair and maintenance of suit property. Thus, he is managing and protecting the suit property since the year 1993. The defendants who belong to other missionaries of Christianity, namely, Church of Northern India (C.N.I) want to forcibly occupy the suit property on one pretext or the other. Earlier the above-mentioned missionaries (members of C.N.I.) alienated a part of the suit property fraudulently in favour of some persons for which plaintiff No.1 had to file a Civil Suit No.433/92, referred to above, which was decreed in favour of plaintiff No.1 and the sale deed executed by the C.N.I. was set aside vide copy of judgment dated 08.08.2012 which has become

final. Now again the defendants at the instance of C.N.I. Members are threatening to forcibly occupy the suit property and also threatening to obstruct the plaintiffs from managing the suit property for which they have no right. Hence the suit was filed.

Upon notice, defendants appeared and filed their written statement raising preliminary objections including that the suit is not maintainable as the Church is controlled by Padri Ashok Masih and plaintiffs No.2 and 3 have no right to interfere in the management and control of the Church. Plaintiff No.2 has no authority to represent plaintiff No.1. Plaintiff Major Masih and his associates are representing false and fake church and Trust i.e. United Church of Northern India (U.N.I.) and United Church of Northern India Trust Association (UCNITA).

From the pleading of parties, the trial Court framed the following issues:-

- “1) Whether plaintiffs are entitled for relief of permanent injunction as prayed for? OPP
- 2) Whether suit of the plaintiffs is not maintainable in the present form? OPD
- 3) Whether the plaintiffs have not come to the court with clean hands and concealed the material facts from the court? OPD.
- 4) Relief.”

On the crucial issue as to whether the plaintiffs are entitled for relief of permanent injunction, the civil Court vide judgment and decree dated 08.04.2013 has held that plaintiff No.2 to 4 are not actually managing the affairs of Church. Therefore, they are not entitled for any relief of permanent injunction. The findings recorded by the Civil Court in para 10 of the judgment read as under:-

“10. Now by way of present suit the plaintiff is seeking relief of permanent injunction restraining the defendant from causing

any obstruction in the management, protection, repairs, prayers and maintenance of plaintiff church property as mentioned in the head note of the plaint. In order to seek relief of permanent injunction it is necessary for the plaintiff to prove that it is actually in possession of the suit property and is actively managing the affairs of the church situated over the property dispute. PW1, who has filed the present suit, is claiming himself to be the father of the plaintiff church. However in his cross-examination he has categorically admitted that vide writing Mark PW1/A5 he was not appointed as father of plaintiff church. At one stage he has gone to the extent of saying that there was no electricity meter installed in the church premises. However when he was put question with regard to electrical amenities provided in the prayer hall, he admitted that there was an electricity connection of the church but he improvised by saying that the same was installed outside the church premises and one Rusuf Paul was paying the electricity bill. However from the aforesaid admissions made by PW1, one thing is clear that there is electricity meter installed in the church premises. However plaintiff has failed to bring on record even a single electricity bill or the receipt vide which the said bill was paid. This fact goes on to show that actually the plaintiff number 2 to 4 are not managing the affairs of the church. As per copy of Jamabandi placed on record for the year 1998-99, plaintiff number 1 is shown to be owner of the suit property. However the said document is of no rescue to plaintiff number 2 to 4 as it is not evident as to who is managing the affairs of the said church. Moreover in his cross-examination PW1 had categorically stated that he was in possession of blue book, memorandum and articles of Association of plaintiff church, annual returns of plaintiff church up till date, registration certificate issued by registrar of companies. However none of the said documents was produced by the witness on next date of waiting except for blue book. This further substantiates the fact that plaintiff number 2 to 4 are not

managing the affairs of church. The PW 2, even though has proved on record the documents with regard to the bank account maintained by plaintiff as already described above. However in his cross-examination the said witness has categorically admitted that the account was not operated since 1/7/2005. He further admitted that the officials of the bank did not verify if the person opening the bank account was actually the president of trust of UCNI. He further admitted that as report brought by him with regard to opening of the account in question there was no original resolution therein. He further admitted that as per statement of accounts, the amount was deposited only three times in the account in question. Therefore in the view of above admissions made by PW2, there is nothing on record to suggest that the said account in question was maintained by plaintiff's for actively managing the affairs of plaintiff number 1 church. Rather there is not even a single document proved on record by the plaintiffs to substantiate the fact that plaintiff number 2 to 4 are actively managing the affairs of the plaintiff church. Needless to say had it been so, the plaintiffs would have been in possession of voluminous documents with regard to management of affairs of plaintiff number 1 church. This being not the case, it is concluded that the plaintiffs number 2 to 4 are not actually managing the affairs of plaintiff number 1 church and are therefore not entitled for any relief of permanent injunction with regard to management, protection, repairs, prayers and maintenance of plaintiff number 1 church property. Consequently the present issue is decided against the plaintiff and in favour of defendants.”

Aggrieved by the aforesaid judgment and decree dated 08.04.2013 passed by the trial Court, appellants-plaintiffs preferred an appeal before the learned Lower Appellate Court. However, vide judgment and decree dated 16.05.2015, Lower Appellate Court dismissed the appeal

It is in the aforesaid circumstances, plaintiffs-appellants have filed the present appeal impugning the judgments and decrees passed by the courts below.

Learned counsel for the appellants has argued that apart from the fact that the courts below have committed a legal error in not appreciating the evidence led by the plaintiffs, it has come in evidence of PW2-Rajesh Gupta, SWO, State Bank of Patiala, Branch Office Mukerian, that Account No.011950059 (Ex.PW2/1) is in the name of United Church Northern India Mukerian which is situated near SPN College Mukerian. The new number of this account was 55095317373 (Ex.PW2/2) and in the said account, an amount of ₹11,000/- and ₹21,000/- were credited. This account was being operated by Major Masih and two other persons. He has further argued that this amount was granted by Punjab Government to the plaintiff-Church and it is on the basis of this amount, plaintiff No.2 along with two elected members of UCNI opened an account No.01190050059 in State Bank of Patiala on 06.05.2005. He has further argued that plaintiff No.2 was a caretaker of the church and, therefore, the suit was maintainable and was liable to be decreed.

I have heard learned counsel for the appellants and perused the judgments and decrees of the courts below.

In order to get the decree of permanent injunction so as to restrain the defendants from interfering in the peaceful possession, one of the ingredients for the plaintiffs was to establish their possession. The plaintiffs were required to prove that they are actually managing the affairs of the Church situated over the property in dispute. Though in cross-examination, the plaintiff No.2 (PW1) has claimed himself to be a Father

of the Church, but during his cross-examination this witness has admitted that he was not appointed as Father of the Church. The factum of installation of an electricity meter in the Church premises also remained one of the issue. The plaintiff could not produce even a single electricity bill or receipt thereof which may establish the installation of an electricity meter in the Church. The courts below have returned a finding of fact that the plaintiffs were not managing the affairs of the Church and have even failed to establish that they are in possession of the Church.

No substantial question of law arises in the present regular second appeal.

No other argument is raised.

Since there are concurrent findings of facts recorded by both the courts below, this Court does not find any reason to interfere in the well reasoned judgments and decrees of the courts below. Accordingly, present appeal is dismissed.

(HARI PAL VERMA)
JUDGE

12.02.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No