

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

**RSA-1890-2017 (O&M)
Date of Decision:11.07.2018**

Om Parkash

... Appellant

Versus

Kailash Nand & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

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

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TEJINDER SINGH DHINDSA, J. (ORAL)

Plaintiff/appellant is in second appeal before this Court
having remained unsuccessful in both the Courts below.

Briefly, it may be noticed that plaintiff/appellant, Om Parkash filed a suit for declaration to the effect that he is owner in possession of a house measuring 215 sq. yards bearing No.B-II/376-A, Kotkapura and that defendant Nos.1 and 2 have no concern with the suit property and defendant Nos.3 and 4 i.e. Municipal Council, Kotkapura and its functionaries have no right to transfer the ownership of the suit property in the names of defendant Nos.1 and 2. Further declaration was sought that if any transfer had been made then the same is illegal, null and void. Consequential relief of permanent injunction restraining defendant Nos.1 and 2 from alienating and transferring the suit property to anybody else was also sought.

Suit of the plaintiff was dismissed by the trial Court on 17.04.2013 and even the civil appeal preferred has met the same fate vide judgment dated 12.08.2016 passed by the learned Additional District Judge, Faridkot.

Counsel for the plaintiff/appellant has been heard at length.

Brief facts are that plaintiff in the suit had asserted that Mahavir Saroop Brahamchari i.e. his brother was the owner in possession of the suit property. It was asserted that Mahavir Saroop Brahamchari had purchased the house in question on 18.12.2002 vide registered sale deed dated 18.12.2002 registered in the office of Sub Registrar, Kotkapura. He asserted that he had three more brothers, namely, Shiv Kumar, Balbir Singh and Raghbir Singh and who had all died. Even the 4th brother i.e. Mahavir Saroop Brahamchari is stated to have died but during his lifetime. He is stated to have executed a general power of attorney in favour of the plaintiff on 24.04.2000 and on the basis thereof, the plaintiff was managing the land of Mahavir Saroop Brahamchari at Sonapat. Plaintiff set up a claim that as per law, any brother or sister who is alive would be the owner of the property of the deceased and he being the only surviving legal heir of the deceased Mahavir Saroop Brahamchari, is legally entitled to inherit the suit property. Plaintiff also asserted that Mahavir Saroop Brahamchari died unmarried and issueless and there is no *chela* of the deceased Mahavir Saroop Brahamchari and as such, any transfer made in favour of defendant Nos.1 and 2 with regard to the suit property was in

connivance with the officials of the Municipal Council, Kotkapura and which cannot be recognized in the eyes of law.

Suit was contested in terms of defendant Nos.1 and 2 by filing a separate written statement and taking a stand that after death of Mahavir Saroop Brahamchari on 08.04.2008, Kailash Nand (defendant No.1) was appointed as Incharge of the Mandir/Ashram. It was pleaded in the written statement that the suit property i.e. house measuring 215 sq.yards was not ancestral property of either plaintiff or Mahavir Saroop Brahamchari and the property was of the Mandir as the same was purchased by routine prayer money collection and that Mahavir Saroop Brahamchari was only the manager of the property. In a nutshell, case set up on behalf of defendant Nos.1 and 2 was that after demise of Mahavir Saroop Brahamchari, defendant No.1 being the only *waris* and having been appointed as the next *mahant*, he became manager and took over the control of the suit property.

Defendant Nos.3 and 4 i.e. Municipal Council, Kotkapura and its office bearers took a stand denying any collusion and connivance with defendant Nos.1 and 2. It was pleaded that entries in the assessment register were changed after following due procedure by defendant No.1. Further pleaded that entries of transfer in the assessment register was made for the purpose of house tax only.

Learned senior counsel representing the appellant has been heard at length.

Both the Courts below have returned a concurrent finding

of fact that the plaintiff/appellant has failed to prove his possession over the suit property. In the shape of documentary evidence only Ex.P-1 i.e. copy of mutation of the property of Mahavir Saroop Brahamchari situated at Sonapat and Ex.P-16 i.e. registered Power of Attorney executed by deceased Mahavir Saroop Brahamchari in favour of plaintiff were adduced. It has been noticed that as per mutation Ex.P1, plaintiff/appellant has only inherited a share in the property of Mahavir Saroop Brahamchari situated at Sonapat. Even the Power of Attorney Ex.P-15 did not in any manner prove possession of the plaintiff/appellant over the disputed house. Under such circumstances, a view has been taken that the plaintiff was required to seek the relief of possession along with declaration and which he has not done and as such the suit for simple declaration was not even maintainable.

Furthermore, plaintiff/appellant has also been non-suited on the ground that the suit instituted by him was bad for non-joinder of necessary parties. In this regard, the Courts have noticed and appreciated that in the cross examination of the plaintiff, he had admitted that all his three brothers apart from Mahavir Saroop Brahamchari, namely, Shiv Kumar, Balbir Singh and Raghbir Singh were married and have left behind their wives and children and who were residing at Sonapat. None of the legal heirs/representatives were made party to the case. Such flaw and error has been held to be fatal.

It would be apposite to take notice that the trial Court has even recorded an observation that even defendant Nos.1 and 2 have not

been able to prove that Mahavir Saroop Brahamchari had ever appointed defendant No.1 Kailash Nand as a disciple and no documentary evidence had been adduced with regard to possession of the defendants No.1 and 2 being in possession of the suit property as Sewadars of Mahavir Saroop Brahamchari.

In the totality of facts and circumstances and after appreciation of evidence adduced on record, the declaration sought for by the plaintiff/appellant has been rightfully declined.

The appeal does not raise any question of law.

Being devoid of merit, appeal is dismissed.

11.07.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |