

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

RSA No. 1710 of 2018 (O&M)
Date of decision : July 31, 2018

Managing Committee, Bir Baba Budha Sahib, Thatha College & another

..... Appellants

v.

Shiromani Gurudwara Parbhandhak Committee and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. A.K Chopra, Sr. Advocate
with Mr. Ankit Midha, Advocate
for the appellants.

Mr. Vikas Bahl, Sr. Advocate with
Ms. Japneet Kaur, Advocate and
Ms. Puneet Kaur Sekhon, Advocate
for the respondents.

Ajay Tewari, J (Oral)

This appeal has been filed against the judgment of the lower appellate Court reversing that of the trial Court and thereby decreeing the suit filed by the plaintiffs/respondents No.1 and 2.

Brief facts are that land was mutated in favour of Bir Baba Budha Sahib School in 1954 through its Managing Committee. It is admitted that the school got ownership and possession of the land through this mutation. On 18.9.1977, after 33 years, the Managing Committee passed a resolution No.16, resolving that the land be mutated in the name of Baba Kharak Singh and on the basis thereof, mutation No.609 was

sanctioned in favour of Baba Kharak Singh on 15.11.1977. In the year 1998, the village Gurdwara was notified under Section 85 of the SGPC Act and was subsequently taken over by the respondent-SGPC. Thereafter, the SGPC filed the instant suit challenging mutation No.609. The ground for claiming the management of the school was based on the fact that the constitution of the original society which had run the school had a clause whereby the management was vested in the local Managing Committee of the Gurdwara. It was on that basis that the SGPC claimed that since it had taken over the Managing Committee of the Gurdwara, it had stepped into the shoes of the local Managing Committee of the Gurdwara. It was further averred that the then local committee had no authority or competency to pass any resolution transferring ownership rights of the school property in favour of Baba Kharak Singh. It was also pleaded that no resolution was passed by the then local committee and any resolution which may have been placed on record was forged, fabricated and impersonated.

The case of the appellants, on the other hand, was that in fact the land had been donated to Baba Kharak Singh who was a great religious saint and a philanthropist and it was only at the instance of Baba Kharak Singh that the land was mutated in the name of the school. It was further asserted that resolution No.16 dated 18.9.1977 had been validly passed and as a result of that resolution, land was validly mutated in the name of Baba Kharak Singh.

It was with these essential proceedings that the parties went for trial. The trial Court dismissed the suit which was challenged by the respondents in appeal, and the appeal having been allowed the original defendants are before this Court.

Learned counsel for the appellants has vehemently argued that the case set up by the lower appellate Court is beyond the pleadings itself. The entire approach of the lower appellate Court is not only without jurisdiction but also is erroneous, misconceived and unwarranted. The Court has referred to Ex.D6 which is the constitution of the school but has relied upon only clause 3 thereof and has conveniently and intentionally not taken note of clauses 2, 4 and 8(c) thereof. Learned counsel has further argued that the lower appellate Court has wrongly held that the Managing Committee was not authorized to pass that resolution since the Committee is specifically authorized to deal with the property of the school as per the constitution. It is further the contention of the learned counsel that in so far as the school is concerned, original mutation was itself sanctioned in favour of the school through its Managing Committee only. It has also been argued that a registered society works through resolutions. The lower appellate Court has also conveniently not noted Ex.D8, much less discussed the same.

It has also been argued that written submissions were filed before the lower appellate Court and every issue was addressed but the Court has not even referred to the contentions raised therein. It is the contention of the learned counsel that the land was not gifted to the school and as a matter of fact, it was given to Baba Kharak Singh for the purpose of school.

Learned counsel has further argued that the lower appellate Court has erred in not considering the resolution Ex.D3 even though it had been validly exhibited by the trial Court. The lower appellate Court erred in holding that a wrong entry could be corrected only with the intervention

of a civil Court, and rather in the present case, the entry was rightly changed. The lower appellate Court wrongly relied upon a judgment of this Court in Sat Parkash alias Satpal v. The Financial Commissioner, Revenue, Punjab 2009(4) RCR (Civil) 357 which had no application to the present case. In that judgment, there was a contest regarding change of entry by a person who claimed to be the owner and that is why this Court had held that in such a case civil suit had to be filed. In the present case, the owner which is the school had itself applied for change of the entry and there was no requirement to file a civil suit, in view of the provisions of Section 37 of the Punjab Land Revenue Act.

It has also been argued that once the school through its duly authorized Managing Committee had itself got the land mutated in favour of Baba Kharak Singh, it could not become a plaintiff in the present case without challenging the resolution.

Learned counsel has further argued that challenge in the civil suit is to the resolution Ex.D3 which is dated 18.9.1977 and the mutation Ex.DX which is dated 14.10.1977 and hence the civil suit is barred by limitation.

Last argument of the learned counsel is that the SGPC had filed a similar suit for another 130 kanals of land which had also been transferred in favour of Baba Kharak Singh by a different resolution. That suit was filed prior to the filing of the instant suit and by not including this land, the plaintiffs were barred from filing the fresh suit in view of Order 2 Rule 2 of the CPC. Moreover, the lower appellate Court has discarded the Will which was executed by Baba Kharak Singh in favour of Baba Darshan Singh overlooking the pleadings and the evidence.

In my considered opinion, this appeal must fail. The crucial determinant in this case is whether the title could be transferred in the year 1977 by a resolution which resulted in a mutation. By that time, the concept of oral transfer had been overturned with the applicability of the Transfer of Property Act to the State of Punjab. Consequently, any transfer which had to be made could only have been made by a registered document. A resolution followed by a mutation could not pass the title from the school in favour of Baba Kharak Singh.

Learned counsel for the appellant has not been able to show any law on this issue which may have taken a different view. In the circumstances, it has to be held that resolution No.16 dated 18.9.1977 and mutation dated 15.11.1977 could not transfer the title from school in favour of Baba Kharak Singh. Once this essential issue is behind us, the other peripheral issues regarding the interpretation and interplay of different clauses of the constitution of the school need not detain this Court and the exact connotation thereof can be considered in a case where they may arise. Likewise, the issue of Will of Baba Kharak Singh would also pale into insignificance. On a complete conspectus of the facts and the law, I am not persuaded to hold that the civil suit should be dismissed. Consequently, finding no merit in this appeal the same is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

July 31, 2018
'kk'

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No