

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2259 of 2017
Date of Decision: 04.07.2018

Chuhar Khan

.....Appellant

Vs.

Mehanga Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Johan Kumar, Advocate,
for the appellant.

Mr. S.S. Sahu, Advocate,
for the respondents.

AMOL RATTAN SINGH, J. (ORAL)

By this appeal, the appellant challenges the concurrent findings of the learned Civil Judge (Senior Division), Ratia, and the appellate Court, i.e. the Additional District Judge-I, Fatehabad, in Civil Suit No. RBT-53 of 2014, instituted by the appellant seeking permanent injunction against the respondents-defendants from interfering in his possession over land on which a '*Peer/Dargah*' known as "*Lakhdata Lala Wala Peer*" stands constructed.

He also sought that the respondents-defendants be enjoined from demolishing the said construction.

The learned courts below have come to concurrent findings on the basis of the evidence led, that the appellant could in no manner to prove his possession of the said building, though his contention was that his father, Bhajna Shekh had managed the land measuring 05 marlas, situated in ward No. 01, Saini

Mohalla, Ratia, Fatehabad, on which the said '*Peer/Dargah*' stood constructed and after his father passed away, the management of the said '*Peer/Dargah*' came upon him and his uncle, which they had been performing since then. (No specific date of the death of the father is seen to have been given in the judgments, with learned counsel for the appellant-plaintiff also not aware of the exact date of death, or any evidence led in that regard).

As per the findings of the learned Courts, even as per the plaintiffs' own cross-examination, as also the cross-examination of PW 3 (Jasbir Singh) and PW-5 (Harbans Singh), a Revenue Kanungo, it was found that he was not residing at the '*Peer/Dargah*' and was residing separately at some distance therefrom with even the assessment to house tax by the Municipal Committee (Ex. P-7) pertaining only to the residence of the appellant and not the '*Peer/Dargah*' or the land that it stood on.

It was further found that even the bills on the meter of the electricity connection, as were led by evidence, pertained to a meter installed at the plaintiffs' residence and not at the '*Peer/Dargah*', and yet further, that the said '*Peer/Dargah*' was being actually run by a Committee and not by the appellant.

Learned counsel for the appellant, however, refers to a site plan (Ex. PW-5/D), to submit that a perusal thereof shows that there is a single entrance to the compound, wherein the '*Peer/Dargah*' is situated and admittedly the appellants' residence is also constructed.

Hence he submits that the appellants' residence being existent and constructed within the boundary of the '*Peer/Dargah*', his possession over the entire compound, including the '*Peer/Dargah*' duly proved and therefore, the findings of the learned Courts below, to the contrary, are wholly perverse.

Learned counsel for the appellant further submits that as a matter of fact the management of the '*Peer/Dargah*' was attempted to be taken over from the appellant by the respondents, in respect of which he had also filed a complaint Ex. P-6, which is why the appellant had to institute the suit seeking permanent injunction.

Mr. Sahu, learned counsel for the respondents-defendants, on the other hand points to the findings of the learned Courts below as have already been noticed hereinabove, to submit that not even an iota of evidence could be led by the appellant to prove his possession over the '*Peer/Dargah*' itself, though the finding as regards his place of residence is not denied, except to the extent that the said residence is not a part of the said '*Peer/Dargah*' but is outside of the compound, (which however, is not actually borne out even from the report of the Tehsildar, Ratia, who had carried out the measurement of the suit property in the presence of the Local Commissioner appointed by the trial Court, to the extent that no separate entrance is shown to the residential area of the appellant in the site plan Ex. D-10, as has been annexed with the report of the Tehsildar Ex. D-9).

However, as per the said report, the residential area of the appellant is about 06 acres (650 feet) away from the '*Peer/Dargah*' and even the assessment of the Municipal Committee was as regards the said house only.

Having considered the aforesaid arguments as also the judgments of the learned courts below, firstly of course it is to be noticed that it is a concurrent finding of fact by those courts which normally, unless such finding is found to be absolutely perverse, would not be interfered with by this Court in a second appeal; but even so, it needs to be observed that with the appellant not having proved his possession over the '*Peer/Dargah*' itself, then simply on the basis of the fact that his residence is located within the same compound as the '*Peer/Dargah*', but at a

distance of about 650 feet therefrom, or even on account of the fact that his father may have been the care-taker of the '*Peer/Dargah*', he cannot be held to be in possession of the *Dargah* itself.

No doubt, the finding by the courts below with regard to a Committee running the *Dargah* are not based on any documentary evidence, but only on photographs stated to be showing it inscribed on the *golak* at the *Dargah* that a Committee was managing it; yet, the plaintiff seeking a decree of permanent injunction qua the suit 'property', he was required to lead positive evidence showing his possession, which he could not, as already discussed.

Consequently, in any case there being no substantial question of law to be adjudicated upon in this 2nd appeal, it is dismissed; while observing however, that as regards the appellants' residence, which was proved to be in his possession even as per the report of the Tehsildar and the findings of the courts below, obviously, the judgments of the courts below would not be construed to be affecting his possession over such residence, (the suit for permanent injunction in any case being only qua the '*Peer/Dargah*' and not the residence).

July 04, 2018
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes