

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

**RSA No.2736 of 2017 (O&M)
Date of Decision:23.02.2018**

Parshotam Dass Chela Sh.Amar Nath @ Amar Dass

...Appellant

Versus

Union of India and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.R.S.Ghuman, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

Plaintiff, claiming to be a Chela of Gurcharan Dass, filed a suit for permanent injunction, asserting that the land is earmarked for construction of a Shiv Mandir.

Defendants-Union of India contested the suit and pleaded that the land comprised in Khasra Nos. 1918, 1924 and 1925 is part of Baradari Anarkali, a protected monument, and pursuant to the order passed by High Court, encroachments were removed and possession was taken. It was pleaded that the plaintiff was also removed from the site.

Both the courts below, after examining the evidence, have dismissed the suit filed by the plaintiff.

On the insistence of the learned counsel for the appellant, the evidence given by the plaintiff and his witness Hardeep Singh has been once again re-examined. The plaintiff admits in cross examination that the construction which was raised by him was demolished and possession

was taken over by the Central Government. Even Hardeep Singh, who has been examined as PW-2, also admits that any Dera or temple of the plaintiff does not exist over the suit property.

The statement made by Hardeep Singh is extracted as under:-

“.....The plaintiff has got no possession over tank at present. I do not know the Khasra No. of the property in dispute. I have not seen the revenue record of suit property. It is correct that there does not exist any dera or temple of plaintiff at present over the suit property.”

Once the plaintiff is not in possession, suit for injunction is maintainable. Still further, both the courts below have found that the plaintiff did not serve notice, which is a mandatory requirement under Section 80 of the Code of Civil Procedure, against Union of India.

In view thereof, there is no scope for interference in the impugned judgments passed by both the courts below. The regular second appeal is dismissed. Pending miscellaneous application, if any, shall also stand disposed of.

23.02.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No