

**RSA-3868-1987 (O&M) AND
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 31.01.2019

1. RSA-3868-1987 (O&M)

Chaman Rishi Ashram Charitable Trust Village Salimpur
Madud and others

... Appellants

Versus

Bara Mandir Bihari Ji

... Respondent

2. RSA-931-2000 (O&M)

Paido Bai and others

... Appellants

Versus

Chaman Rishi Ashram Charitable Trust and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Rajinder Goyal, Advocate and
Mr. Ashish Soi, Advocate
for the appellants in RSA-3868-1987 and
for the respondents in RSA-931-2000.

Mr. Puneet Jain, Advocate for
Mr. Rakesh Gupta, Advocate
for the appellants in RSA-931-2000.

Mr. Bhag Singh, Advocate
for the respondent in RSA-3868-1987.

AMIT RAWAL, J.

This order of mine shall dispose of two regular second appeals
bearing **RSA No.3868 of 1987** titled as **"Chaman Rishi Ashram
Charitable Trust Village Salimpur Madud and others V/s Bara Mandir
Bihari Ji"** preferred by the defendants against the concurrent findings of

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fact, whereby the *Civil Suit No.12 of 1980* titled as "*Bara Mandir Bihari Ji V/s Chaman Rishi Ashram, Charitable Trust and others*" (in short 'the first suit') for declaration with possession as consequential relief, has been decreed by the trial Court and affirmed in appeal. The other appeal bearing **RSA No.931 of 2000** titled as **"Paidai Bai and others V/s Chaman Rishi Ashram Charitable Trust and others"**, whereby the *Civil Suit No.8 of 1980* titled as "*Chaman Rishi Ashram Charitable Trust and others V/s Lachhman Singh and others*" (in short 'the second suit') for declaration and cancellation of the documents, dismissed by the trial Court, has been decreed by the lower Appellate Court.

In the first suit, Bara Mandir Bihari Ji through worshipers sought the declaration and possession against the appellants-defendants claiming themselves to be owner of land measuring 267 kanals 16 marlas, on the premise that it was well known Mandir situated at Village Pabnawa Tehsil Kaithal, for the last more 200 years and idols of Radha, Krishana and Balram Ji, were installed. The plaintiffs were none-else, but worshipers. It was alleged that Mandir was also having the land measuring 6 kanals 16 marals in Village Dadwana Tehsil Kaithal, in its capacity of Dholidar and as per precedent, a person holding the office of Pujari, would be holding the land and in the column of ownership, his name was reflected as owner. In the year 1975, the suit was filed by the worshipers to remove the Pujari and one Brij Bhushan Dass, on account of misdeeds and illegal actions. However, in view of the statement of the counsel that the said Brij Bhushan Dass was murdered, the suit was dismissed as infructuous. After his death, defendant No.2 wrongly represented him to be Chela of deceased Brij

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Bhushan Dass and in collusion with defendant Nos.3 to 8, constituted the Trust under the name and style of defendant No.1 i.e. Chaman Rishi Ashram Charitable Trust and illegally occupied the suit land under the garb of the same. Despite repeated requests to the defendants to desist from their illegal activities, but no action was taken, accordingly, the suit was filed.

The defendants opposed the suit by taking the preliminary objections qua maintainability and stated that one of the person, namely, Swami Ramji Dass did not remain Pujari and for the last many years, Chaman Rishi Ashram was situated in village Slimpur Madood, where a saint was worshipped by the inhabitants of surrounding areas and the income of the land was being used for charitable purposes. The plaintiffs had no right and title over the suit property, whereas the defendant No.2 was the Chela of Baba Brij Bhushan Dass and not the chela of Ram Saran Dass. Ram Saran Dass had been the gurubhai of Baba Brij Bhushan Dass.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the constitution and creation of Chaman Rsihi Ashram Charitable Trust Village Salimpur Madood is illegal, void and not binidng on the plaintiff? If so to what effect? OPP*
- 2. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPd*
- 3. Whether the suit of the plaintiff is mala fide one and has been filed by greedy person on behalf of the Mandir? If so to what effect? OPD*
- 4. Relief.*

The plaintiffs in support of their case examined two witnesses and brought on record many documents (Ex.P1 to P-66), whereas the

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defendants examined one witness and tendered in evidence various documents (Ex.D1 to Ex.D3).

The trial Court on the basis of the evidence brought on record decreed the suit and the appeal laid before the lower Appellate Court was also met with the same fate.

In the second suit, the plaintiffs, defendants in the first suit, instituted the suit for declaration and cancellation of the documents, on the premise that one Baba Brij Bhushan Dass was the owner of the land and after his demise, plaintiff No.2, being the Chela of said Baba Brij Bhushan Dass, created a trust and during his life time, appointed plaintiffs No.2 to 7 along with one Ram Singh, as its trustees, vide general power of attorney dated 18.02.1974, which was registered in the office of Sub-Registrar, Kaithal, but subsequently, the same was cancelled, vide cancellation deed dated 01.05.1975. This fact was in the knowledge of the defendants, but the defendants in collusion with each other, grabbed the land by changing the date from 18.02.1974 to 18.03.1979 and conspired together to execute the sale deed dated 20.05.1980, in favour of defendant Nos.2 to 9 and under the garb of said sale deed, the defendants, aforementioned, claimed the ownership.

Defendant No.1 contested the suit by taking the objection qua maintainability and denied the forgery and change of date and stated to be volunteer act of plaintiff. It was asserted that registered sale deed was very much legal, valid and against the payment of due consideration.

Both the parties led their respective evidence.

The trial Court on the basis of the evidence both oral and

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documentary, dismissed the suit only on the basis of the judgment rendered in first suit, but the lower Appellate Court accepted the appeal of the respondents-plaintiffs, in second suit, and cancelled the sale deed. Though the lower Appellate Court, in para 29, observed that if in any litigation, somebody else is declared owner of the suit property, then he would attain ownership on the basis of final verdict of the court.

During the pendency of the regular second appeal bearing No.3868 of 1987, an application bearing CM No.3764-C of 1988 was preferred by the plaintiffs/respondents, for amendment of the plaint. The aforesaid application was opposed and this Court, vide order dated 16.12.1988, allowed the amendment subject to the payment of costs of ₹1500/- and in pursuance to that, amended plaint and written statement had already been filed.

Mr. Kanwaljit Singh, learned Senior Counsel, assisted by Mr. Rajinder Goyal and Mr. Ashish Soi, learned counsel for the appellants in RSA-3868-1987 and for the respondent in RSA-931-2000, submitted that the amended written statement has been taken on record, an opportunity should be granted to both the parties to lead evidence as to whether the plaintiff was the juristic person and the decision of the other regular second appeal would also be dependent as in view of the reversal of the judgment and decree, particularly when the lower Appellate Court conferred the ownership based upon the verdict rendered by the Court of law.

Mr. Puneet Jain for Mr. Rakesh Gupta, learned counsel appearing on behalf of the appellants in RSA-931-2000, submitted that the decision of RSA No.931 of 2000, would not have any relevancy regarding

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decision of the first suit and the present regular second appeal be de-tagged and heard on merits.

Mr. Bhag Singh, learned counsel appearing on behalf of the respondents in RSA-3868-1987, though do not deny the amendment of the plaint, but submitted that the amendment sought and allowed on technical objection was just to prevent the raising of the objection qua maintainability of the suit, though the defendants did not take up any objection, in the written statement or any issue was framed. In such circumstances, *de novo* trial is not *sine qua non*, thus, urges this Court for hearing the appeal on merits.

I have heard learned counsel for the parties and appraised the paper book as well as the records of the Courts below.

It would be apt to reproduce the operative part of the judgment and decree of the trial Court as well as the lower Appellate Court in RSA No.931 of 200 and order dated 16.12.1988 allowing the amendment of the plaint passed in RSA-3868-1987, which read as under:-

"Para 8 of the judgment of the trial Court

8. I find merit in the submission advanced on behalf of defendant. I have carefully perused the document Ex.D1 judgment of Sh. A.K. Bimal Sub Judge, Kaithal dated 17.4.86 in which now plaintiff was not declared the owner of the suit properly but Baba Mandir Bihari Ji was declared owner of the property in question. It is also admitted fact that Ex.D2 is a decree sheet of the said judgment. Moreover, the appeal filed by the plaintiff was also dismissed, but RSA is pending in the Hon'ble High Court filed by the plaintiffs, but operation of the judgment dt. 17.4.86 passed by Sh. A.K. Bimal, the then Sub Judge Kaithal is not stayed. In other words, I am of the

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considered view that there is no document on record which proves that the plaintiff is owner of the suit property. Hence, in view of the document Ex.D1 and Ex.D3, I hold that the plaintiff has no locus standi to file the present suit. Hence, this issue is decided in favour of the defendants and against the plaintiff."

Para Nos.29 and 32 of the judgment of the lower Appellate Court

29. For the above reasons, I hold that for the purpose of this suit, the plaintiffs are the owners of the suit land. As already stated above, if in any litigation, somebody else is declared to be the owner of the suit property, then he will attain ownership on the basis of final verdict of the court. As regards the present suit, the sale deed in favour of defendants No.2 to 9 is not valid and is liable to be cancelled. It is the result of fraud conspiracy and void abinitio. The suit was maintainable. Hence, issues no.1 to 3 are recorded in favour of the plaintiffs and against the defendants.

32. Resultantly, the appeal in hand is accepted with costs throughout. The suit of the plaintiff is decreed for declaration to the effect that the sale deed No.563/1 executed and registered on 20.5.80 by defendant No.1 in favour of defendants No.2 to 9 is null and void. The sale deed is cancelled. Necessary intimation be given to Sub-Registrar, Kaithal regarding cancellation of the sale deed. The counsel's fee is assessed at Rs.880/-. Decree sheet be prepared accordingly and file be consigned to the record room."

Order dated 16.12.1988 of this Court allowing the amendment of the plaint

The only prayer made in this application for amendment is that in the heading note of the plaint words 'Murti Sri Krishan Ji' be allowed to be added, in para 2 of the plaint in place of word plaintiff the words 'Bara Mandir Bihari Ji, be allowed to be substituted and in para 3 where-ever the word 'Mandir' is

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mentioned, it should be substituted by words 'Murti Sri Krishan Ji'.

The only objection raised is that the proposed amendment is belated.

It has been consistently observed that amendments should be liberally allowed in order to shorten the litigation and in case of delay, in the absence of mala fides, the costs should be panacea for the negligence. Keeping in view the interest of justice and nature of the lis which is a public interest litigation, the amendment is allowed subject to payment of ₹1500/- as costs. The defendants will be at liberty to file written statement to the extent the amendment has been allowed."

I am of the view that an opportunity should be given to both the parties to the *lis* to lead evidence in support of the objections, in terms of the provisions of Section 66 of the Indian Evidence Act.

In order to prevent the delay of the adjudication of the trial, since the litigation commenced, in the first suit, in the year 1980, the testimony of the witnesses recorded earlier, can also be looked into, in view of the provisions of Section 33 of the Indian Evidence Act. For the sake of brevity, the provisions of Section 33 and 62 of the Indian Evidence read as under:-

"Section 33 in The Indian Evidence Act, 1872

33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.—Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or

is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable: Provided— that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

66. Rules as to notice to produce.—*Secondary evidence of the contents of the documents referred to in section 65, clause [\(a\)](#), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, 1[or to his attorney or pleader,] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—*

- [\(1\)](#) when the document to be proved is itself a notice;*
- [\(2\)](#) when, from the nature of the case, the adverse party must know that he will be required to produce it;*
- [\(3\)](#) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;*
- [\(4\)](#) when the adverse party or his agent has the original in Court;*
- [\(5\)](#) when the adverse party or his agent has admitted the loss of the document;*
- [\(6\)](#) when the person in possession of the document is out of reach of, or not subject to, the process of the Court"*

In view of the aforementioned facts, the judgments and decrees, under challenge, are hereby set aside. The matter is remitted back to the trial

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Court to adjudicate the *lis* in the suit afresh *de novo*, in view of the observations made hereinabove, much less, in accordance with law.

This Court is sanguine of the fact that the trial Court shall decide the suit by fixing the timeline in affording the opportunities to the parties to lead evidence, as expeditiously as possible preferably within a period of one and half year from the date of the receipt of the certified copy of this order.

The parties or through their counsel are directed to appear before the trial Court on 12.03.2019.

Original records of the Courts below be sent back for the adjudication of the controversy.

It is made clear that the parties to the *lis* are not precluded to cut short the trial by resorting to the provisions of Order 12 of CPC.

With the aforesaid observations, both the regular second appeal are disposed of.

31.01.2019
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**