

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 3.10.2019

RSA No. 1645 of 2019 (O&M)

Ram Pal @ Baba Shamsher Giri

---Appellant

versus

Brij Mohan and others

---Respondents

RSA No. 1646 of 2019 (O&M)

Ram Pal @ Baba Shamsher Giri

---Appellant

versus

Sat Narayan and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. S.K.Chauhan, Advocate
for the appellant in both the appeals

Rekha Mittal, J.

CM No. 12054-C of 2019

Prayer in this application is for impleading legal representatives of appellant Ram Pal @ Baba Shamsher Giri (since deceased).

In view of averments made in the application supported by an affidavit of Baba Bansi Giri and arguments advanced by counsel for the applicant, the application is allowed and person mentioned in para No. 3 of the application is allowed to be brought on record as legal representative of appellant Ram Pal @ Baba Shamsher Giri(since deceased), for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

Main case

This order will dispose of RSA Nos. 1645 and 1646 of 2019 as identical questions of law and fact are involved for adjudication. For

facility of reference, facts are taken from RSA No. 1645 of 2019.

Challenge in the present appeal has been directed against judgments and decrees dated 6.1.2015 passed by the Additional Civil Judge (Senior Division), Bhiwani (hereinafter referred to as “the trial court”) and dated 22.1.2019 by the Additional District Judge, Bhiwani whereby appellant's claim of ownership and management of the suit property measuring 5 kanal 12 marlas and counter claim filed by defendants No. 1 and 2 were dismissed by the trial court that led to filing of two appeals one by the plaintiff and other by defendants No. 7 and 11, disposed of by the Appellate Court affirming findings of the trial court qua dismissal of suit of the plaintiff but findings of the trial court with regard to suit property being a public trust and direction to Deputy Commissioner to manage the same and sale deed executed by defendants No. 1 to 3 in favour of defendant No. 4 and subsequent sale deeds and mutation are illegal were set aside.

Counsel for the appellant would argue that predecessor -in-interest of the appellant gave the suit property to predecessor -in -interest of defendants No. 1 and 2 for the purpose of construction of well and actually a well was existing in the suit land but the same later became non-functional. It is further submitted that appellant is managing the suit property since 1986 and after his death, his successors-in-interest are managing the same. It is further argued that in the suit land, there is a temple of Hanumanji and Dholia Kua (well) and a fair is organized there, as has been so reported by the local commission appointed by the Court. It is argued with vehemence that the trial court had rightly held that suit property is a public property and as such, claim of the respondents-defendants qua ownership of suit property was rejected and Deputy

Commissioner was directed to manage affairs of the suit property in order to ensure that public property is not misutilized by bad elements.

I have heard counsel for the appellant, perused the paper book and records.

Counsel for the appellant has not disputed that in respect of the suit property, hiba (gift) was created by predecessor-in-interest of the appellant in favor of predecessor-in-interest of defendants No. 1 and 2 in respect whereof mutation was sanctioned way back in the year 1917 on the basis of oral gift dated 5.4.1916. It is also admitted position of the case that the well was existing at the spot though the same has now lost its life. No sooner the predecessor-in-interest of the appellant gifted away the suit property and gift has been given effect to, he cannot claim ownership of the suit property as gift once accepted by the donee becomes binding against the donor and his successors in interest. The courts have consistently held against the appellant with regard to his right of ownership and management of the suit property. Counsel has failed to advance any convincing arguments that suit property is a public property, as has been so held by the trial court.

So far as counter claim filed by respondents/defendants No. 1 and 2 is concerned, they have claimed ownership of the suit property on the basis of oral gift created by predecessor-in-interest of the plaintiff in favour of predecessor-in-interest of contesting defendants No. 1 and 2. The mere fact that a well and temple of Hanumanji are existing at the spot ipso facto is not sufficient to accept that suit property is a public property. The trial court has held that suit property is lying abandoned at the site. Counsel has failed to point out if findings of the First Appellate Court negating plea with

regard to public property are the result of failure to take into consideration materials on record or misreading of evidence, thus vitiated.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed in limine.

(Rekha Mittal)
Judge

3.10.2019

PARAMJIT	Whether speaking/reasoned	: Yes
	Whether reportable	: Yes/No