

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

1. RSA No.426 of 2002 (O&M)
Date of decision : 28.02.2019

Maluk Dass

...Appellant

Versus

Smt. Gurdevi

...Respondent

2. RSA No.679 of 2002 (O&M)
Date of decision : 28.02.2019

Smt. Gurdevi

...Appellant

Versus

Shri Maluk Dass

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Deepak Sharma, Advocate for the appellant
(In RSA No.679 of 2002)
for the respondent (In RSA No.426 of 2002)

None for the appellant (In RSA No.426 of 2002)

ANIL KSHETARPAL, J.

By this judgment, RSA Nos.426 and 679 of 2002 shall stand
disposed of as both the appeals are arising from the same suit.

Plaintiff as well as defendant are in appeals.

In the considered view of this Court, question which requires determination is “whether the office of mahantship (Manager) of a religious institution can be transferred by way of Testament?”

Smt. Gurdevi-plaintiff-appellant in RSA No.679 of 2002 filed a suit for declaration claiming that judgment and decree dated 20.09.1982 is illegal. She has further prayed for a decree for permanent injunction restraining the defendant from alienating, mortgaging or creating any charge on the suit land and further interfering in her possession in any manner.

Detailed facts have been noticed by the Courts below, however, for the purpose of decision of the present suit, some facts are being noticed. Property in dispute is agricultural land measuring 40 kanals and 14 marlas situated in Village Jeouli, District Ambala. Plaintiff-Gurdevi claims that she has inherited the property from her parents on the basis of Testament executed by her mother dated 15.12.1983 and, therefore, she has become owner in possession. At the same time, it has been pleaded that the property in question belongs to a religious institution i.e. Thakurdwara.

On the other hand, defendant-Maluk Dass, appellant in RSA No.426 of 2002 claims that he is *Chela* of his *Guru* and father late Sh. Puran Dass and he has been appointed as *mahant*. He claims that his father suffered a decree in his favour dated 20.09.1982 and also executed a registered Will in his favour dated 16.06.1981 appointing him his

successor.

Both the Courts below on appreciation of evidence have found that the property belongs to a religious institution i.e. Thakurdwara. In fact, this is admitted case of both the parties that the property belongs to a religious institution. Before this Court also, no one disputed that the religious institution is owner of the property.

Both the Courts have held that late Sh. Puran Dass, who was erstwhile *mahant*, had no right to suffer a consent decree in favour of his son Maluk Dass and, therefore, such decree has been held to be not binding on the rights of the institution.

Both the Courts have also found that Maluk Dass defendant-appellant was appointed as *mahant* after the death of late Sh. Puran Dass and there is a document available on the record Ex.D1 which was written on 17.08.1990 in a religious congregation declaring that Maluk Dass shall be *mahant* of the religious institution. This document has been signed by large number of persons from different villages including various *mahants*.

Both the Courts have further found that it is the plaintiff Gurdevi who is in possession of the property as khidmatgaar (servant of God) through her husband Norata, thus, the learned First Appellate Court has held that she is entitled to a decree for permanent injunction restraining the defendant from forcibly dispossessing her except in due course of law.

This Court has heard learned counsel for the appellant-

Gurdevi at length and with his able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel appearing on behalf of Gurdevi has submitted that both the Courts have committed error while recording a finding that the Testament in favour of Maluk Dass by his father results in bequeathing mahantship. He submitted that the mahantship cannot be willed away as it is not an estate or personal property of the *mahant*. He further submitted that no custom has been established to prove that in this religious institution there was any custom that mahantship can be willed away. He further submitted that the Courts have erred in declaring Maluk Dass to be *mahant* of the *dera* as no religious congregation took place.

As regards first argument of learned counsel for the appellant, there is substance. In the considered view of this Court, a mahantship which is a sort of office is not personal/individual property of the *mahant*, therefore, in absence of any custom or power to nominate with the *mahant* to appoint next *mahant*, the office of *mahant* cannot be willed away. In the present case, no evidence has come on file which proves that either there was any custom or there was any authority with the *mahant* Puran Dass to appoint *mahant* after his death. Hence, even if the Will dated 16.06.1981 has been proved but such Will would not result in appointing Maluk Dass to be *mahant*. Hence, the finding of the Courts on this aspect is set aside.

However, there is no substance in the second argument of the learned counsel for the appellant. Ex.D1, is writing which was executed

at the time when last rites of *mahant* late Sh. Puran Dass took place on 17.08.1990. As noted above, the aforesaid writing clearly prove that in the religious congregation, Maluk Dass, defendant-appellant was appointed as *mahant* in the presence of large gathering including Sarpanch of the village, various religious heads of different religious institution and general public. This written document is further supported by oral evidence which has proved that Maluk Dass was appointed as *mahant* of the religious institution. However, there is one error in the judgment passed by the learned First Appellate Court. Learned First Appellate Court while concluding has recorded that the *mahant* of the religious institution would be owner in possession of the property which is not correct. The property is owned by religious institution i.e. Thakurdwara as held by both the Courts below. Therefore, *mahant* Maluk Dass cannot claim to be owner of the property. Accordingly, the finding of the First Appellate Court with regard to Maluk Dass having been appointed as *mahant* on the basis of Will also is set aside. The finding of the First Appellate Court that *mahant* Maluk Dass is owner is also set aside. It is declared that suit property is owned by religious institution i.e. Thakurdwara. It has been noticed that in the revenue record in the ownership column, the entry is continuing in the names of various *mahants* as owner which is not the correct position. The revenue record shall be corrected to record in the ownership column as the property belonging to Thakurdwara as has been found by both the Courts below.

With the aforesaid modifications, RSA No.679 of 2002 is

partly accepted. However, it would not affect the result of the case. Resultantly, suit filed by the plaintiff is decreed only to the extent that the judgment and decree dated 20.09.1982 does not give any benefit to *mahant* Maluk Dass. However, he has been appointed as *mahant* in the religious congregation. Plaintiff-Gurdevi who is in possession would have a decree for permanent injunction restraining the defendant from interfering in her possession except in due course of law.

Accordingly, both the Regular Second Appeals are disposed of.

Question of law framed earlier is answered in favour of appellant-Gurdevi.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

28.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No