

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 25.03.2019

1. RSA No.1916 of 2015 (O&M)

Shri Guru Granth Sahib

..... Appellant

Versus

Ghala Singh Chela Sant Narain Singh and another

..... Respondents

2. RSA No.5954 of 2015 (O&M)

Ghala Singh Chela Sant Narain Singh

..... Appellant

Versus

Shri Guru Granth Sahib and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Abhinav Aggarwal, Advocate
for the appellant (in RSA-1916-2015).
for respondent No.1 (in RSA-5954-2015).

Mr. Vikas Bahl, Sr. Advocate with
Mr. Nikhil Sabharwal, Advocate
for the appellant (in RSA-5954-2015).
for respondent No.1 (in RSA-1916-2015).

ANIL KSHETARPAL, J. (ORAL)

CM-14860-61-C-2015 in RSA-5954-2015

Both the applications are allowed and the delay in filing/re-filing the appeal are condoned.

Main Cases

Vide this judgment, two appeals bearing RSA No.1916 of 2015 and RSA No.5954 of 2015 shall stand disposed of as both are arising from

the same suit. Counsel for the parties are also agreed that both the cases can be conveniently disposed of by a common judgment.

In the considered opinion of this Court, following substantial questions of law arise for consideration:-

1. Whether bar to the maintainability of subsequent suit under Order 23 Rule 1(4) of the Code of Civil Procedure can be invoked even if the subsequent suit is based on a different cause of action?
2. Whether on withdrawal of the previous suit on the ground that it had become infructuous, bar to the subsequent suit can be invoked under Order 23 Rule 1(4) of the Code of the Civil Procedure?
3. Whether a donor after having been left with no right, title or interest in the agriculture land donated, can still claim right to appoint Managing Committee to manage the agriculture property particularly when gift is absolute and no right was reserved by the donor?
4. Whether suit filed by the religious institution through its Managing Committee for possession can be dismissed on the ground that the proceedings and orders passed by the authorities dealing with the proceedings under Section 145/146 Cr.P.C. cannot be challenged in the civil suit?

Some facts are required to be noticed.

Plaintiff-appellant in RSA No.1916 of 2015 is a religious institution claiming ownership of the property in question measuring 117 kanals 8 marlas gifted by Mohinder Singh vide registered gift deed dated 21.12.1959. It has been written in the registered gift deed that a Gurudwara

(religious place of Sikhs) is being constructed and he is donating the land to Shri Guru Granth Sahib at Nanaksar Patti Bir Singh Bhadaur. The execution of the gift deed is not in dispute.

In the gift deed, the donor authorized 6 respectables of the village to manage the relevant property which did not include him. Out of 6 persons, 4 died and a registered society was constituted to manage the religious property vide Ex.P-14 in April 1981. In the society, apart from 12 other persons, defendant No.2 namely Balvir Singh was one of the member who was appointed as President of the Managing Committee of the Society. Mohinder Singh-donor along with two surviving persons out of the 6 named in the gift deed vide document dated 19.12.1982 requested Baba Sant Narain Singh, a religious person to look after the land and managed the property. However, thereafter, litigation started. First suit was filed by the Managing Committee of the Society being civil suit No.214 instituted on 27.07.1983 for possession. During the pendency of the suit, in the proceedings under Section 145/146, Cr.P.C., some order was passed by the Sub-Divisional Magistrate on 25.04.1985 in favour of the Managing Committee which prompted the Managing Committee to withdraw the suit on 30.04.1985 with permission to file fresh one on the same cause of action. Second suit was filed by the plaintiff-religious institution through Managing Committee on 13.01.1986. It was pleaded in the aforesaid suit that the defendant-Ghala Singh was cultivating the land as a tenant and he had relinquished his tenancy on receipt of more than Rs.1,40,000/- and handed over the possession. However, thereafter, proceedings were initiated by the Sub-Divisional Magistrate and receiver was appointed while exercising powers under Section 146, Cr.P.C. who had taken over the possession. It was further pleaded that

in the year 1985, another order had been passed by the Sub-Divisional

Magistrate while deciding proceedings under Sections 145/146, Cr.P.C. and receiver had handed over the possession to the defendant. It was pleaded that cause of action accrued to the plaintiff on 25.04.1982.

The aforesaid suit was dismissed under Order 17 Rule 3, CPC vide order dated 15.02.1988. The appeal against the aforesaid order was pending when counsel appearing for the appellant submitted that in view of subsequent development i.e. the orders passed by the authorities while dealing with the proceedings under Sections 145/146, Cr.P.C., the suit has been rendered infructuous. The suit was dismissed as withdrawn vide order dated 14.11.1990.

The proceedings under Sections 145/146, Cr.P.C. continued. The present suit, out of which this regular second appeal has come up, was filed by the plaintiff through its Managing Committee for declaration, possession on 16.04.2001. In this suit, it was pleaded that subsequently Sub-Divisional Magistrate has passed an order on 16.03.1997 and further orders passed by the Additional Sessions Judge while deciding the revision petition dated 23.10.2000 and consequent delivery of possession to the defendant was wrong and erroneous. It was pleaded that one month before filing of the suit, the defendant has finally refused to hand over the possession and therefore, the suit has been filed.

The defendant contested the suit and pleaded that the plaintiff-Managing Committee has no authority to file the suit. It was further pleaded that the present suit was barred under Section 11 of the CPC. The gift by Mohinder Singh (donor) dated 21.12.1959 was admitted. It was pleaded that Mohinder Singh, Balvir Singh and Basant Singh had appointed Baba Sant Narain Singh as Mohatmim of the Gurudwara and handed over the entire management. Defendant No.1 claimed that he is heir of late Baba Sant

Narain Singh and appointed Mohatmim of the Guru Granth Sahib and therefore, he has right to manage the property.

Both the Courts have dismissed the suit filed by the plaintiff on the ground that the present suit filed is barred under Order 23 Rule 1(4) of the Civil Procedure Code. Learned First Appellate Court has held that the possession of the defendant No.1, who is in exclusive possession of the entire property, is not as a tenant. It has been further held that through the document dated 19.12.1982 (Ex.D-X), the property was kept at the disposal and under the management of Baba Sant Narain Singh and as per the gift deed Ex.D-49 as also Ex.D-X, there was no provision for appointment of a Managing Committee or Society. The Courts further held that Baba Sant Narain Singh cannot be taken to be only Manager of the property.

It will be noted here that on account of the dispute with regard to possession, 5 murders had taken place and defendant No.1 has been convicted in the criminal trial.

Learned senior counsel appearing for the plaintiff has submitted that as per the gift deed dated 21.12.1959, Mohinder Singh-donor was left with no right, title or interest in the property. He submitted that act of Mohinder Singh (donor) to appoint Baba Sant Narain Singh was without jurisdiction. He, in any case, submitted that vide document dated 19.12.1982, Baba Sant Narain Singh was only given right to take care of the agriculture land and himself cultivate the same. He was prohibited from getting the land cultivated from any other person or give it on lease. Hence, he submitted that the finding of the First Appellate Court that Baba Sant Narain Singh was appointed as Mohatmim or Manager are erroneous. He further submitted that the present suit filed by the plaintiff was on an entirely different cause of action and therefore, the Courts erred in returning a finding

that the suit is barred under Order 23 Rule 1(4) of the Civil Procedure Code.

On the one hand, learned counsel appearing for defendant No.1 has submitted that the property in dispute in the previous suit as well as in the subsequent suit is same. He further submitted that major part of the pleadings in both the suits is common and therefore, the Courts have correctly held that the present suit is barred. He further submitted that the plaintiff had no locus standi to file the suit as constitution of the Managing Committee by constituting a registered society is not permissible. He further submitted that Baba Sant Narain Singh was appointed as Mohatmim and therefore, defendant No.1 being his heir and Chela (disciple), is entitled to continue in possession. He has also drawn attention of the Court to small factual errors in the judgment passed by the First Appellate Court, one in the last line of para 36 where the Court has wrongly recorded that the trial Court has rightly held that the suit property was being managed by the registered Committee of the plaintiff. He has also submitted that the Court has also erred, in not dismissing the suit being barred by limitation.

This Court has analyzed the arguments of learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the record.

Main stress of arguments of learned counsel for the parties is on interpretation of bar as contained in Order 23 Rule 1(4) of the Civil Procedure Code. Order 23 Rule 1(4) is extracted as under:-

“Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of

such subject-matter or such part of the claim.”

It is apparent that the plaintiff, if abandons any suit or part of claim under sub-rule 1 or withdraws from a suit or part of the claim without the permission referred to in sub-rule 3, shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim. So the question which arises is what is the meaning of 'such subject matter' in respect of a suit as to whether the subject matter is with reference to the property involved or the subject matter is the substance which is required to be adjudicated upon or what was the dispute which required adjudication. The argument of learned counsel for the respondent that the word 'such subject matter' means the property involved cannot be accepted because if such interpretation is accepted, once a suit with regard to a property is filed and withdrawn, in future no suit can be filed even if the subsequent suit is based upon a different cause of action. In the considered view of this Court, the subject matter in reference to Order 23 Rule 1(4) has to be with reference to the same cause of action. Each suit is based upon a cause of action which gives rise to the suit. With regard to one property, the cause of action may keep arising from time to time due to various developments and actions of the plaintiff or the defendant. The interpretation as suggested by learned counsel for the defendant would lead to disastrous result. Hence, such interpretation does not deserve to be accepted. It is held that bar to the maintainability of the subsequent suit under Order 23 Rule 1(4) is only with respect to the same cause of action and not for different cause of action.

As noted above, the present suit has been filed by the plaintiff on the basis of a cause of action which accrued on account of orders passed by the Sub-Divisional Magistrate confirmed in revision petition by the Additional Sessions Judge in the year 2000 and thereafter, one month before

the filing of the suit when defendant refused to hand over the possession. Hence, the suit filed by the plaintiff was maintainable.

Finding of the First Appellate Court that through document dated 19.12.1982 Ex. D-X, Baba Sant Narain Singh was appointed as Mohatmim, is result of misreading of the document. First of all in the document itself, it has been written that Baba Sant Narian Singh is being given right to cultivate and take care of the agriculture land. It was specifically written that he can neither transfer possession to any one or lease out the land. Thus, Baba Sant Narain Singh was never appointed as Mohatmim of the religious institution. Secondly, through the gift deed dated 21.12.1959, Mohinder Singh, the donor had gifted the property in favour of a religious institution-a legal entity. Once the gift deed had been executed without reserving any right, the property vested with the religious institution i.e. Shri Guru Granth Sahib, a juristic person, the property vested in the institution free from all encumbrances and therefore, Mohinder Singh had no authority to execute the document dated 19.12.1982. There was no power given to Baba Sant Narain Singh to appoint a care taker of the land after his death.

In any case, once Baba Sant Narain Singh was only permitted to cultivate the land, he had no authority to transfer the possession in favour of defendants No.1 and 2.

Still further, defendant No.2 himself was a President of the registered society which had been constituted to manage the property of the religious institution, therefore, defendant No.2 cannot now turn around and claim that the society has no jurisdiction.

Learned Courts have further erred in recording a finding that the

Civil Court has no jurisdiction to entertain a suit for declaration challenging

the proceedings under Sections 145/146, Cr.P.C. It will be noted that under Sections 145/146, Cr.P.C., the Executive Magistrate is required to adjudicate only with respect to dispute over possession of the property and such findings arrived at by the authorities are not binding on the Civil Court. The proceedings under Section 145/146, Cr.P.C. are summary in nature and the authorities do not decide question of title. At the most, it can be said that such relief claimed in the present suit was superfluous, however, on that ground, the relief of possession could not be denied.

As regards argument of learned counsel pointing out error in last line, learned counsel for the plaintiff does not dispute the same. Next argument of learned counsel for the defendant that the suit is time barred is clearly erroneous as the present suit has been filed for possession. It has been pleaded that the defendant had been put into possession by the receiver appointed in the proceedings under Section 145/146, Cr.P.C. in the year 2000 whereas the suit was filed in the year 2001. Hence, the suit filed by the plaintiff was within limitation. Accordingly, all the questions are answered in favour of the plaintiff-appellant.

Hence, RSA No.1916 of 2015 is allowed whereas RSA No.5954 of 2015 is dismissed.

The pending miscellaneous application, if any in both the appeals, shall stand disposed of accordingly.

25.03.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No