

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

RSA-3455-2016(O&M)

Date of decision:-17.5.2019

State of Haryana through Deputy Commissioner, Yamuna Nagar,
District Yamuna Nagar

...Appellant

Versus

Murti Mari Guga Peer Mandir and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Pritam Saini, Addl. A.G. Haryana with
Mr.Harkesh Kumar, AAG, Haryana for the appellant.

Mr.Anshul Mangla, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs – Murti
Mari Guga Peer through Sh.Pritam Chand son of Sh.Ram Kishan as
well as Subhash Chand sonof Sh.Mangat Ram and Anil Kumar son
of Sh. Biru Ram, Mohatmim, residents of Chhachhrauli, District
Yamuna Nagar had brought a suit for permanent injunction against

State of Haryana, Deputy Commissioner, Yamuna Nagar praying that the defendant be restrained from dispossessing the plaintiffs by force or otherwise from the land measuring 1 Kanal 19 marlas comprised in khasra No.181 min, fully detailed in the head note of the plaint.

As per the version of the plaintiffs, they along with other family members are Mohatmim and the manager of Guga Mari Mandir; that as per order dated 9-1-2003 passed by the High Court, it has been decided that Mohatmim Lal Chand on one hand and defendants in the said appeal on the other hand would manage and control the affairs of the Murti Mari Guga Mandir on the alternate years i.e. Lal Chand would manage the control of the Mandir in the year 2004 and the defendants/ respondents (in appeal) would have the right to manage in the next year; that as per the order of the Court, Lal Chand was managing the affairs of the Murti Mari Guga Mandir in the year 2004; that the Guga Mari Mandir is in existence for the last more than 100 years and the same was constructed by the Raja of Chhachhrauli when it was known as Kalsia State; that the plaintiffs and his brothers were called from village Panjeto by the king of Kalsia State being Jogis to look after and manage and control Murti Mari Guga Peer Mandir (suit property) as its Mohatmim and they were allowed to accept the offerings; that earlier, the suit property was being looked after by Lal Chand, Mangat Ram and Badri etc.; that the whole of the land of Mandir is enclosed by a

boundary wall and fencing wire and open land is being used by the followers and worshippers of Guga Mari Mandir for the assembly and religious congregations and that in the year 1965, a dispute arose between Hindu Jogis and Muslim Jogis regarding holding of Gugga Chhari Function in Chhachhrauli and one of Muslim Jogis namely Ilmudin had filed a suit for declaration and injunction against Lal Chand plaintiff but said suit was dismissed vide judgment dated 29-7-1966; thereafter, plaintiff Lal Chand filed a suit for permanent injunction against other Mohatamim and the said suit was dismissed vide judgment dated 3-4-1994 and a Managing Committee was appointed by the Court, however, in appeal the appointment of Managing Committee was struck down by the Court; thereafter, a compromise was affected between the parties to that suit before the High Court wherein, High Court passed the order dated 16.1.2004 giving right to the Mohatmim to control the affairs in alternate years; the existence of Murti Mari Guga Mandir on the present site for more than 100 years has been recognized and accepted by the defendants in their revenue record and the defendant has never objected thereto; that the defendant has also handed over the management of the plaintiff's temple on 5.3.2004 through the Tehsildar Chhachhrauli; that as per directions of High Court, the property remained in possession of the Mandir even during the pendency of the aforesaid case; that the suit property is adjacent to bus Stand Chhachhrauli and

some of the persons of Chhachhrauli want to grab the land and they had approach the Mohatmim for delivery of the possession, which was refused to them. These persons also moved false applications against the plaintiffs before the Govt. officials and General Manager, Haryana Roadways for taking possessions of the land and inclusion of the same into Bus Stand; that upon enquiry the plaintiffs got to know that in maps prepared for the construction of Bus Stand, the suit property has not been included, however, a day prior to filing of the suit, some officials of the Haryana Roadways came to the spot and threatened the plaintiffs for taking forcible possession of the suit land to which they have absolutely no right. As such the plaintiffs brought the suit in question.

On notice, the defendant appeared and filed written statement contesting the suit taking preliminary objections with regard to locus standi of the plaintiffs to bring the suit submitting that they had no right, title or interest in the land measuring 1 kanal 19 Marla comprised in Khasra No. 181 min as the entire land belongs to provincial Govt. exclusively and the vacant land is being used for facilitating the general public as a Bus Stand for the last more than 40 years; that the Provincial Govt. is the exclusive owner and in possession of the land as per the revenues record except the small portion of land, where Guga Mari Mandir has been constructed by the committee comprising of elders/respectable of village

Chhachhrauli in the year 1979-80, however, even the said land exclusively belongs to the Provincial Govt. without any dispute; that another preliminary objection as to service of notice under section 80CPC has been taken and it has been further submitted that the order passed by the High Court in the regular Second Appeal is not binding upon the defendant as the defendant was not a party to the proceedings though they were owner of the land i.e. Provincial Govt. (answering defendant) was not a party in the proceedings; that before the High Court, the plaintiff and other respondents in collusion with each other made collusive compromise and on the basis of that compromise, High Court passed an order dated 16-1-2004 whereby, the High Court had directed the Tehsildar, Chhachhrauli to hand over the management and possession of only temple but while making compliance, no notice was served upon the owner of the property though, the defendant is the care taker of the land and had right to defend and protect the land; that the Govt. through Haryana Roadways is looking after and maintaining the suit land as a bus stand for more than 40 years, thus, it was mandatory for Tehsildar, Chhachhrauli to intimate the respondents before taking necessary action in pursuance of orders of High Court dated 16-1-2004; that a letter by General Manager Haryana Roadways to Deputy Commissioner was also written on 19-3-2004 for rectifying the entries in report Roznamacha at Sr. No. 470 dated 8-3-2004; that the

site selection team of Haryana Roadways has approved the construction of Modern Bus Stand and the recommendation thereof has been sent to the Transport Commissioner on the suit land except the portion of Mandir; that the Gram Panchayat of Chhachhrauli has also given land measuring 6 kanal to Haryana Roadways Transport Department for construction of Bus Stand vide Resolution No. 8 dated 7-12-2002. The answering defendant also took preliminary objection regarding cause of action; the plaintiff not coming to the court with clean hands; resjudicata; non joinder and miss joinder of necessary parties etc. They further contended that the civil suit has become infructuous, as the land measuring 1 kanal 6 marla pertaining to khasra No. 181 Min is in possession of Haryana Roadways and the Halqa Patwari has carried out a Girdawri inspection and corrected the Girdwari entries of Khasra No. 181 Min on 25-3-2004, as per which the Guga Mari Mandir is constructed on an area of 13 Marla only and the remaining land of 1 Kanal 6 Marla is being used as a Bus Stand for more than 40 years. They further contended that the entire land belongs to provincial Govt. and at the time of consolidation, the same was shown as ownership and possession of Provincial Govt. and there is no entry of Guga Mari Temple in the Jamabandi for the year 1963-64. On merits, the defendant admitted the order of the High Court and delivery of possession of temple to Lal Chand; they further stated that the defendant was the exclusive owner of the suit property

and the Mandir was constructed only on 13 Marla of Land and rest of land measuring 1 Kanal 19 Marla was being used as a Bus Stand. The answering defendant denied that plaintiffs or others have got any interest in the suit land as they are not Mohatmim of Guga Mari Mandir and plaintiff Lal Chand and others are spoiling the sanctity and atmosphere of the temple by taking Liquor in premises. It has been further submitted that the revenue record prepared at the time of consolidation does not have the name of Guga Mari Peer, which was constructed only in the year 1979-80 and there was no entry regarding the management of Mandir by the king of Chhachhrauli or Kalsiya State and there was no entry in the record of rights and Wazib ul-urj. All others averments of the plaint had been specifically denied and defendant had reiterated the averments made in the preliminary objections regarding the title of the plaintiff over the suit property and the area in possession of Murti Mari Guga Peer. With these averments, defendants prayed for dismissal of the suit with costs.

On the pleading of the parties, following issues were framed vide order dated 19-7-2010:

1. Whether the plaintiffs are entitled for a decree for permanent injunction in respect of the land as fully detailed and described in the heading of the plaint as alleged? OPP.
2. Whether the plaintiffs have no locus standi and cause of action

to file the present suit? OPD.

3. Whether the suit is barred for want to notice under section 80 CPC? OPD.
4. Whether suit is liable to be dismissed on the ground of non joinder and mis joinder of necessary parties? OPD
5. Whether the suit is liable to be dismissed on the ground of resjudicata? OPD.
6. Relief.

In order to proved their case, the plaintiffs had examined Sh.Sunder Lal as PW1, Sh. Sat Parkash as PW2, Sh.N.K.Sharma, member Panchayat as PW3, Sh.Sadhu Ram as PW4, Sh.Subhash Kumar as PW5, Sh.Kiran Singh as PW6, Sh.Sat Kumar as PW7 and Sh.Pritam Chand as PW8.

On the other hand, defendant had examined Sh.Bir Singh as DW1 besides tendering some documents.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiffs, issue No.2 against the defendant, issue No.3 against the defendant, issues No.4 and 5 being not pressed. Resultantly, the trial Court vide judgment and decree dated 12.3.2011 decreed the suit with costs.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal before District Judge, Yamuna Nagar at Jagadhri, which was assigned to Additional District Judge,

Yamuna Nagar at Jagadhri, who vide judgment and decree dated 10.3.2016 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendant has filed the present regular second appeal before this Court, notice of which was issued and the respondents - plaintiffs appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I do not find any merit in the appeal.

The trial Court after detailed discussion of the factual and legal position observed in para No.20 of the judgment while deciding issue No.1 that long and established possession of the plaintiff Murti Guga Mari Peer Mandir over the suit land measuring 1 Kanal 19 marlas is duly proved and it is also proved that the defendant had dispossessed the plaintiffs from the part of the suit land during the pendency of the suit and thus plaintiffs were entitled to restoration of possession. Accordingly, issue No.1 was decided in favour of the plaintiffs to that extent.. The trial Court decreed the suit of the plaintiffs with costs and restrained the defendant from interfering in actual and physical possession of the plaintiff Murti Mari Guga Peer Mandir in the land measuring 1 kanal 19 marlas and the defendant was further directed to restore the possession of the suit land forcibly taken during the pendency of the suit.

The First Appellate Court has agreed with the findings recorded by the trial Court observing that possession of the plaintiffs over the suit land has been duly proved to the effect that it is long possession and that during pendency of the suit the possession has been taken by defendants or even if any society for governing the Guga Mari was constituted by the Deputy Commissioner that would not affect the right of the plaintiffs to seek injunction. However, the appellant – State was given liberty to initiate proceedings to assert its rights.

With such findings of the fact being there recorded by the courts below that plaintiff Murti Mari Guga Peer Mandir is in established possession of 1 kanal 19 marlas of land, though the defendant is reflected to be owner in the revenue record, the plaintiff cannot take possession by adopting illegal means or use of force however of course it can certainly do so in accordance with law by adopting proper procedure. Though learned State counsel for the appellant has argued that the Guga Mari is in possession of 13 marlas of land only but the findings recorded by the Courts below on the basis of evidence produced by the parties are otherwise. Therefore, the defendant – State shall have to adopt legal means to take possession, if it so desires and it cannot come up with a plea that injunction against true owner cannot be granted for the reason that existence of the mandir in question over the disputed land is proved

to be there since long. Though State of Haryana is not shown to be a party in the earlier proceedings but even then the defendant State can certainly not take law into its hands and take possession by use of force.

Learned counsel for the respondents-plaintiffs has referred to authority **Ramji Rai & Another Versus Jagdish Mallah (Dead) through LRs & Another, 2007(3) RCR(Civil)680** by the Apex Court wherein it was observed that when suit of the plaintiffs is for permanent injunction restraining the defendants from interfering in possession of the land based on possession of land, the Court is to grant decree on proof of possession and it cannot go into question of title to suit land. The counsel further referred to authority **Rame Gowda (D) by LRs Versus Mr.Varadappa Naidu (D) by LRs and another, 2004(1) RCR(Civil)519** by the Apex Court wherein it was observed that it is not necessary for the person claiming injunction to prove his title to the suit land and he is required only to prove his lawful long possession without any concealment to the true owner and that his possession was invaded or threatened.

Learned counsel for the appellant State has referred to authority **Premji Ratansey Shah Versus Union of India, 1995(3) RRR 11**, wherein it was observed that an injunction cannot be issued in favour of a trespasser or a person who was gained unlawful possession as against the owner. This authority does not help the

appellant in any manner since in the present case there is nothing to show that the Mandir had come in illegal and forcible possession of the land belonging to the plaintiffs, rather its established possession for a long period comes out to be there.

The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

No substantial question of law arises in this appeal.

It being so and in view of the concurrent findings returned by the Courts below with which I do not see any reason to disagree, I conclude that the appeal is without merit and is dismissed accordingly.

17.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No