

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

RSA-2161-2014(O&M)

Date of decision:-17.10.2019

Lakhbir Singh and another

...Appellants

Versus

Mahant Jarnail Singh

...Respondent

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

Present: Mr.Shekhar Verma, Advocate
for the appellants.

Mr.A.P.S. Sandhu, Advocate
for the respondent.

H.S. MADAAN, J.

In nutshell, facts of the case are that Mahant Jarnail Singh, aged 45 years, Chela Mahant Hardy Singh, Dera Thakran, Gali Samadhan Wali, Chowk Moni, Amritsar had brought a suit against defendants i.e. Virsa Singh and his son Lakhbir Singh, both residents of Gali Samadhan Wali, Chowk Moni, Amritsar seeking possession of the property shown as red in the site plan attached with the plaint comprising of rooms, kitchen and covered verandah forming part of the property bearing No.2664/V-19 situated in Gali Samadhan Wali, Chowk Moni, Amritsar; in addition to that seeking a decree for permanent injunction restraining the defendants from

making any additions, alterations and construction in the said property and from parting with possession thereof to any person.

As per the version of the plaintiff, he is Mahant of Dera Thakran, Gali Samadhan Wali, Chowk Moni, Amritsar (hereinafter referred to as 'the Dera') and being its Muntjim has been managing and controlling the properties of that Dera; earlier Mahant Hardy Singh Chela Mahant Jeewan Singh had been managing the affairs of the said Dera and he, during his life time while possessed of sound disposing mind had executed a legal and valid Will dated 3.4.1978 registered on 14.4.1978 appointing the plaintiff as his successor as Mahant of the said Dera; Mahant Hardy Singh had expired on 1.8.1991 and after his death on 10.8.1991, Bheikh gathered and the plaintiff was affirmed as Mahant of the Dera in terms of the Will executed by Mahant Hardy Singh; there had been litigation between Gurnam Singh and Mahant Hardy Singh and in that litigation, which was pending before this Court, the plaintiff was declared as Mahant of the Dera in place of Mahant Hardy Singh vide order dated 10.4.1992; this Court vide order dated 1.12.1997 had directed that all the documents including FDRs etc. of the Dera, which were in possession of Sh.N.N. Bhatia, Advocate, who had been appointed as receiver during the pendency of the regular first appeal, be returned to the plaintiff and it was so done accordingly; the plaintiff had received all those documents including FDRs etc.

from the widow of Sh.N.N. Bhatia, Advocate(since dead) and name of the plaintiff was substituted as Mahant of the Dera; that the property in question is in ownership of Dera; the defendants are in wrongful possession thereof as trespassers; the plaintiff requested the defendants a number of times to vacate the suit property and hand over the possession to him being Mahant of the Dera but to no effect. Therefore, the plaintiff knocked at the door of the Court by filing the suit in question.

On getting notice, the defendants appeared and filed a joint written statement contesting the suit raising preliminary objections, to wit that the plaintiff is neither Mahant nor Muntjim of the Akhara property, as such he has no locus standi to file the suit; that the dispute had been going on between Mahant Mohan Singh and Mahant Jarnail Singh, present plaintiff and a Civil Suit in that regard titled “Mahant Mohan Singh Versus Jarnail Singh” is pending in the Court and until and unless the said suit is finally adjudicated, this suit cannot proceed; that Mahant Charanjit Singh vide valid and legal deed of Dast Bardari executed by him on 5.4.1990 had voluntarily relinquished his right qua the suit property in favour of defendant No.1 – Virsa Singh; that Mahant Charanjit Singh was nominated as such by Nirmala Panchayati Akhara and Nirmala Akhara Kankhal Haridwar vide resolutions dated 10.9.1985 and 1.7.1990, respectively; since the date of execution of the said deed

defendant No.1 Virsa Singh along with his son defendant No.2 – Lakhbir Singh are in possession of the suit property; even otherwise, since they are in possession of the suit property for last more than 30 years being adverse to the knowledge of the plaintiff and whole world, therefore, the present suit is not maintainable; the name of Charanjit Singh is reflected as owner in possession of the property in house tax assessment record of Municipal Corporation, Amritsar; the defendants are in actual physical possession of the suit property as owners and they are registered voters and are also having ration card at that very address; the electricity bills are paid by them. According to the answering defendants, the plaintiff is not Mahant of Akhara Dera Thakran and even a criminal case in the form of FIR No.115/2001 for the offences under Sections 420/120-B IPC was got registered at Police Station City, Tarn Taran by Mahant Mohan Singh against Jarnail Singh. According to the answering defendants, the suit was bad for mis-joinder and non-joinder of the necessary parties. The defendants denied that earlier Sh.Hardyal Singh was Mahant of the Dera or that he had executed any Will dated 14.4.1978 appointing the plaintiff as his successor as Mahant of the Dera. Refuting the remaining assertions in the plaint, the defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments

in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the possession of the suit property? OPP.
2. Whether plaintiff is entitled to permanent injunction as prayed for? OPP.
3. Whether defendants No.1 and 2 are owners of the suit property? OPD.
4. Whether the suit is bad for mis-joinder and non-joinder of parties? OPD.
5. Relief.

In order to prove his case, the plaintiff got his statement recorded as PW6 and he had further examined Sh.Baldev Singh, Clerk, House Tax department as PW1, Arvinder Singh, Civil engineer, Draughtsman as PW2, Mahant Iqbal Singh as PW3, Smt.Satwant Kaur, Additional HRC as PW4 and Sh.Jatinder Singh as PW5 besides tendering certain documents.

On the other hand, defendant No.1 Virsa Singh got his statement recorded as DW1 and defendant No.2 Lakhbir Singh got his statement recorded as DW3. The defendants further examined Sh.Satnam Singh as DW2 and Sh.Karamjit Singh as DW4.

After hearing the learned counsel for the parties, the trial

Court of Civil Judge(Jr.Divn.), Amritsar decided issues No.1 to 3 in favour of the plaintiff and against the defendants, issue No.4 against the defendants and in favour of the plaintiff. Resultantly, suit of the plaintiff was decreed for possession of the suit property and for permanent injunction restraining the defendants from making any additions, alterations and construction in the said property and from parting with possession thereof. The defendants were given three months time to hand over the vacant possession of the suit property to the plaintiff, failing which, the plaintiff would be at liberty to get the possession of the suit property by adopting legal means. This was so done vide judgment and decree dated 28.2.2011.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Amritsar, which was assigned to learned Additional District Judge(Adhoc), Fast Track Court, Amritsar, who after hearing arguments vide judgment and decree dated 16.9.2013 affirmed the judgment and decree passed by the trial Court and dismissed the appeal, which left the defendants aggrieved and they had filed the present regular second appeal before this Court, notice of which was issued and the respondent appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The trial Court on analysis of the evidence adduced before it has concluded that plaintiff is duly appointed Mahant of Dera and possession of defendants over the suit property is that of trespassers and not as owners and since defendants have failed to establish mahantship of Charanjit Singh qua the property in question, as such Mahant Charanjit Singh was not competent to give that property to defendants. It has further been observed that plaintiff being duly appointed Mahant of the Dera is entitled to manage and control the properties of the Dera and to get the possession of the suit property from the defendants.

The First appellate Court has also arrived at the same conclusion, in the process affirming the judgment and decree passed by the trial Court. I do not see any reason to disagree with the Courts below in that regard. The defendants had failed to prove any title to the suit property. They could not establish that they have become owners of such property by way of adverse possession.

Learned counsel for the appellants has referred to judgment **Ravinder Kaur Grewal and others Versus Manjit Kaur and others, 2019 SCC OnLine SC 975** by the Apex Court wherein it was observed that plea of acquisition of title by adverse possession can be taken by the plaintiff under Article 65 of the Limitation Act and there is no bar under Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any right of a plaintiff. There cannot

be any dispute with such proposition of law laid down by the Apex Court but here the defendants had failed to prove the necessary ingredients of adverse possession i.e. they being in continuous possession of the suit property to the knowledge of the original owner and others and their possession has been open and hostile. The defendants have taken up a vacillating stand in the written statement filed by them. Their main thrust is that they have acquired title to the suit property on the basis of deed of dastbardari dated 5.4.1990 executed by Mahant Charanjit Singh in favour of defendant No.1 Virsa Singh. However, both the Courts below have concluded that it is not established on record that Charanjit Singh was duly appointed Mahant of the Dera or that he was competent to execute such document. Even otherwise, a Mahant managing the Dera properties can certainly not make any alienation thereof in such a manner without any rhyme or reason. Under the circumstances, the defendants have failed to establish that they have acquired any title to the suit property by adverse possession.

One more argument advanced by learned counsel for the appellants was that the suit has not been properly filed inasmuch as Mahant Jarnail Singh has filed the suit in his personal capacity and not on behalf of the Dera.

However, learned counsel for the respondent/plaintiff has contended that it was so done on behalf of Dera as is evident from

the pleadings of the plaintiff and suit as filed is competent.

Both the Courts below have not found any such defect in framing of the suit and I do not see any reason to disagree with the Courts below in that regard.

No other point was pressed or put forward on behalf of the appellants.

The judgments and decrees passed by both the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The same are upheld.

No substantial question of law is found to be there in this case.

Finding no merit in the present appeal, the same stands dismissed with costs.

17.10.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No