

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

RSA-3809-2014(O&M)

Date of decision:-9.9.2019

Dera Suthre Shah

...Appellant

Versus

Anil Kumar and others

...Respondents

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

Present: Mr.Kulbhushan Sharma, Advocate
for the appellant.

Mr.Avnish Mittal, Advocate
fo respondents No.1, 2, 8 to 10.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that plaintiff Dera Suthre Shah, a religious endowment through Sh.Anand Swarup Sharma son of Sh.Kishori Lal, a resident of Jagadhri, District Yamuna Nagar holding power of attorney had brought a suit against defendants – S/Sh.Anil Kumar, Sushil Kumar, Rakesh Kumar, Sudesh Rani, Joginder Shah (dead) through his LRs, Prem Shah Chela Bihari Shah, Vinod Kumar, Karam Singh, Suresh Kumar, Om Parkash and Smt.Manju Rani seeking a declaration that chakotanama dated 15.5.1985 alleged to have been executed by Joginder Shah alleged chela of Bihari Shah in favour of Ram Lal son of Sh.Ram Mela Mal in respect of the plot fully detailed in the head-note of the plaint for 99 years lease, is illegal, null and void and

not binding upon the rights of the plaintiff and further craving for grant of possession of the same as well as for mesne profits @ Rs.5,000/- per month.

On getting notice, the defendants No.1, 2, 4, 7 to 10 had put in appearance. Defendants No.1, 2, 4, 8 to 10 had filed a joint written statement, whereas defendant No.7 had filed a separate written statement contesting the suit.

Issues on merits were framed and parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the trial Court of Civil Judge(Jr.Divn.), Yamunanagar at Jagadhri had dismissed the suit vide judgment and decree dated 29.9.2009.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Yamunanagar at Jagadhri, which was assigned to Additional District Judge, Yamunanagar at Jagadhri, who vide judgment and decree dated 19.3.2014 dismissed the same.

Being dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted and the impugned judgments and decrees passed by the Courts below be set aside.

On getting notice of regular second appeal, the respondents No.1, 2, 8 to 10 have appeared before this Court through counsel.

I have heard learned counsel for the parties besides going

through the record.

Learned trial Court had come to the conclusion that the property in suit vested in Dera Suthre Shah, a religious endowment and Joginder Shah was held to be Mohatmim of the same at the time when property was leased out for 99 years; it was so done without any legal necessity and it was not an act of prudence on the part of Joginder Shah; however, Anand Swarup Sharma had failed to prove his right over the suit property since his first power of attorney executed by Devender Bajaj was held to be invalid, though he had tried to fill up the lacunae by examining Vivek Shah in rebuttal, who as per his version is Chairman of the trust. But in absence of the trust deed, the capacity of Vivek Shah to furnish a power of attorney in favour of the plaintiff could not be in existence and furthermore connection of Dera Gaddi with Dera had not been established; the present suit had not been filed in the capacity of a worshipper on behalf of the idol, therefore Anand Swarup Sharma had failed to establish any connection with the suit property and he is not entitled to get possession of the same.

Learned First Appellate Court had affirmed such findings of the trial Court upholding the judgment and decree passed by the trial Court. Para No.25 of the judgment of learned Additional District Judge, Yamunanagar at Jagadhri is quite relevant, which for ready reference is reproduced as under:

25. In view of the afore discussed i.e. eve where Joginder Shah being Mohatmim could not create a lease for a period of 99 years in respect of the dera property without any legal

necessity, yet when the appellant did not have a valid authority to institute the present suit on behalf of the dera, he could not be entitled to possession of the suit property, rather from the conduct on record it can be said that appellant Anand Sarup Sharma has tried his best to take over the dera property on the basis of power of attorney which he himself has not been able to prove as having been validly and legally executed. He has also concealed the material evidence from the Court by not producing the trust deed which could prove the constitution of the trust as well as property which was to be controlled and looked after by the trust.

However, since it has been observed that the property in suit vested in Dera Suthre Shah, a religious endowment and Joginder Shah was held to be Mohatmim of the same at the time when property was leased out for 99 years; it was so done without any legal necessity, that means the defendants are not in legal possession of the suit property. The suit filed in the name of Dera by Anand Swarup Sharma has been dismissed for the reason that he has no authority to do so.

Under the circumstances any person properly authorized on behalf of Dera may seek possession of the suit property from the defendants.

It may be mentioned that the defendants have neither filed any appeal against the judgments by the Courts below nor any cross-objections have been filed, resultantly, they are bound by the findings

recorded in the judgments passed by the Courts below.

Therefore, in this regular second appeal, I do not see any reason to set aside the judgments passed by the Courts below by way of acceptance of appeal since those judgments do not suffer from any illegality or infirmity. They are perfectly in accordance with law and no fault can be found therewith.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, miscellaneous application(s), if any stand disposed of accordingly.

9.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No