

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

RSA-1223-2017(O&M)

Date of decision:-2.5.2019

Rajesh Dass

...Appellant

Versus

Satbir and others

...Respondents

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

Present: Mr.Surender Lamba, Advocate
for the appellant.

Mr.Sumit Gupta, Advocate
for respondent No.1.

Mr.Inderjit Sharma, Advocate
for respondent No.2.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs – Satbir son of Hukam and Harpal son of Sh.Mishri Lal, both residents of village Mandnaka, Tehsil Hathin, District Palwal had brought a suit for declaration, possession and permanent injunction against

defendants i.e. Rajesh Dass son of Teekam Dass, resident of their village as well as Gram Panchayat of their village on the averments that plaintiffs are permanent residents of village Mandnaka; that Gram Panchayat of the village is owner of the agricultural land comprised in khewat No.958, khatauni No.1090, rectangle no.29, killa no.4/4(1-1), 7/1(6-7), 14(8-0), 15(7-0), 16(7-0), 25(6-6), rectangle no.74, killa no.26(1-1), khasra no.206(3-8) gair mumkin mandir, total measuring 40 kanals 3 marlas situated within the revenue estate of village Mandnaka; that the land remained as Dholidar in the name of 'Mandir Gabdu Wala' in the jamabandi for the year 1965-66; that the Mandir was being managed and controlled by Ganesh Dass Chela Suraj Dass and entries in that regard remained there in the revenue record till 1970-71, however, subsequently in the mutation No.2264, the management and control of the temple stood changed in the name of Brij Lal, Teekam, Roop Chand sons of Sarweshwar Dass son of Ganesh Dass from the side of Ganesh Dass Chela Suraj Dass Pujari Dholidar. According to the plaintiffs, the entries were changed in the name of Brij Lal etc. and mutation was sanctioned in their favour due to collusion between revenue officials and predecessors-in-interest of defendant No.1; that after mutations Nos.2841, 2842 and 3508 were entered and sanctioned; that defendant No.1 or his predecessors-in-interest did not remain Dholidar of the suit land; that defendant No.1 is a man of

questionable habits and was adamant to destroy property of the temple; that he is residing in the property along with his family; that he want to change its nature; defendant No.2 Gram Panchayat being owner had not been taking necessary action against the defendant No.1, which was necessary to save property of the temple. Therefore, the suit in question was filed.

On notice, both the defendants appeared and filed separate written statements. In the written statement filed by defendant No.1, he had taken up preliminary objections challenging maintainability of the suit further contending that the plaintiffs are estopped by their act and conduct from filing the suit; that no cause of action arose to them to file the suit. Such defendant No.1 challenged the territorial jurisdiction of the Court at Palwal to entertain and try the suit in question. On merits, such defendant contended that ownership rights of defendant No.2 had already been ceased and he had become owner of the suit land; that he had applied for acquiring the ownership rights under the Haryana Dholidar, Butimar, Bhondedar and Mukarrardar (vesting the proprietary Rights) Act, 2010; that defendant No.1 being a Dholidar of the suit land as per jamabandi for the year 2005-06. According to such defendant, the plaintiffs in collusion with defendant No.2 wanted to grab the property. Refuting the remaining allegations of the plaint, such defendant prayed for dismissal of the suit.

In the separate written statement brought by it, defendant No.2 had also raised preliminary objections contending that suit was not maintainable; that the plaintiffs had no locus standi to bring the suit and no cause of action arose to them to do so; that the plaintiffs had suppressed the true and material facts etc. from the Court. On merits, such defendant admitted major portion of the pleadings of the plaintiffs contending that vide resolution dated 28.9.2011, it had already written to Deputy Commissioner, Palwal for taking necessary action and not to declare defendant No.1 as owner of the suit land; that the revenue record showing the defendant No.1 as Dholdar is wrong and has been procured by him and his predecessors-in-interest.

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

1. Whether the plaintiffs are entitled to decree for declaration that the revenue entries in favour of defendant no.1 as Dholdar are illegal, null and void and are liable to be rectified in favour of the Mandir Gabdu Wala as Dholdar and he is bound to deliver the possession of the suit property to defendant No.2 as alleged? OPP.
2. Whether the plaintiffs are entitled to decree for permanent injunction restraining the defendant no.1 from changing the nature of the suit property specifically meant for Mandir in the

revenue record and from creating any hindrance in the prayer of devotees? OPP.

3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the Civil Court has no jurisdiction to try and maintain the present suit? OPD.
5. Relief.

In order to prove their case, the plaintiffs examined Sh.Ombir as PW1, whereas plaintiff No.1 – Satbir got recorded his statement as PW2.

On the other hand, defendant No.1 Rajesh had got his statement recorded as DW1 besides examining Sh.Birbal as DW2 and Sh.Udaybir as DW3.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiffs and against the defendants, issues No.3 and 4 against the defendants. Resultantly, the trial Court vide judgment and decree dated 30.10.2014 decreed the suit partly with costs to the effect that the revenue entries showing the name of defendant No.1 as Dholidar as illegal and wrong and liable to be corrected as Mandir Gabdu Wala as Dholidar ba ahtmam Rajesh Das Chela Teekam Das Chela Sarveshar Das Pujari.

Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal before District Judge, Palwal,

which was assigned to Additional District Judge, Palwal, who vide judgment and decree dated 5.12.2016 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 No.1 has filed the present regular second appeal before this Court, notice of which was issued and the respondents and contesting respondents No.1 and 2 have appeared through counsel.

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

Both the Courts below in light of the evidence adduced by the parties and considering the legal position have come to the conclusion that revenue entries in the form of jamabandi for the year 1965-66 showing Gram Panchayat as owner of the suit land with entry in the column of cultivation being 'Mandir Gabduwala Dohlidar ba Ahtamam Ganesh Dass Chela Suraj Dass' and this possession continued up to 1975-76; thereafter the revenue entries were wrongly got changed inasmuch as in the ownership column, the entry came into being as 'Naal Chah Mandir Gabdu Wala' and in the year 2000-01 entries in column of cultivation were changed in the name of Rajesh Das Chela Teekam Dass Chela Sarveshwar Dass Pujari without assigning any reason. Thus, the change was wrong, illegal and unauthorized, as such could not be recognized. Defendant No.1

had come up with a plea that he had applied for acquiring rights under the Haryana Dholidar, Butimar, Bhondedar and Mukarrardar (vesting the proprietary Rights) Act, 2010 but as conceded by learned counsel for the appellant during the argument, such defendant No.1 has been unsuccessful in obtaining ownership rights under the said Act. The trial Court finding the change in the entries in the jamabandi to be unauthorized had come to the conclusion that the name of defendant as Dholidar in the revenue record was illegal and wrong and was liable to be corrected by entering name of Mandir Gabdu Wala as “Dholidar ba Ahtmam Rajesh Das Chela Teekam Das Chela Sarveshwar Das Pujari” and defendant No.1 was restrained from changing entry of the suit property. The Court of Additional District Judge, Palwal in its judgment has affirmed such observations and findings by the trial Court coming to the conclusion drawing an inference that predecessors of defendant No.1 never remained Dholidar of the suit land and in fact Mandir Gabdu Wala was the Dholidar. A judgment of this Court i.e. **Gurdip Singh Vs. Manmohan Singh and others, 2000(4) Recent Civil Reports – 19** has been referred wherein it was observed that *“When there is a conflict between the old and new jamabandis, the presumption of law is that more importance should be given to the previous jamabandi unless it is shown that the new jamabandi has been entered on the basis of some valid documents.”* It was observed by the Courts below

that Mandir Gabduwala was the Dholidar and Ganesh Dass Chela Surajdass Pujari was managing and controlling the suit land and mutation No.2264 Ex.P11 showing Brij Lal, Teekam and Roop Chand as Dholidaran was wrong.

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.

Therefore, the present appeal stands dismissed.

2.5.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No