

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

**RSA No.3525 of 2018 (O&M)
Date of Decision:22.05.2019**

Baba Darshan Singh (since deceased) through LRAppellant

Versus

Gurudwara Beer Sahib (Baba Budha Ji) and others
..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.A.K.Chopra, Sr. Advocate
with Mr. Ankit Midha, Advocate
for the appellant.

Mr. Vikas Bahl, Sr. Advocate
with Ms. Priyanka Kaushal, Advocate
and Dr. Puneet Kaur Sekhon, Advocate
for the respondents.

LISA GILL, J.

Appellant-defendant no.1, is aggrieved of judgement and decree dated 28.01.2014, passed by learned Addl. Civil Judge (Sr. Division), Tarn Taran, as well as judgement and decree dated 30.01.2018, passed by the learned Additional District Judge, Tarn Taran.

Brief facts necessary for the adjudication of the case are that the plaintiff-Gurudwara Beer Sahib (Baba Budha Ji) filed a suit seeking declaration to the effect that it is the owner of land measuring 130 Kanal 14 Marlas as detailed in the plaint as well as for possession with a consequential relief of permanent injunction. It is pleaded that the land in question was donated to Gurudwara Beer Sahib (Baba Budha Ji) for the purposes of running a school under the management and control of

Gurudwara Sahib known as School Baba Beer Baba Budha Sahib by Kundan Singh son of Achhar Singh. This land was donated through an oral gift deed and mutation of this land was duly sanctioned in favour of the plaintiff vide mutation no. 729 dated 27.12.1952. The plaintiff thus claimed to have become the owner in possession of the suit land. Appellant-defendant no.1 is alleged to have got the entries of the suit land changed in the revenue record in an illegal manner. Defendant no.1 was stated to be in illegal, unauthorized, unlawful possession of the suit property. From the very inception of the opening of the school under the name and style of School Beer Baba Budha Sahib, it is claimed to be under the management and control of the plaintiff-Gurudwara, which was paying salaries of the staff and bearing all other expenses. It is stated that previously a suit was wrongly filed in the name of Beer Baba Budha Sahib School, which was withdrawn with liberty to the plaintiff to file a fresh suit on the same cause of action. Plaintiff requested the defendants to admit the abovesaid claim, but defendants refused to do so. Hence the suit was filed.

Defendant no.1 contested the suit while defendant no.2 was proceeded against *ex parte* and the suit was dismissed under Order 9 Rule 2 CPC qua defendants no.3 and 4. Various preliminary objections were taken by defendant no.1 (present appellant) in the written statement. It is stated that originally the land was initially gifted by its owner Kundan Singh to Baba Kharak Singh through an oral gift deed. It is due to an inadvertent mistake that mutation was sanctioned in favour of Khalsa High School Beer Baba Budha Sahib. Managing Committee of the school passed a resolution no.15 dated 18.09.1977 for correction of the revenue record in favour of

Baba Kharak Singh. Mutation of ownership was accordingly sanctioned in favour of Baba Kharak Singh instead of the school vide mutation no.1555 dated 14.10.1977 and 09.11.1977. After verifying the ownership of Baba Kharak Singh, the present appellant purchased the suit land vide two sale deeds dated 07.06.1979 and the said sale deeds were duly executed by Baba Kharak Singh in favour of the appellant for valuable consideration of ₹7500/- each. Defendant claimed to be in possession of the suit property as its owner. Appellant-defendant no.1 claimed to be a *bona fide* purchaser for consideration without notice. It is further claimed that his possession had otherwise matured into full ownership by adverse possession being open, hostile, uninterrupted and to the knowledge of the plaintiff. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is owner in possession of the suit land?OPP
2. Whether the plaintiff is entitled to the perpetual injunction restraining the defendants from alienating the suit land?OPP
3. Whether the suit is not maintainable?OPD
4. Whether the plaintiff has no locus standi to file the present suit?OPD
5. Whether the present suit is within the period of limitation?OPD
6. Whether the present suit is properly valued for the purpose of court fee and jurisdiction?OPD
7. Whether plaintiff has suppressed the material facts from the Court?OPD
8. Whether the plaintiff has no cause of action to file the present suit?OPD
9. Whether the plaintiff is estopped by his act and conduct from filing the present suit?OPD
10. Whether the suit is bad on account of non-joining of necessary parties?OPD.

The following additional issues were framed by the learned trial

Court vide order dated 26.10.2013:-

1. Whether Sh. Kewal Singh has a right to file the present suit on behalf of the plaintiff as alleged in para no.3 of the plaint?OPP
2. Whether Baba Kharak Singh Ji sold the suit land vide two sale deeds dated 07.06.1979 in favour of defendant no.1 as alleged in para no.4 of the written statement on merits?OPD
3. Whether the defendant no.1 is a bona fide purchaser of the suit land as mentioned in para no.4 of the written statement on merits?OPD
4. Whether the defendant no.1 has become the owner of the suit land by way of adverse possession as pleaded in para no.4 of the written statement on merit?OPD
5. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record decreed the suit filed by the plaintiff-respondent, while concluding that the property in question was never gifted to Baba Kharak Singh in his individual or personal capacity. Entry in regard to the gift continued for a period of 25 years, but none had challenged the same to be wrong. Kundan Singh, the owner of the property had never raised any objection till his death. It is further observed that the revenue authorities did not follow the correct procedure while sanctioning the subsequent mutation no. 1555 dated 14.10.1977 and 09.11.1977. Objection raised by the defendant-appellant to the extent that the earlier suit, barred the plaintiff from filing the present suit, was negated while observing that permission was specifically granted to the plaintiff to file a fresh suit when it withdrew the earlier suit. It is specifically observed that the property was transferred in favour of Baba Kharak Singh in the year 1977 in a clandestine manner and thereafter sold to defendant no.1 in 1979. Reference is made to the testimony

of the present appellant-DW-5, wherein he has categorically admitted that he was present at the time gift was made by Kundan Singh in favour of Baba Kharak Singh. Therefore, he was very much aware about the gift as well as subsequent entries in the revenue records. Therefore, he could not be considered to be a *bona fide* purchaser for valuable consideration. It was further held that possession of defendant-appellant, over the suit property cannot be held to be adverse.

Appeal preferred by the present appellant was dismissed by the learned Additional District Judge, Tarn Taran, vide impugned judgement and decree dated 30.01.2018.

Aggrieved therefrom, present appeal has been filed.

Learned senior counsel for the appellant vehemently argues that both the learned Courts below have grossly erred in law and on facts, in decreeing the suit filed by the plaintiff-respondent. It is submitted that the land in question was gifted by Kundan Singh to Baba Kharak Singh in his individual capacity. Reference is made to mutation no. 729 dated 30.05.1952, Ex.PW2/A, to submit that finding of the learned trial court, to the extent that entry in mutation in favour of Gurudwara, is incorrect. In fact, it is in favour of the school which admittedly had not come up till the year 1954. The evidence, it is stated is contrary to the pleadings, inasmuch as, PW-2-Gurbir Singh, PW-3-Manbir Singh and PW-5-Iqbal Singh, have stated that the land in question was donated to the school. Plaintiff-Gurudwara Baba Sahib (Baba Budha Ji), it is submitted, never became the owner of the suit property. Furthermore, the managing committee of the school was fully authorized to pass the resolution dated 18.09.1977, Ex.D-6,

for making necessary corrections in the revenue record in favour of Baba Kharak Singh. Reference is made to Ex.D-36 i.e., constitution of the school. It is further contended that both the learned Courts below have erred in holding that a wrong entry in the revenue records should be corrected only with the intervention of the Civil Court.

In the present case, the owner, which is purportedly the school itself, as per mutation dated 15.06.1979, had itself applied for the change of the entry. Therefore, there was no need to file a Civil Suit in view of the provisions of Section 37 of the Punjab Land Revenue Act. It is the duly authorized Managing Committee of the school, who got the land mutated in favour of Baba Kharak Singh. It is further contended that both the learned Courts below have grossly erred in holding that the present appellant was not a *bona fide* purchaser of the property in question for valuable consideration. Furthermore, the suit filed by the plaintiff is hopelessly time barred. Moreover, after having filed a civil suit earlier, the present suit was not maintainable. The plaintiff, it is submitted has not even challenged sale deed dated 07.06.1979. Therefore, findings returned by the learned Courts below are liable to be set aside. It is thus prayed that this appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside.

Though, notice of motion had not been issued, Mr. Vikas Bahl, Sr. Advocate with Ms Priyanka Kaushal, Advocate, appear on behalf of the respondents. Ms. Priyanka Kaushal, Advocate, accepts notice on their behalf. It is contended by learned senior counsel for the respondents that a similar matter involving gift of land by Kundan Singh in favour of School

Beer Baba Budha Sahib School in 1954, stands decided by this Court in RSA No. 1710 of 2018 in favour of the plaintiff-respondent no.1 on 31.07.2018. The said decision dated 31.07.2018, it is submitted has attained finality as SLP No. 27552 of 2018 against the same has been dismissed by the Hon'ble Supreme Court on 29.10.2018.

Learned senior counsel for the respondents argues that the present is a clear cut case of fraud and an attempt to usurp the land which was gifted by Kundan Singh for running a school. The land in question was never gifted to Baba Kharak Singh in his individual capacity. It is submitted that two parcels of land were gifted by Kundan Singh, for the purpose of running educational institutions. Mutations thereof were sanctioned in 1954. The school and college are admittedly being run by respondent no.1. It is contended that the subject matter of RSA No. 1710 of 2018 is the other oral gift deed made by Kundan Singh in favour of Beer Baba Budha Sahib School, mutation of which was also sanctioned in the year 1954. In the said case also the Managing Committee therein, on 18.09.1977 had resolved that the land be mutated in the name of Baba Kharak Singh in his individual capacity. The entire controversy in RSA No. 1710 of 2018 it is submitted, is identical and squarely covers the present lis as well. It is thus prayed that the present appeal be dismissed.

I have heard senior learned counsel for the parties and have gone through the record with their assistance.

Learned senior counsel for the appellant has vehemently argued that as per mutation, Ex. PW2/A, the land in question is reflected to be gifted to Beer Baba Budha Sahib School and not to the Gurudwara.

Reference is made to column no. 10, wherein name of the cultivator is mentioned. I have perused the said mutation, Ex.PW2/A. In column no.15, it is specifically mentioned that gift is in favour of Beer Baba Budha Sahib School through Baba Kharak Singh. Perusal of decision dated 31.07.2018, passed in RSA No. 1710 of 2018, reveals that the appeal filed by the Managing Committee of Bir Baba Budha Sahib, Thatha College, in similar circumstances has been dismissed on the ground that any transfer of land, which was made after the applicability of Transfer of Property Act to the State of Punjab, could have been validly effected only through a registered document. Therefore, a resolution followed by a mutation could not pass any title from the school in favour of Baba Kharak Singh. Relevant part of decision dated 31.07.2018, reads as under:-

“In my considered opinion, this appeal must fail. The crucial determinant in this case is whether the title could be transferred in the year 1977 by a resolution which resulted in a mutation. By that time, the concept of oral transfer had been overturned with the applicability of the Transfer of Property Act to the State of Punjab. Consequently, any transfer which had to be made could only have been made by a registered document. A resolution followed by a mutation could not pass the title from the school in favour of Baba Kharak Singh.

Learned counsel for the appellant has not been able to show any law on this issue which may have taken a different view. In the circumstances, it has to be held that resolution No.16 dated 18.9.1977 and mutation dated 15.11.1977 could not transfer the title from school in favour of Baba Kharak Singh. Once this essential issue is behind us, the other peripheral issues regarding the interpretation and interplay of different clauses of the constitution of the school need not detain this Court and the exact connotation thereof can be considered in a case where

they may arise. Likewise, the issue of Will of Baba Kharak Singh would also pale into insignificance. On a complete conspectus of the facts and the law, I am not persuaded to hold that the civil suit should be dismissed. Consequently, finding no merit in this appeal the same is dismissed.”

Learned senior counsel for the appellant is unable to point out any distinguishing factor in the present case. Admittedly, the said decision has been upheld by the Hon'ble Supreme Court in SLP No. 27552 of 2018. Therefore, controversy in hand being identical, I do not find any ground whatsoever to interfere in this appeal.

Learned senior counsel for the appellant, is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 28.01.2014 and 30.01.2018 passed by the learned Additional Civil Judge (Sr. Division) Tarn Taran and learned Additional District Judge, Tarn Taran, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

22.05.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.