

RSA No. 4017 of 2014 (O&M)

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

RSA No. 4017 of 2014 (O&M)

Date of Decision: February 11, 2019

Ensamueul Masih @ Bitta and others

..... APPELLANT(s)

Versus

Amritsar Diocesan Trust Association (ADTA)

..... RESPONDENT(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Prateek Sodhi, Advocate
for the appellants.

Mr. G.S. Bhatia, Advocate with
Mr. Prabhjot Singh Sidhu, Advocate
for the respondent.

LISA GILL, J.

Defendants-appellants are aggrieved of judgment and decree dated 28.04.2014 passed by the learned Additional District Judge, Amritsar whereby judgment and decree dated 08.03.2013 passed by the learned Civil Judge (Jr. Division), Ajnala has been set aside and the suit filed by the respondent-plaintiff decreed.

Brief facts necessary for the adjudication of the case are that the respondent-plaintiff Amritsar Diocesan Trust Association (for short 'ADTA') filed a suit for possession of the house consisting of three bedrooms, one godown, kitchen, bathroom, verandah, servant's quarter etc. as described in the plaint, situated inside the Mission Compound, Tehsil Ajnala, District Amritsar, besides recovery of Rs.5,000/- per month w.e.f. 01.03.1999 till the

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date property was handed over to the plaintiff-ADTA for wrongful occupation and use of the property along with interest @ 12% p.a. It was pleaded that plaintiff-ADTA was a society duly registered under the Societies Registration Act. Bishop R.K. Sumantha was its Chairman and Bishop of Diocesan of Amritsar, Ex-officio Chairman of ADTA and Sadrick Sohan Lal was the Secretary of the plaintiff-Society. Both of them claimed to have the authority to jointly and severally sign, verify and institute suits on behalf of the Society. It was stated that defendant no.1-Abdul Masih i.e. appellant no.3 in this appeal was working as the Priest of the Diocesan whose President and Ex Officio Chairman was P.K. Sumantaroy. He was drawing salary from ADTA and he retired on medical grounds on 28.02.1999. By virtue of his office Abdul Masih was allowed to live in this church house, situated at Tehsil Ajnala, District Amritsar. Appellant-defendant no.1 was asked to vacate and hand over possession of the property on his retirement. However, appellant-defendant no.1 instead of handing over vacant possession started threatening the plaintiff along with his sons (defendants no.2 & 3). He refused to hand over vacant possession thereof and in fact filed a suit for permanent injunction titled as 'Reverent Abdul Masih Vs. Executive Committee' on 01.03.1999. Learned Court in that case initially passed an order on 01.03.1999 directing maintenance of status quo regarding the demised premises. Ex-parte interim stay was, however, vacated and the suit ultimately dismissed in default on 30.07.2001.

However, even after dismissal of the suit, possession of the property was not handed over by the defendants to the plaintiff. Defendants

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tried to change the nature of the suit property. The defendants were claimed to be in illegal occupation of the premises since 01.03.1999, therefore, liable to pay rental/mesne profits of Rs.5,000/- per month. Hence, the suit was filed.

Defendants resisted the suit. Various preliminary objections were raised in the written statement. Averments on merits were controverted. It was claimed that Sadrick Sohan Lal had no concern with the plaintiff Society as he was a member of a Church of North India, which is a separate body having a separate office. Ashok Kumar was claimed to be the Chairman and David Paul, the Secretary of ADTA. It was further stated that the suit was time barred. Moreover, appellant-defendant no.2 (Ensamueul Masih) claimed to be appointed as an evangelist at Ajnala vide appointment letter dated 15.03.1999 and was thus duly authorised to live in the house in dispute. The defendants further stated that the suit was not maintainable by the persons filing the same claiming to be the Chairman and the Secretary of the ADTA. Sadrick Sohan Lal it was held was not the Secretary of the ADTA by the High Court of Himachal Pradesh in a case titled 'ADTA Vs. R.C. Paul and others', vide decision dated 29.06.1984. Reference was also made to the decision of the Hon'ble Supreme Court in 'District Council of United Basel Mission Church and others Vs. Salvador Nicholas Mattheus and others'. Resolution 2-E, it was claimed was not passed by the Diocesan Council of Gurdaspur Diocese before joining the Union of Diocesan Council, which is obligatory. Operation of the judgment dated 31.10.1998 it is stated has been stayed by this Court on 23.11.1992. Another judgment dated 16.08.1988

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was challenged through Bishop Babu Masih and appeal against order dated 01.05.1989 in the said case was filed before this Court and the matter remanded to the lower Court. In a miscellaneous application in the said case, this Court in order dated 23.11.1992 observed that ADTA was realizing rent from its tenant through Chairman Bishop Babu Masih. It was further stated that the appeal filed by Sadrick Sohan Lal as Secretary against Doaba Automobiles, stood dismissed vide judgment dated 20.04.2011, passed by the learned Additional District Judge, Amritsar, with the observation that Sadrick Sohan Lal was not the Secretary of ADTA. Possession of the defendants-appellants was claimed to be legal and valid. Hence, dismissal of the suit was prayed for.

Replication to the written statement was filed. Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i) Whether the plaintiff is entitled to possession of the suit property ?OPP.
- ii) Whether the plaintiff is entitled to recovery of Rs.5000/- per month as mesne profit alongwith interest w.e.f. 1.3.1999 ?
OPP
- iii) Whether the suit is not maintainable in the present form?
OPD.
- iv) Whether suit is not properly valued for the purposes of Court fee and jurisdiction? OPD
- v) Whether suit is bad for want of notice under the Transfer of Property Act ? OPD
- vi) Whether suit is time barred ? OPD
- vii) Relief.

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Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances, observed that the plaintiff – ADTA has not examined any revenue official or any revenue record to prove ownership of the plaintiff over the suit property. In the absence of revenue record the plaintiff failed to prove his title over the suit property. It was observed that the plaintiff did not lead conclusive evidence to prove its title over the suit property and also did not bring on record any cogent or convincing evidence in their favour. Suit filed by the plaintiff was dismissed.

Appeal filed by the plaintiff-ADTA was however, allowed by the learned District Judge, Amritsar vide judgment and decree dated 28.04.2014 whereby it was observed that the plaintiff is a registered body, defendant no.1 has admitted himself to be an employee of the plaintiff-society. Once defendant no.1 stood retired on 28.02.1999, he did not have any right to continue living in the church house which was admittedly given to him by virtue of his service with ADTA. Judgment dated 08.03.2013 passed by the learned trial Court was thus set aside and the appeal allowed. Consequently suit filed by the plaintiff was decreed.

Aggrieved from judgment and decree dated 28.04.2014, passed by the learned Additional District Judge, Amritsar, present appeal has been filed by the defendants.

Learned counsel for the appellants argues that the learned Additional District Judge, Amritsar has grossly erred in law and on facts, in

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as much as the evidence on record to the effect, that the plaintiff was not even the owner of the property in question, has not been adverted to. The plaintiff in this case was not entitled to file the suit. It is submitted that the suit has been filed by persons who are not authorized to represent Amritsar Diocesan Trust Association (ADTA). It is further submitted that Ex. D-1 to D-6 is the list of Members of ADTA, which was placed on record but has not been considered by the learned First Appellate Court. It is vehemently argued that in this case it was incumbent upon the plaintiff to first prove its ownership over the property in question. Reference is made to Ex. D-11 i.e. Judgment dated 20.04.2001 passed by the learned Additional District Judge, Amritsar to submit that Sadrick Sohan Lal was not the Secretary of ADTA. The resolution and the power of attorney in this case, it is submitted, are post-dated, therefore, on the date of filing of the suit, the persons through whom the suit has been filed, were not authorized.

It is submitted by learned counsel for the appellants-defendants that even if it is admitted that defendant no.1 was appointed by ADTA with permission to reside in the house in question and on his retirement he was to vacate the premises (though not admitted), the said premises were duly allotted to his son - defendant no.2 (appellant no.1 in this appeal), after appointment of defendant no.2 as an evangelist on 15.03.1999 i.e. Ex. D-7. Defendant no.2/appellant no.1 was duly appointed by ADTA, therefore, it was incumbent upon the learned Additional District Judge to first and foremost have considered the question of entitlement of the plaintiff who has filed the present suit. He places reliance upon the judgment of the

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Hon'ble Supreme Court in *Nair Service Society Ltd. Vs. K.C. Alexander and others 1968 AIR (SC) 1165*.

Learned counsel for the appellants-defendants submits that though possession of the premises has been handed over to the respondent-plaintiff during the pendency of this appeal in execution proceedings, he has instructions to argue this matter on merits because in case the present appeal is allowed the appellants would be entitled to restitution of the possession of the demised property. It is thus prayed that this appeal be allowed, judgment and decree dated 28.04.2014 passed by the learned Additional District Judge, Amritsar be set aside and that of the learned trial Court be upheld.

Learned counsel for the respondent-plaintiff on the other hand while refuting the averments as above submits that the plaintiff was duly authorised to file the suit in question and general power of attorney Ex. P-2 has been placed on record. Learned counsel refers to Ex.P-32 i.e. judgment dated 16.08.1988 passed by the learned Additional Senior Sub Judge, Amritsar wherein it is observed in para 18 thereof, that Sadrick Sohan Lal is held to be the Secretary of the ADTA. This suit purportedly filed by ADTA through V.S. Hague claiming to be the Secretary of the said Association seeking permanent injunction for restraining the defendants therein from dispossessing, selling or interfering in the management of the properties of the Trust, which included the property in question, was dismissed. Though it is informed that appeal against this judgment is pending, learned counsel for the respondent further points out to Ex. P-72 i.e. the suit filed by defendant no.1 and others seeking the relief of permanent injunction for restraining the

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defendants therein from taking over the possession of the suit property. It is submitted that the said suit was dismissed in default on 30.07.2001. Furthermore, till date, no efforts have been made for revival of the said suit. Moreover, the defendants have admitted that defendant no.1 was afforded the accommodation in question having been appointed by the ADTA. On his retirement, he was asked to hand over the vacant possession of the property but he resisted the same. Defendant no.2 in connivance with the persons who were challenging the management sought to retain possession of the property on the ground that he was appointed as an evangelist and permitted to reside therein. It is contended that as on March 1999 defendant no.2 could not have been appointed by the so called management. Reference in this respect is made to Ex.P-37. Moreover, the conduct of the appellants reveals the lack of *bona fides*. Learned counsel for the respondents refers to order dated 21.01.2015, passed in this appeal, by this Court whereby interim order dated 28.11.2014 afforded in this case was vacated. It is submitted that the conduct of the appellants has been deprecated by this Court and it is observed therein that the appellants have deliberately concealed facts. The SLP(C) No. 13299/2015 filed by the appellants challenging order dated 21.01.2015 was dismissed by the Hon'ble Supreme Court on 17.08.2015. The appellants were directed to vacate the premises in dispute on or before 30.09.2015 and to file an undertaking before the Hon'ble Supreme Court within two weeks. Possession of the property since then it is submitted has been with the respondents. Learned counsel for the respondents vehemently argues that the present is in fact proxy litigation, being pursued by the

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persons who claimed to be in the management of the ADTA. It is thus prayed that this appeal be dismissed.

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

Learned counsel for the appellants has primarily argued that the plaintiff-respondent was not authorised to file the present suit against the defendants-appellants. Furthermore, once there is no evidence on record to show that the plaintiff-respondent was not even the owner of the property in question, there is no question of decreeing the suit for possession filed by the plaintiff-ADTA. At this stage it is relevant to note that the dispute regarding the management of the ADTA had admittedly arisen between warring groups. However, in the present case it is admitted that the premises in question were handed over to appellant no.2 – Abdul Masih (defendant no.1 before the learned trial Court) by virtue of his employment as an evangelist with the plaintiff. It is not in dispute that Abdul Masih has not even stepped in the witness box. Learned counsel for the appellants are unable to deny that the appellant - Abdul Masih filed a suit for permanent injunction for restraining the plaintiff from taking charge of his post forcibly and from retiring him prematurely and further to restrain them from taking over the possession of the house in question. Plaint of the said suit is on record as Ex. P-72. Initially an order of status quo regarding the possession was directed by the learned trial Court in the said suit on 01.03.1999. Said order is on record as well. However, order dated 01.03.1999 was vacated vide a detailed order dated 05.05.1999 by the learned trial Court. Order

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dated 05.05.1999 is also on record. It is specifically observed in order dated 05.05.1999 that Abdul Masih retired on 28.02.1999 on attaining the age of superannuation. It was observed that *prima facie* case or balance of convenience did not lie in favour of Abdul Masih etc. for grant of an *ad interim* injunction as their act and conduct was not such, which invited any equity in their favour. It is further not in dispute that the said suit filed by Abdul Masih etc. was dismissed in default on 30.07.2001. Said order has attained finality.

Learned counsel for the plaintiff-ADTA has referred to Ex. P-37 i.e. an order dated 05.05.1992 passed by the learned Additional Senior Sub Judge, Amritsar on an application under Order 39 Rule 1 & 2 of CPC in a suit for permanent injunction purportedly filed by the ADTA through David Paul as its Secretary and Rt. Reverent Babu Masih as the Chairman whereof, against the Church of North India and others including Sadrick Sohan Lal for restraining the defendants therein from using the name of ADTA and representing themselves to be the office bearers of. It was specifically observed by the learned trial Court in order dated 05.05.1992 while dismissing the application, that Sadrick Sohan Lal being the Secretary of the ADTA has every right to use the name thereof. It was further observed that an observation has been made in the judgment dated 16.08.1988 that the plaintiffs in the suit wanted to usurp the properties of ADTA with sinister motives. The application for interim relief was dismissed. The said suit it is apprised stands adjourned sine die.

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Reference has also been made to Ex. P-57 by learned counsel for respondent-ADTA which is judgment dated 05.09.2005 in a suit for declaration and permanent injunction filed by the ADTA through its Chairman Rt. Reverent Pardeep Kumar Somantaroy and Sadrick Sohan Lal as Secretary. It is observed in the said judgment dated 05.09.2005 that Sadrick Sohan Lal was proved to be the Secretary of the ADTA. Reference was made to a resolution dated 25.07.1980 vide which Sadrick Sohan Lal was elected as a Secretary of the plaintiff society. It was further observed that the question whether Sadrick Sohan Lal was the Secretary of the plaintiff society or not was not decided by the High Court of Himachal Pradesh on merits, therefore, it did not operate on *res-judicata*. The application was simply dismissed being not pressed under Order 23 CPC. It was categorically held in the said decision that Sadrick Sohan Lal was the Secretary of the plaintiff society on the date when the suit was filed and he was duly empowered to file the suit. Learned counsel for the appellants have referred to the decision Ex.D-11 i.e. an appeal filed by the ADTA through Sadrick Sohan Lal against one Doaba Automobiles seeking its eviction from the property in its possession.

At this stage, it is relevant to note that there is no denial on the part of the appellant-defendants that the premises in question were initially given to Abdul Masih (appellant no.2/defendant no.1) by virtue of his service with ADTA. It has been averred that the said premises were given to appellant no.1 subsequently on his appointment as an evangelist by the ADTA. Defendants-appellants examined DW-1 David Paul claiming himself

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to be the Secretary of ADTA. DW-1 in his cross examination has however admitted that Defendant Abdul Masih was employed by the ADTA and he retired on 28.02.1999. It was further admitted by DW-1 that it is in connection with Abdul Masih's service with ADTA that he was permitted to live in the church house. Appointment letter was duly issued to Abdul Masih, however, DW-1 David Paul admitted that they were not in possession of any of the record regarding service of Abdul Masih with ADTA. The suit for permanent injunction filed by Abdul Masih was not filed against ADTA through David Paul etc. who are claimed by the defendants, to be the management of ADTA. It is to be noted that Abdul Masih has not stepped in the witness box in order to substantiate the stand of the defendants. Ensamueul Masih appellant no.1 in this case and defendant no.2 in the plaint testified as DW-2. He has not denied that his father was an employee of ADTA and the property in question was given to his father for his residence alongwith his family by virtue of his service. DW-2 has not specifically denied that Bishop P.K. Somantaroy and Sadrick Sohan Lal are not the chairman and secretary respectively of the plaintiff-ADTA. A perusal of his testimony reveals that he denies for want of knowledge whether the said persons are the office bearers of ADTA. DW-2 even goes on to say that he does not know whether the society is a registered one or that resolution dated 04.04.2006 authorises the above said office bearers to institute the suit in question. Statement of DW-2 in this regard is vague and evasive. Learned Additional District Judge, Amritsar in the given facts and circumstances of the case has rightly observed that once defendant

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no.1-Abdul Masih retired from service, he had no right to continue in possession of the suit property. Defendant-Abdul Masih clearly was never in the employment of the society of whose management is claimed by David Paul etc.

I also do not find any merit in the argument raised by the learned counsel for the appellants that the present suit for possession is not maintainable by the plaintiff. It is reiterated that defendants have admitted that possession of the property in dispute was given to Abdul Masih for his residence along with his family by virtue of his service. It is admitted by DW-1 that they did not have any proof of any employment of Abdul Masih with them. It is proved that Abdul Masih was appointed by the plaintiff-ADTA. It is apparent that proxy litigation is being carried out where the ultimate target is the management of the society in question. Therefore, the suit is indeed maintainable.

Judgment of the Hon'ble Supreme Court in *Nair Service Society's* case (supra) relied on by the appellants does not come to their aid. The Hon'ble Supreme Court in the said case was examining the controversy as to whether the plaintiff in the said case could maintain a suit for possession (apart from a possessory suit under the Travancore Laws analogous to Section 9 of the Indian Specific Relief Act) without proof of title basing his case mainly on his prior possession and whether the society could defend itself pleading the title of the government. The said decision is not applicable to the facts and circumstances of the present case.

Keeping in view the facts and circumstances as discussed above, there is no question of law much less a substantial question of law, which is involved for consideration in this regular second appeal.

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No other argument has been addressed.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 28.04.2014 passed by the learned Additional District Judge, Amritsar, which calls for any interference by this Court in second appeal.

Accordingly, this appeal is dismissed. Judgment and decree dated 28.04.2014 passed by the learned Additional District Judge, Amritsar is upheld.

As the appeal is finally decided, no separate orders are required to be passed in any pending applications, if any.

February 11, 2019.
Sunil

(**LISA GILL**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No