

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

RSA-33-1989 (O&M)

Date of decision : 06.03.2020

Mahant Gian Dass (deceased) through his LRs and others

...Appellants

Versus

Mahant Madho Dass and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kamal Sharma, Advocate for the appellants.

Mr. Lakshman Sharma, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants have filed the present Regular Second Appeal against the judgment passed by the learned Additional District Judge, Rohtak, partly setting aside the judgment and decree passed by the learned Sub-Judge, Ist Class, Jhajjar.

The dispute is with regard to a religious institution and its property. The record as available shows that Mahant Amar Dass, Chela Jage Ram was originally Mahant of the religious institution. However, he started alienating the property without any legal necessity. Mahant Rattan Dass, filed a civil suit challenging alienation of the property by Mahant Amar Dass and also for his removal. In fact, two suits i.e. Civil Suit

Nos.1312 and 1315 were decided in the year 1932 together and the Court passed the decree to the following effect:-

“The plaintiff is entitled to the decree for declaration. It may be noted here that the plaintiff's prayer is also for possession. I do not think that it is open to the Court in this suit since to grant a decree for possession in favour of the plaintiff. In such a suit, a decree cannot be passed against the allinee directing them to deliver possession of the property to the plaintiffs as such relief is not specifically mentioned in the section. The remedy of the newly appointed Mahant shall be to institute a separate suit for possession against the alienees. (112 I, C.120 & CPC by Mulla, Commentary Under S. 92 page 250 edition to 1926.) It may also be noted hence that the learned counsel for the defendants vendees, urged that the defendants vendees were bonafide transferee for consideration from an original transferee is protected. In this connection, he has cited 10 Lahore 447. That ruling however is inapplicable in as much as that case was under S. 53 of the transfer of Property Act and the question about the defeeting or delaying the creditors. In the present case, the facts are different. In Suit No.1312, I pass a decree in plaintiffs against the defendants for the removal of the defendant as Mhant and Manager, of Gaddi Dawla. The plaintiffs will put in a list by the 7th December, 1932, of persons who may be eligible for being appointed as Mahant of the Gaddi. The defendant will pay plaintiffs costs of the suit. Pleaders fee Rs.16/-.

In case No.1315, I pass a decree for a declaration to the effect that the alienation of the property in dispute by the defendant Amar Dass in favour of the other defendants

is inoperative against the rights of the Gaddi, or the religious institution. Decree for possession cannot be granted in the case at present. When a new Mahant is appointed, he may take the necessary steps for the recovery of the possession. The parties in this case xxx xxx own costs of the suit. Pleaders fee Rs.16/-."

Pursuant to the aforesaid decree passed, Mahant Deva Dass was appointed as Mahant. He is alleged to have married against custom and blessed with three sons i.e. defendant Nos.1 to 3. On the death of Mahant Deva Dass, his three sons and widow claimed the property. Defendant No.1-Gian Dass filed a suit against Hari Dass claiming that now he is Mahant of the religious institution. In the aforesaid suit, plaintiff No.3 and two others filed an application for their impleadment as a party which was rejected. Ultimately, the suit filed by Gian Dass was decreed ex parte on 23.07.1980.

The present suit i.e. Civil Suit No.1071 of 1980 was filed by Mahant Madho Dass, Mahant Sohan Dass and three others, including Ganeshi, praying for decree of declaration, permanent injunction and for appointment of Mahant of Gaddi Kabir Panthi Sadhu, Village Dawla.

The defendants contested the suit and pleaded that Mahant Deva Dass was owner of the property and Mahant Gian Dass has been declared to be Mahant of the religious institution. The property was also claimed on the basis of a Will executed by Mahant Deva Dass.

Learned trial Court, partly decreed the suit, by declaring that the property situated in Jhajjar is personal property of Mahant Deva Dass

and, therefore, inherited by the defendants whereas with regard to the other property, the religious institution was held to be owner.

Two appeals were preferred before the First Appellate Court. The defendants filed the appeal against the decree which went against them whereas the plaintiffs filed an appeal claiming that the property at Jhajjar is also the property of the religious institution.

Learned First Appellate Court, on re-appreciation of evidence, accepted the appeal filed by the plaintiffs whereas dismissed the appeal filed by the defendants. The Appellate Court held that the entire property at Village Dawla as well as at Jhajjar belongs to the religious institution. None of the property was never personal property of Mahant Deva Dass.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellants submitted that Mahant Gian Dass was declared Mahant of the religious institution vide judgment and decree dated 23.07.1980. One of the plaintiff namely Ganeshi had filed an application for impleadment of party and therefore, he was in knowledge of the litigation. Hence, he submitted that such decree is binding on Ganeshi and consequently, the suit filed by the plaintiffs was liable to be dismissed.

On the other hand, learned counsel for the respondents-plaintiffs has submitted that the application filed by Ganeshi for

impleadment as party defendant, was dismissed. Hence, result is that Ganeshi was never a party to the aforesaid suit. Ganeshi was never allowed to litigate or contest the aforesaid suit. Hence, judgment and decree dated 23.07.1980 is not binding on the plaintiffs.

Before this Court analyzes the arguments of learned counsel for the parties, it would be appropriate to note that with regard to the religious institution concerned, there is already a judicial verdict declaring the religious institution to be owner of the property. The operative part of the judgment passed in the year 1932 has already been extracted. It is not disputed that the aforesaid judgment passed in the year 1932 covers the property at Village Dawla, Rohtak as well as Jhajjar. It is also not in dispute that pursuant to the judgment and decree passed on 23.11.1932, Mahant Deva Dass came to be appointed. In such a situation, as far as the fact that the properties at both the places belongs to religious institution, has already been established.

Now, the question is whether ex parte decree passed on 23.07.1980 declaring Mahant Gian Dass is binding or not. As none of the plaintiffs were parties in the aforesaid suit, the aforesaid decree would not be binding on them. In fact, the dismissal of the application for impleadment filed by Ganeshi alongwith two others, operates in favour of the plaintiffs because Ganeshi was never impleaded as a party-defendant in the suit. Mere filing of the application for impleadment which was ultimately dismissed, is as good as a person who is not a party to the suit. In such a situation, arguments of learned counsel for the appellants that

the decree passed by the Civil Court dated 23.07.1980 is binding on one of the plaintiff, cannot be accepted.

Both the Courts, on appreciation of evidence, have found that Mahant Gian Dass son of late Mahant Deva Dass was never appointed as Mahant of the religious institution.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere with a detailed judgment passed by the learned Additional District Judge.

Consequently, Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

06.03.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No