

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

1. RSA-2430-2012 (O&M)
Date of decision : 15.01.2020

Harnek Singh ...Appellant

Versus

Sant Baba Ajmer Singh Ji ...Respondent

2. RSA-2705-2012 (O&M)
Date of decision : 15.01.2020

Shri Nanaksar Ashram and another ...Appellants

Versus

Shri Guru Granth Sahib Gurudwara Nanaksar ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate for the appellants.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate for the respondents.

ANIL KSHETARPAL, J.

By this judgment, RSA No.2430 and 2705 of 2012 shall stand disposed of, which are arising from a common judgment deciding two connected suits. Learned counsel for the parties have also agreed that both the appeals can be conveniently disposed of by a common judgment.

In the considered view of this Court, the question which requires adjudication is “Whether an individual can be declared to be the Manager (Ba Itmam) of a religious property in absence of any custom or

established practice particularly when he was previously working as a *Granthi* in the Gurudwara (equivalent to *Pujari* in a temple)?”

The defendants-appellants have filed these Regular Second Appeals against the judgment passed by the learned Additional District Judge reversing the judgment and decree passed by the trial Court.

At this stage, it would be appropriate to notice certain facts, correctness whereof is not disputed. Tara Singh, Mohan Singh and Bibi Surinder Kaur gifted the land measuring 8 kanals on 22.08.1967 to Shri Guru Granth Sahib Gurudwara Nanaksar, Village Gorsian Makhan through Sant Baba Mihan Singh. Thereafter, Tara Singh also sold another piece of land measuring 12 kanals 3 marlas to Shri Guru Granth Sahib Gurudwara Nanaksar, Village Gorsian Makhan through Sant Baba Mihan Singh vide registered sale deed dated 09.01.1978. Sant Baba Mihan Singh was the settler of “Thath”/Gurudwara Nanaksar, Village Gorsian Makhan. The construction of the Gurudwara was started under his supervision. In the year 1978, he constituted a Trust which was called “Shri Nanaksar Ashram Village and Post Office Shiar, District Ludhiana”. He was the President/Chairman of that Trust whereas other Trustees were Harnek Singh, Mann Singh, Kanwaljit Singh, Roor Singh and Surjit Singh. The Trust Deed was registered on 10.04.1978. On 23.12.1981, additional/supplementary Trust Deed was prepared and registered on 27.01.1982. He used to visit various foreign countries in order to spread the spiritual message of Shri Guru Granth Sahib. He expired on 30.08.1994. Thereafter, the plaintiff-Baba Ajmer Singh son of

Gajjan Singh performed the duties of a *Granthi* in Shri Guru Granth Sahib Gurudwara Nanaksar, Village Gorsian Makhan.

The plaintiff-Sant Baba Ajmer Singh, in Civil Suit No.162 of 1999, claims that on 11.11.1994, he has been appointed as Manager (Ba Itmam) of the Gurudwara and its property by the congregation of devotees. Hence, the plaintiff claims that he be declared Manager (Ba Itmam) of the religious place and its properties. The second Civil Suit has been filed by Shri Guru Granth Sahib Gurudwara Nanaksar, Village Gorsian Makhan through its Mohatmim/Ba Itmam Baba Ajmer Singh for similar relief. The plaintiff has also challenged the mutation of the land incorporating an entry in the revenue record to the effect that such Gurudwara is under the management of Sant Harnek Singh who was appointed as Chairman of the Trust, again by congregation of devotees belonging to the surrounding villages as also by the Trustees through a resolution.

The defendant-appellant took a stand that the plaintiff-Baba Ajmer Singh is performing the duties of a *Granthi* in the Gurudwara but never appointed as Manager/Ba Itmam/Mohatmim. Their stand is that it is the Trust which is managing the affairs of the religious institution.

Learned trial Court, on appreciation of voluminous evidence, which was brought on record by the parties, held that the plaintiff-Baba Ajmer Singh is not entitled to the declaration as prayed for, particularly when, there is no order of appointment of plaintiff-Baba Ajmer Singh as Manager/Mohatmim/Ba Itmam of the religious institution.

Learned First Appellate Court has reversed the judgment passed by the learned trial Court by writing a lengthy judgment, reproducing the grounds of appeal and the entire oral and documentary evidence. In substance, the First Appellate Court has given the following reasons to reverse the judgment of the learned trial Court:-

- 1) Revenue Authority while sanctioning the mutation has overstepped its jurisdiction and recorded a finding that the property is managed by Baba Harnek Singh, although the owner of the property is Shri Guru Granth Sahib Gurudwara Nanaksar, Village Gorsian Makhan.
- 2) Shri Guru Granth Sahib Gurudwara Nanaksar, Village Gorsian Makhan is the owner of the property. Shri Nanaksar Ashram Trust is not the owner of the property and, therefore, the Chairman of the Trust is not necessarily required to be Ba Itmam/Manager of the Gurudwara.
- 3) Sant Ajmer Singh was appointed as Manager/Ba Itmam/Mohatmim by the congregation of devotees of the surrounding villages and is in continuous possession of the Gurudwara.

It is important to note that the correctness of documents Ex.D1 to Ex.D5 is not disputed. Ex.D1 is a copy of an application submitted by Baba Ajmer Singh for electricity connection. It has specifically been recited that the plaintiff-Baba Ajmer Singh is working as a *Granthi* of the Thath/Gurudwara. The document Ex.D3 is also to the similar effect. On the aforesaid application, the Electricity Department sanctioned the electricity connection and load. Thereafter, the document

Ex.D4 is a demand notice issued by the Electricity Department. The document Ex.D5 is an order releasing the electricity connection. No doubt, the plaintiff has led voluminous oral evidence to prove its case that by the congregation of devotees of the neighbouring villages, he was appointed as Manager/Ba Itmam.

However, in absence of any custom or practice in the religious institution, authorizing congregation of residents of the neighbouring villages to make such an appointment, it would not be safe to conclude that the plaintiff had been appointed as a Manager. The properties of the religious institution vests with the Deity/Idol/or holy book-Shri Guru Granth Sahib. In the Sikh Religion, the property of the religious institution vests with the Holy Scripture of Sikhism (Shri Guru Granth Sahib). In the revenue record, the property continues to vest in the Shri Guru Granth Sahib. Learned trial Court has erred in recording a finding that the revenue authorities have held that the property vests in the Trust.

At this stage, it would be appropriate to note that the original Trust Deed as well as the supplementary Trust Deed does not refer to transfer of property of the religious institution to the Trust or its vesting in the Trust. In fact, the Trust has been created for charitable purposes. Sant Mihaan Singh, who was the original undisputed settler of the religious institution, had constituted the Trust because he used to quite often visit foreign countries for spreading the teachings of Shri Guru Granth Sahib.

Appointment of an individual as Ba Itmam/Manager of a

religious institution/religious place and its properties is a serious matter. De facto, such individual becomes more like an owner of the property. A comparison in this regard can be made with an incorporated company, which can own and possess the immovable or moveable property, however, it has to manage its property through a human. Hence, the Board of Directors manage the property of a company on its behalf. Similarly, in the case of religious place/institution, the property vests with the Deity/Idol/Shri Guru Granth Sahib, which is a juristic person and, therefore, such property is required to be managed through a human. In such circumstances, it is always safe if a committee consisting of various persons manage the property so as to avoid any misappropriation thereof.

The custom of appointment of Mahant/Ba Itmam is prevalent in certain religious institutions like 'Deras' or Maths or Akharas. In those religious institutions, apart from preaching of the respective religions, an individual is placed on a very high pedestal who manages all the affairs of the aforesaid institution. Such individual may or may not be the owner of the property. However, in the present case, as noted above, the property is owned by Shri Guru Granth Sahib which is a juristic person.

Learned Senior Counsel for the plaintiff, on being confronted, although made a feeble attempt to make a submission that this religious Gurudwara belongs to Nirmala Sect., however, in the absence of pleadings and evidence to that effect, this Court does not find such claim of the plaintiff needs to be examined.

It may be significant to note here that the plaintiff-Baba

Ajmer Singh has himself chosen not to appear in evidence. Resultantly, the defendants did not get an opportunity to cross-examine him. Had the plaintiff appeared in evidence, the defendants would have got an opportunity to cross-examine the plaintiff and give relevant suggestions. The non-examination of a plaintiff in such cases is a material failure which permits the Court to draw an adverse inference in respect of burden of proof. Reference in this regard can be made to Illustration (g) of Section 114 of the Evidence Act, 1872, as interpreted in the case of **Vidhyadhar Vs. Manikrao and another, (1999) 3 SCC 573.**

It would further be significant to note that the plaintiff does not claim that Sant Mihaan Singh during his lifetime ever assigned any of his duties/responsibilities to him apart from the duties of a *Granthi*. The plaintiff-Baba Ajmer Singh was never made member/Trustee of the Trust which was a multi member organization. Thus, Sant Mihaan Singh also never expressed the desire that the plaintiff-Baba Ajmer Singh should be appointed/nominated/elevated to the office of Manager after his death.

It is further significant to note that the plaintiff in his evidence has not produced any documents to prove that the plaintiff is dealing with the financial matters or is managing the accounts of the Gurudwara. In absence thereof, the plaintiff merely on the basis of oral evidence of certain witnesses, can not be held entitled to a decree of declaration as prayed for. The plaintiff had filed the suit in the year 1999. He claims that he was appointed as Ba Itmam/Manager in the year 1994. The suit came up for decision before the trial Court in the year 2009.

Thus, before the decision of the suit by the trial Court, 15 years had elapsed. Had the claim of the plaintiff that he is managing all affairs including the financial affairs, been correct, he would have produced some evidence to prove that fact. The plaintiff could have produced the details of bank account in which offerings/donations received by him in the capacity of the Manager, were deposited or accounts of the expenditure thereof, ought to have been produced.

Further, the plaintiff claims that he was appointed as Ba Itmam/Manager by worshippers of the neighbouring villages. The word used is that he has been elected by “*Sangat*” (devotees). The plaintiff has not produced any documentary evidence in support thereof. Further, the locus standi of the “*Sangat*” to nominate/elect a *Granthi* as Ba Itmam/Manager has not been proved. On the one hand, the plaintiff has examined 11 witnesses including the Local Commissioner and Revenue Official whereas on the other hand, the defendants have examined 18 witnesses including respectables of the area who have come forward and deposed in favour of the defendants-appellants.

Baba Harnek Singh-appellant was appointed as Chairman of the Trust on the occasion of Dusshera festival in the presence of Trustees, Devotees and High Priests. He was also made Chairman of the Trust by majority of the Trustees by passing a resolution of the Trust Ex.D5. In the aforesaid Resolution, all Thaths and their affairs came under the supervision of the appellant-Baba Harnek Singh. DW18-Kanwaljit Singh, one of the Trustee has appeared and deposed on similar lines as is the

case of the defendants.

Learned counsel for the respondents, although tried to draw the attention of the Court to the statement of Govinder Singh-DW17, Attorney of Sant Baba Harnek Singh, that he has admitted the appointment of Sant Baba Ajmer Singh as Ba-Itmam, however, credibility of such admission is required to be properly analyzed. If the entire statement of Govinder Singh is carefully read, it appears that the aforesaid admission is by mistake. He has gone on to state that on the day of Dusshera festival in the year 1994, Baba-Ajmer Singh was appointed as Ba-Itmam/Manager whereas his entire statement is to the contrary. One line in the cross-examination cannot be read in isolation/divorced from the entire statement. The dispute of such nature cannot be decided only on the basis of so called admission made in one line of the cross-examination of a witness.

It may be significant to note that *Granthi* is a person who reads holy scriptures. A *Granthi* cannot claim or elevate himself to be a Manager merely because he was also performing certain other functions of a religious institution. Apart from the religious duties like reading of the holy scriptures, the *Granthi* can perform other normal functions. However, the word “Ba Itmam” with respect to a religious institution and its properties, has a different connotation. Resolution passed by the Trust is also an indication of the fact that the Trust through its office bearers used to manage the properties. It may be noted here that there are no allegations that any party has misused or mis-managed the property.

Therefore, the obvious choice has to be a multi member body consisting of respectable members of the society. The plaintiff-Baba Ajmer Singh is not even one of the trustee of the aforesaid Trust. Sant Mihan Singh, the original settler, did not include the plaintiff as one of the Trustees.

Now let us deal with the reasons given by the learned First Appellate Court in the impugned judgment which have been extracted above.

As regards the first reason, the revenue authority had sanctioned the mutation by making a change only to the effect that earlier the property was entered in the name of Shri Guru Granth Sahib Gurudwara Nanaksar, Village Gorsian Makhan through Ba Itmam late Sant Sh. Mihan Singh, now the name of Harnek Singh in place of late Sant Mihan Singh has been incorporated pursuant to the decision of the Trust. The ownership still vests with Shri Guru Granth Sahib Gurudwara Nanaksar. Sections 33 and 34 of the Punjab Land Revenue Act, 1887, mandate the revenue authority to incorporate any change in the ownership or assignment or lease or mortgage with regards to the possession of the agricultural land. Hence, the First Appellate Court has erred that revenue authority has committed an error. The sanction of mutation is not a judicial function, rather it is an administrative function of the revenue authority. In such circumstances, the First Appellate Court erred that revenue authorities had no jurisdiction or it overstepped its jurisdiction.

As regards the second reason that Shri Guru Granth Sahib Gurudwara Nanaksar is the owner of the property and not Shri Nanaksar

Ashram Trust, it may be noted that although it is not necessary that the Chairman of Shri Nanaksar Ashram Trust has to be a Ba Itmam/Manager of the aforesaid religious place, however, the Trust itself through its office bearers can manage the properties of the Gurudwara.

The finding of the learned First Appellate Court that Sant Ajmer Singh-the plaintiff is declared to have been appointed as Manager/Ba Itmam is liable to be set aside because in absence of special custom or practice, the congregation of devotees neither have power nor it is proved that the plaintiff was ever appointed as Ba Itmam/Manager.

One more issue needs elaboration. No doubt, the Deed of Trust does not refer to the properties of the religious institution, however, as noticed above, since Sant Mihaan Singh was the settler of the religious institution as also of the Trust. He was the person who indisputedly used to manage the properties of the religious institution through the Trust, therefore, it would be safe to hold that although the property of the religious institution does not vest with the Trust, however, the Trust has a right to manage the religious institution.

The First Appellate Court has profoundly relied upon the report of Local Commissioner, while recording a finding that the plaintiff-respondent Baba Ajmer Singh is in control of the affairs and properties of the Gurudwara. The First Appellate Court committed an error in this regard. There is no dispute that the plaintiff is performing the duties of *Granthi* in the Gurudwara for quite sometime. Even the defendants do not dispute that the plaintiff-Baba Ajmer Singh is

performing the duties of *Granthi*. However, the question is whether a *Granthi* can claim that he stands elevated to Manager/Mahant or Ba Itmam. In the considered view of this Court, the answer to the aforesaid question has to be in negative.

Hence, the judgment passed by the learned First Appellate Court is modified. The plaintiff is not found entitled to the declaration as prayed for. However, it is held that the property attached to the religious organization/institution vests in the holy scripture which is a juristic person. The Trust would only have the right to manage the affairs of the institution through its members.

Hence, both the Regular Second Appeals are allowed, while setting aside the judgment passed by the First Appellate Court.

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

15.01.2020
Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No