

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

1. RSA-3637-2017(O&M)

Avtar Singh and others

.....Appellants

Versus

Udasi Dharamsala/Dera and others

.....Respondents

2. COCP-1214-2020(O&M)

Avtar Singh

.....Petitioner

Versus

Romesh Chander @ Harmesh and others

.....Respondents

Date of decision:18.11.2020

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Onkar Singh, Advocate, for the appellants
in RSA-3637-2017 and
for the petitioner in COCP-1214-2020
Mr. H.K.Aurora, Advocate for respondent no.1
in RSA-3637-2017 and for respondent no.3 in COCP-1214-
2020
Mr. Gurmeet Singh, Advocate for respondent no.5-8
in RSA-3637-2017 and for respondent no.1 and 2
in COCP-1214-2020

ANIL KSHETARPAL, J.

By this order RSA-3637-2017 and COCP-1214-2020 shall
stand disposed of.

The defendants-appellants have filed Regular Second
Appeal against concurrent findings of fact arrived at by the Courts
below while decreeing suit for possession of land measuring 27 kanals
17 marlas comprised in khatoni nos. 191, 192, 193 and 194. In a

nutshell, the plaintiff which is a religious institution through its Mahant filed suit seeking possession on the basis of ownership. In fact, the suit was filed for possession of land measuring 28 kanals 17 marlas however, learned First Appellate Court has found that the plaintiff is entitled to 27 kanals 17 marlas.

The defendants contested the suit. In the written statement, the suit was contested on the ground that the suit is not maintainable as it is barred under Section 92 CPC and the suit is also pre-mature as the civil writ petition challenging declaration of the land of the plaintiff-institution as surplus being beyond the ceiling is pending before the High Court.

Both the Courts on appreciation of evidence have found that the land in question was never declared surplus and it was in fact the remaining part of the land which was declared surplus. Therefore, both the Courts have concurrently found that out of total land of 54 kanals 12 marlas, one half of the land was declared surplus. This is further clear from rampat romnamcha no.342 and jamabandi for the year 1970-71.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book and the lower courts record requisitioned. The counsels were also permitted to file their written synopsis.

Learned counsel for the appellants has contended that Hari Parkash had filed proceedings for ejectment of the appellants which was decided against him. He, hence, contended that since the aforesaid

order has become final therefore, the suit for possession is not maintainable. It is further contended that the suit has been filed through Mahant Rambir Dass who is son of Hari Parkash and grandson of Mahant Keshav Nand. He further contended that the plaintiff – institution is not proved to be owner of the property as in the revenue record it is Hari Parkash who is being recorded as owner. It is further contended that the Hon’ble Supreme Court did not record the statement of the parties with respect to a compromise arrived at and therefore, merely because there was a settlement between the parties is not sufficient to prove ownership.

On the other hand, learned counsel for the respondent-plaintiff has defended the judgment passed by the Courts below.

It is apparent from the perusal of the record that the defendant apart from producing certain copies of the jamadbandis Ex.D1 to D4 and DA to DF, no other documentary evidence was produced to prove that the land in dispute was declared surplus. On the other hand, it has been proved that Hari Parkash never became Mahant or Manager of the institution. It has also come on record that there was litigation with regard to who is the Mahant of the religious institution. On 11.7.1991, Hon’ble Surpeme Court dismissed the civil appeal with the following order:-

“Learned counsel for the appellant does not want to press this appeal in view of the fact that the parties have arrived at compromise out of court. The appeal is accordingly dismissed as not pressed.”

Thereafter, on the basis of the compromise arrived at between the parties, the Trial Court passed an order on 1.8.1998 which is extracted as under

“The parties had compromised in the Hon'ble Supreme Court of India. The orders dated 11.7.91 passed by the Hon'ble Supreme Court of India have been produced on record. The statements of parties recorded. As per the compromise/statements of parties, Ranbir Dass was appointed as Mahant of the Dera in question. During the pendency of the proceedings, the properties of Dera, which had been given under the charge of a Receiver, namely, Shri Ramesh Chander Sood, Advocate, Hoshiarpur, have been handed back by the Receiver alongwith the accounts, to the new Mahant. The statement of receiver, Sh. Ramesh Chander Sood, Advocate, Hoshiarpur recorded to that effect. In view of the compromise arrived at between the parties and in view of the statements made by the parties and in view of the orders dated 11.7.91 passed by the Hon'ble Supreme Court of India, the suit is ordered to be dismissed as withdrawn.”

In view of the aforesaid two orders, there can be hardly any dispute that the plaintiff-religious institution is the owner of the property and it is being managed through Mahant Ranbir Dass. It is also

apparent that Hari Parkash was never appointed Mahant of the institution and Hari Parkash failed to prove his ownership. In these circumstances, dismissal of ejectment petition filed by Hari Parkash does not affect the rights of the plaintiffs. Similarly, the argument of the learned counsel for the petitioner that Ranbir Dass is son of Hari Parkash also does not cut ice because the fact that Ranbir Dass is son of Hari Parkash does not bind the religious institution. Ranbir Dass is merely a Mahant/Manager of the religious institution and consequently, entitled to manage the land. The eviction petition was not filed by the religious institution.

Further, the plaintiff has successfully proved its ownership. It has come on record that out of land measuring 54 kanals 12 marlas, half of the property was found to be beyond the ceiling limit and therefore, declared surplus which was thereafter allotted to Dasondhi Ram. It has also come on record that the aforesaid piece of land is not the suit land. As noticed above, defendants-appellants have not led any cogent evidence to prove that the suit land was ever declared surplus. Hence, pendency of the writ petition challenging declaration of the surplus area would have no effect on the result of the present case. Similarly, once the appeal filed before the Supreme Court was withdrawn and thereafter, on the basis of the statement of the parties, relevant part whereof has been extracted above, an order has been passed by the Civil Court on 1.8.1998, there can be hardly any doubt about the ownership of the religious institution or competence of Mahant Ranbir Dass.

In view thereof, there is no ground to interfere in the concurrent finding of fact. Dismissed.

Now let us examine COCP-1214-2020. This petition under Article 215 of the Constitution of India has been filed for initiating contempt proceedings for intentional and willful disobedience of order dated 14.7.2017 passed in the appeal referred to above. On 14.7.2017 dispossession of the appellants was stayed. In the contempt petition, it has been alleged that during the currency of the interim order, the respondents have dug a water channel and changed its direction. A detailed reply has been filed contending that it is the appellant who changed the directions of the water channel. The respondents filed an application before the police where the appellant admitted their mistake and restored the channel to its original position.

Keeping in view the aforesaid facts, once the water channel has been restored to its original position, this Court does not find it appropriate to proceed with the contempt petition. In view thereof, the petition is disposed of.

18.11.2020

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE