

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

CR-1313-2021 (O&M)
Decided on : 06.05.2022

Rikhi Ashram Om Waheguru Nirmal Panth

..... Petitioner

Versus

Ram Singh Chela Mahant Waryam Singh and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. Kanwal Goyal, Advocate
for respondent No.2.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

Manjari Nehru Kaul, J.(Oral)

Instant revision petition has been filed under Article 227 of the Constitution of India with a prayer to set aside the order dated 15.06.2021 (Annexure P-9) passed by Civil Judge (Jr. Div.) Jagraon vide which an application filed for issuance of appropriate/necessary directions to the Tehsildar, Jagraon/Receiver appointed under Order XL CPC by the trial Court vide order dated 09.03.2021 (Annexure P-7) to lease out the suit property by way of an open bid at competitive prevailing rates, was dismissed.

For the sake of convenience, the parties to the lis hereinafter would be referred to by their original position in the suit.

Before proceeding further, it would be apposite to give a brief sequence of events leading to the filing of instant petition. The plaintiff-

petitioner filed a suit for declaration to the effect that Rikhi Ashram Om Waheguru Nirmal Panth plaintiff-Trust Agwar Lupon Kothi Swami Nahar Singh Ji (hereinafter referred to as 'plaintiff-Trust') and other properties as mentioned in the plaint were owned, possessed and managed by four Sadhus Trustees and two members of Ranjit Singh Family under the patronage of duly elected and incumbent Mahant Darshan Singh Chela Mahant Waryam Singh Chela Swami Nahar Singh Ji. It was further pleaded that the defendants-respondents thus, had no right, title or concern with the suit property of the plaintiff-Trust. A further declaration was also sought that Mahant Darshan Singh was duly appointed Mahant/Mohitnum of the plaintiff-Trust and was thus, entitled to manage and control the suit properties. Consequential relief of permanent injunction was also sought from restraining the defendants from interfering in the possession, management, control and administration of plaintiff-Trust and its properties including the control and management of the hospital in the name of Swami Nahar Singh Memorial Society and agricultural land etc. A further relief of rendition of account from defendant No.2 from the year 2009 upto March, 2014 was also sought on the basis of oral and documentary evidence. It was pleaded that the plaintiff-Trust had been formed by Nahar Singh s/o Santa Singh vide Trust Deed dated 04.01.1921. On the basis of a compromise effected between Gurkirpal Singh, Harbans Singh sons of Ranjit Singh son of Swami Nahar Singh and the Trustees in 1980, the plaintiff-Trust continued to function in accordance with the intention of the founder of the plaintiff-Trust as well. It was also stated in the plaint that Sant Darshan Singh was appointed as Mohtimum of the plaintiff-Trust vide resolution

No.39 dated 18.03.2014. Since then the plaintiff-Trust and all its properties i.e. moveable and immoveable were under the control of Mahant Darshan Singh. However, after the resignation of defendant No.1 as Chairman of the plaintiff-Trust, defendant No.1 was removed from the post of Mahant vide resolution No.36 dated 02.03.2014. After his expulsion, defendant No.1 joined hands with defendants No.2 to 7 and was trying to interfere into the peaceful possession, management and control of the plaintiff-Trust and of its properties.

Defendants No.2 to 7 after putting in an appearance before the trial Court filed their written statement and thereafter, the trial of the suit commenced after framing of issues.

During the pendency of the suit, an application under Order XL read with Section 151 CPC (Annexure P-3) was moved by the plaintiff-Trust for the appointment of a Receiver to maintain the income and expenditure of the land owned and possessed by the plaintiff-Trust so as to avoid multiplicity of criminal and civil litigations between the parties and also to prevent irreparable loss and wastage of funds etc. of the plaintiff-Trust. The said application was allowed by the trial Court vide order dated 16.02.2018 (Annexure P-4) and Mr. Subhash Chander, Advocate was appointed as Receiver of the Court to look after the income and expenditure of the plaintiff-Trust and further to maintain all the relevant record and produce them in the Court every month. It may be pointed out that during the course of trial, the Receiver was changed twice and finally, Tehsildar, Jagraon is the current Receiver.

An application under Order XL read with Section 151 CPC was

moved by the plaintiff-Trust for modification of order dated 23.03.2018 vide which the newly appointed Receiver was assigned the same duties as were given to the previous Receiver vide order dated 16.02.2018. The said application was dismissed by the Trial Court vide order dated 05.07.2019 (Annexure P-6) by observing that the plaintiff-Trust had earlier also filed a similar application, which came to be dismissed on 26.04.2018 and that it was in the habit of filing such like applications to delay the trial.

On 07.06.2021, an application (Annexure P-8) was yet again moved by the plaintiff-Trust for issuance of appropriate/necessary directions to the Tehsildar, Jagraon (being Receiver) to lease out the agricultural land, which forms part of the suit property by way of open bid either himself or for getting it conducted under his supervision by inviting bids through a public notice. It was also averred in the application that defendant No.2 was causing wrongful loss to the plaintiff-Trust by leasing out its land at rates lower than the prevalent rate of lease in the area.

The above-said application of the plaintiff-Trust was dismissed by the Trial Court vide order dated 15.06.2021(Annexure P-9), which is now being impugned before this Court.

Learned counsel for the plaintiff *inter alia* contends that the impugned order suffers from patent illegality and is against the provisions of Order XL CPC. He submits that the trial Court ignored the provisions of Order XL CPC, which clearly provides that all such powers as are necessary for the realization of management, protection, preservation, improvements of the properties and collection of rent and profits thereof could be conferred upon the Receiver by it. Thus, it is evident that the Receiver also

had the power to manage the suit land including the power to lease it out through public notice. Learned counsel further submits that defendant No.2 neither had the authority to manage the suit property nor any legal right to lease out the same. Learned counsel submits that on account of the act of defendant No.2, undue loss has been caused to the plaintiff-Trust as the suit property had been leased out by him at rates lower than the prevailing rates of lease in the area, which is evident from the report of Tehsildar, Jagraon annexed as Annexure P-10. He still further contends that defendant No.2 without any authorization has been submitting the account statements of the plaintiff-Trust to the trial Court by making false entries in the same, even though the Receiver had been appointed by the trial Court with specific directions to look after the income and expenditure of the plaintiff-Trust, to maintain the record of the same and to submit a copy thereof, every month to the Court. Learned counsel submits that the order dated 05.07.2019 (Annexure P-6) has been grossly misinterpreted by the trial Court wherein it has been specifically observed by it that "Order XL clearly provides the specific duties of receiver."

Per contra, learned counsel for the defendants while vehemently opposing the submissions made by the counsel opposite submits that the trial Court while appointing the Receiver vide order dated 16.02.2018 (Annexure P-4) specified the duties of the Receiver to look after the income and the expenditure of the plaintiff-Trust and also to maintain the monthly record of the statement of accounts with further directions to submit a copy thereof in the trial Court every month. Learned counsel submits that it was beyond the specified powers of the Receiver to lease out

the suit land through public notice since no power of management had been conferred upon or given to him by the trial Court. He further submits that since the land was being leased out on oral basis, registration of lease was not required for leasing out any land of the plaintiff-Trust. However, the proceedings and the factum of lease stood duly recorded in the proceeding books of the plaintiff-Trust. He still further submits that defendant No.2 is fully authorized to lease out the suit land of the plaintiff-Trust and the submissions made by the counsel opposite that it had led to losses to the plaintiff-Trust was bereft of any merit as the land was being leased out at the actual prevailing lease rates.

Heard learned counsel for the parties and perused the relevant material on record.

It would be relevant to reproduce the prayer clause of application under Order XL (Annexure P-3) moved by the petitioner, which is as follows:

*“It is therefore, prayed that Receiver for the land owned and possessed by the Trust Rikhi Ashram to avoid criminal multiple civil litigations and irreparable loss and safety of human life, wastage of funds and unnecessary harassment in the litigation etc. be appointed, **who should maintain the income and expenditure of the land** during the pendency of the present suit in the interest of natural justice and equity.”*

It would also be relevant to reproduce Order XL Rule 1, which is as follows:

1. Appointment of receivers.

(1) Where it appears to the Court to be just and convenient, the Court may by order-

- (a) appointment a receiver of any property, whether before or after decree;*
 - (b) remove any person from the possession or custody of the property;*
 - (c) commit the same to the possession, custody or management of the receiver; and*
 - (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such those powers as the Court thinks fit.*
- (2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.”*

A perusal of Rule 1(1)(d) reveals that the court is competent to confer upon the Receiver such powers as it thinks fit.

A conjoint reading of orders dated 16.02.2018 and 23.03.2018 (Annexures P-4 and P-5 respectively) clearly reflects the intention of the trial Court to confer only such powers upon Receiver, as was prayed for by the plaintiff-Trust in its application i.e. to look after the income and expenditure of the plaintiff-Trust. Therefore, the ambiguity arising in order dated 05.07.2019 wherein it was observed that “Order XL clearly provides the specific duties of the Receiver” stands removed and there could be no doubt about the scope of the powers conferred upon the Receiver by the trial Court. It is thus, clear from the above discussion that in absence of any powers of management of the suit land/properties of plaintiff-Trust being conferred upon him, the Receiver was not competent to lease out the land by way of public notice.

Moving further, whether defendant No.2 had the authority to lease out or not would be a matter of trial and this Court cannot go into the said aspect at this stage. However, since the land was already leased out for the year 2020-21 by the defendant No.2 at the time when application Annexure P-8 was moved, trial Court was justified in validating the lease for only one year to avoid further complications and multiplicity of proceedings.

In the circumstances, this Court is not inclined to exercise its revisional jurisdiction in setting aside the impugned order. Accordingly, the present petition being devoid of any merit, stands dismissed.

06.05.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No