

35 16.5.2023

Ct-08

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**SAT 437 of 2015**

**Sri Sridam Das Bairagya & Ors.**

**Vs.**

**Seva Das Vaisnab Akhara,  
represented by Sri Subal Das Gonsai**

The minor defect reported by the stamp reporter is ignored.

The appellants are not represented.

The appeal appeared in the warning list on 6<sup>th</sup> March, 2023 with a clear indication that the same shall be transferred to the regular list on 21<sup>st</sup> March, 2023, since then the matter is appearing in the list. The appellants are having deemed notice of the matter.

The appellate judgment and decree dated 5<sup>th</sup> February, 2015 affirming the judgment and decree passed by the trial court on 27<sup>th</sup> June, 2014 in a suit for declaration and permanent injunction is the subject matter of challenge in this second appeal.

We have carefully read the judgment of both the courts below and the grounds of appeal in order to find whether this appeal involves any substantial question of law or not.

The plaintiff filed the suit over the suit property which was originally owned and possessed by one Seva Das Vaisnab. Seva Das established an Akhara by the people of Vaisnab religion where they used to assemble for religious purpose. After his demise his mortal remains was buried within the compound of said Akhara and to commemorate his date of death Kirtan Harinam used to be performed for three days beginning from 29<sup>th</sup> Phalgun and ending on 1<sup>st</sup> Chaitra every year. After the demise of Seva Das Vaisnab, Banku Das Vaisnab was in-charge of

the said Ashram/Akhara and after his demise the plaintiff is in-charge of Akhara and he used to Seva puja and performing Harinam and other rituals.

The defendants though claim to be Vaisnabs but they hardly practice the rites and rituals of Vaisnab and in order to destroy the sanctity of Akhara they tried to convert the said Akhara into a burial ground. From then the dispute arose.

The plaintiff filed the suit seeking declaration of the property of Akhara established by Seva Das Vaisnab and for permanent injunction.

The defendants alleged that 15 families of Vaisnab sect have been staying for generation over the period of 300 years in the suit property and Seva Das Bairagy was one of those families who was residing in a portion of the suit plot by constructing dwelling house and subsequently he built an Akhara with the help of Vaisnabas living in the said village. According to the defendants the villagers belonging to Vaisnaba sect perform Harinam Sankirtan in the Akhara.

The plaintiff, Subal Das Gonsai, was never a Vaisnab. He migrated from Ketugram village and subsequently he with the help of local political activists have tried to grab the Akhara of Seva Das Vaisnab.

Learned Trial Judge held on the basis of literature and evidence that the Akhara is not originally used as cemetery. The property on which the Akhara was established was the personal property of Seva Das Vaisnab. After his death he was buried in the said Akhara. Similarly, his wife was also buried there. There was no evidence to show that the Akhara was dedicated to the common village people of

Vaisnab community to bury their dead bodies. There was also no evidence to show that the owner of the property ever intended to use the said Akhara for burial purpose. In absence of any evidence, the said Akhara became the public cemetery for the use of common people by way of customary burial ground was not accepted. Learned Trial Judge also held the Commissioner's report (Exhibit-C series) wherefrom it appears that there are 12 cemeteries in the said Akhara at present. It is hard to believe that only 9 persons were buried in that Akhara in 100 years, although claim was made that the said suit plot was used as a burial ground by the Vaisnabs.

The first appellate court while considering the judgment of the trial court had come across the evidence wherefrom it appears that one of the Mahatmas of the Akhara deposed that there was a place for burial place named Chandrachurtala Sasan adjacent to Akhara where dead bodies are burnt for cremation and there are few other places near the Akhara where such funerals are taken place. Moreover, the defendants have admitted that Ashram and Akhara are the private property. The plaintiff did not file the suit in his personal capacity but in a representative capacity for a declaration that the suit property was a property of Akhara established by Seva Das Vaisnab. This fact was virtually admitted by the defendants. During the cross-examination, the plaintiff has stated that he was appointed by Subal Das Gonsai for last 20 years. D.W 1 confirmed that he had sent Subal for more than 3 years. The possession of Subal was not also disputed.

On such consideration, we do not find any reason to admit the second appeal. The concurrent finding of facts does not call for any interference.

The appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage

There will be no order as to costs.

**(Uday Kumar ,J.)**

**(Soumen Sen, J.)**

