

Sr. No.240

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1172-2018 (O&M)

Date of Decision: 01.06.2023

Panchayati Akhara Bara Udasin Nirwan, U.T. Chandigarh

...Appellant

Vs.

Baba Mal Dass Charitable Trust and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. Raman K. Sharma, Advocate
for the appellant.Mr. Pritam Saini, Advocate
for respondent No.1.Mr. Sanjiv Ghai, Advocate and
Mr. Shubham Chaudhary, Advocate
for respondent No.3.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before Ld. Trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, Plaintiff (appellant herein) is in second appeal assailing Ld. Trial Court judgment and decree dated 22.02.2014, as upheld by Ld. First Appellate Court vide its judgment and decree dated 12.10.2017, dismissing his suit.

3. Plaintiff filed a suit for declaration that the suit land Measuring 48 Killas, which was acquired by Land acquisition Collector vide notification dated 08.07.1988 under Sections 4/6 of the Land Acquisition Act, 1894 was owned by him, with further declaration that the mutation in favour of Balwant Dass is null and *void-ab-initio* and further that the alleged Trust Deed dated 04.11.1996 setting up Defendant No.1-Trust is null and void, illegal and unlawful, with further declaration that the money released by Land Acquisition Officer,

Chandigarh in favour of Defendant no.1 (Baba Mal Dass Charitable Trust, Dera Kahir, Village Nizampur Kumbra, Chandigarh) vide Award No. 441 dated 27.03.1991 and vide Award No. 534, dated 24.03.2000, is a sham transaction. Consequential relief of Injunctions etc. was also sought.

3.1. Succinct facts first, as pleaded by the plaintiff society. Plaintiff is a registered society called Shri 108 Pujya Pad Avait Panch Parmeshwar Panchyati Akhara Baba Udasin Nirwan, also known as Panchyati Akhara Bara Udasin Nirwan. The society's objective is to promote and propagate the religious, ritual, philosophical, and spiritual tenets of the Udasin sect through various means, including preaching and providing food and shelter to visiting Udasin saints. They also aim to act as a supervising authority in the installation, appointment, and expulsion of Mahants (spiritual leaders) and take legal steps to prevent interference by unauthorized persons. The plaintiff claims that the right to appoint a Mahant lies with the Udasi Sadhus (ascetics), and the Mahant appointed by the congregation known as BHEKH becomes the Mohtamim (administrator) of the Dera (religious institution).

3.2. The plaintiff asserts that the land in question, located in Village Nizampur Kumbra, Chandigarh, is owned Dera Kahir and managed by the Udasi Sadhus through the appointed Mahant. Village residents have no rights or authority over the appointment of the Mahant. Furthermore, the plaintiff pleads that the Dera's land was donated to the Udasi Sadhus by Sikh rulers during their rule. The British rulers also granted land around the Dera to the Udasi Sadhus in 1857. Village residents have never owned or occupied the land in question. The plaintiff asserts that Mahant Shukar Dass, appointed by the BHEKH, is/was in possession of the Dera and the attached land. Balwant Dass, who claims to be the Mahant, was falsely appointed and that the trust created by Balwant Dass holds no legal value. The plaintiff also mentions a previous judgment where it was held that the land is vested in the Dera and it was not the property of villagers. It is

pleaded previous judgment is binding on the defendants. Further assertion is that Balwant Dass illegally obtained mutation (transfer of land ownership) in his favor and misrepresented himself as a Mahant to secure funds in the name of the Trust. Based on these claims, the plaintiff has filed the present lawsuit

4. Upon notice, Defendants No.1 & 3 (Respondents No.1 & 3 herein) appeared and filed their respective written statements. Defendant No.2-Bank, despite its service, did not appear before Ld. Trial Court and was proceeded *ex parte*.

4.1. Defendant No. 1, in its written statement, raised objections *qua locus standi*, maintainability, insufficient court fees, and jurisdiction. It pleaded that the disputed land in question belonged to the Shamlat Deh of village Nizampur and was gifted to Dera Kahir for public charitable purposes. The management of the Dera had always been under the control of the Managing Committee, and Mahants were appointed to manage its affairs. Plaintiff is a stranger and never had possession, ownership, title, or any interest in the property. The defendant further stated that the appointment of Mahants was done by the Managing Committee from the early 1900s. The plaintiff failed to produce any reliable record of his prior appointments of Mahant by Guru to Chela. One Mahant Narain Dass, a previous Mahant, had breached the conditions of the agreement, including appointing Chelas, associating with bad characters, misusing the Dera's income, and failing to maintain accounts.

4.2. The defendant also pleaded that the plaintiff had suppressed previous legal proceedings and judgments related to the same property, which had already been decided against the plaintiff and in favor of the defendant. The defendant pointed out that the disputed land was acquired by the Chandigarh Administration, and the compensation amount had been paid to the defendant Trust through Mahant Balwant Dass. The plaintiff never objected to the acquisition or claimed ownership over the Dera's property during the process and cannot do so at this

belated stage by filing suit. Suit was in any case barred by the principle of *res judicata*, as the title and ownership of the property had already been determined and decided in previous civil court judgments and revenue Courts. The charitable activities and services provided by the Trust to the public were also highlighted. Overall, the defendant contended that the plaintiff had no right, ownership, or title over the property and that the present suit should be dismissed. It is emphasized that the previous judgments and legal proceedings had already settled the matter, and the plaintiff's claims were baseless.

5. Defendant No.3 also filed his independent written statement and denied all the averments of the plaint and sought dismissal of suit.

6. In the replication, plaintiff reiterated contents of plaint and denied those of the written statements.

7. Based on the rival pleadings, following issues were framed by learned Trial Court :

- “1. Whether the land measuring 48 Killas situated in Khewat No. 145, Khatauni No. 186 to 198, fully detailed in the head note of the plaint, which was acquired by the Chandigarh Administration vide notification dated 8.7.1998 was owned by the plaintiff? OPP.*
- 2. Whether the mutation of the said property in favour of Balwant Dass was null and void as alleged? OPP.*
- 3. Whether the trust dated 4.11.1996 created by Balwant Dass is null and void and illegal and unlawful as alleged? OPP.*
- 4. Whether the money released by the LAO, Chandigarh vide Award No.441 dated 27.3.1991 is a sham transaction as alleged? OPP.*
- 5. If the above issues are placed in affirmative, whether the plaintiff is entitled for relief of rendition of accounts and mandatory injunction directing the defendant no.1 to release the money deposited with defendant no.2 to the plaintiff? OPP.*
- 6. If issue No. 1 to 4 are placed in affirmative, whether the plaintiff is entitled for decree of permanent injunction restraining the defendant no.1 from withdrawing the money deposited with defendant no.2 and also from selling 4 acres of land as alleged? OPP*

7. *Whether the plaintiff is entitled for consequential relief of directing the defendant no.1 to hand over the possession of land measuring 32 Kanals situated in Khewat No. 145 min, Khatauni No. 185, min Khasra No. 24 situated in revenue estate of village Kumbra as alleged?OPP.*
8. *Whether the suit is not maintainable?OPD*
9. *Whether the suit is time barred?OPD*
10. *Whether the suit is barred under Sections 10 & 11 of CPC? OPD.*
11. *Whether the plaintiff has suppressed material facts as alleged?OPD*
12. *Whether this court has got no jurisdiction?OPD*
13. *Whether the suit is bad on account of mis-joinder and non-joinder of necessary parties? OPD.*
- 13A.*Whether the ad valorem court fee not fixed on the claim of the amount of compensation lying deposited in State Bank of Patiala Kumbra and for possession of 32 kanals of land situated in village Nizampur Kumbra? OPD (This issue was added vide order dated 8.10.2008).*
14. *Relief.”*

8. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

9. On appraisal of evidence *vis-à-vis* pleadings, issue Nos.1 to 7 & 13A were decided in favour of defendants and against plaintiff and issue Nos.8 to 13 were given up by defendants being not pressed for and consequently, the suit of plaintiff was dismissed vide impugned judgment and decree dated 22.02.2014 passed by the learned Civil Judge (Junior Division), Chandigarh.

10. Aggrieved, plaintiff/appellant preferred first appeal, which was dismissed by Ld. First Appellate Court vide impugned judgment and decree dated 12.10.2017, resulting in instant Regular Second Appeal before this Court.

11. Learned counsel for appellant would, *inter alia*, argue making following submissions:-

11.1. That vide three earlier judgments dated 23.08.1954, 03.09.1979 & 03.09.2000 (Ex.D-99, Ex.P-37 and Ex.P-4, respectively) it was held that the suit land belongs to Dera Kahir of Village Nizampur Kumbra. Even though these judgments are not *inter se* between the parties herein, but are admissible in evidence and as such binding *qua* title of the suit land. Therefore, the plaintiff has *locus standi* to file a suit.

11.2. Land acquisition Reference *qua* suit land was decided only with regard to compensation and has no bearing on the title of land. Section 30 of the Land Acquisition Act, 1894 can only deal with the apportionment and title has to be decided by the Civil Court. As such, regarding the title suit was/is maintainable. Principle of *res judicata* thus does not apply.

11.3. All the proceedings resulting out of fraud, are vitiated. In the present suit, DW-7 and DW-8 Surjit Kaur and Baldev Singh had admitted in their cross-examination that Balwant Dass was never the successor of Narain Dass nor the Mahant of Dera Kahir or Mohtamim of Proprietary Body Kumbra. The case of Balwant Dass was that he was the successor of Narain Dass and Mahant of Dera Kahir. He further created a Trust dated 04.11.1996 to whom the amount of compensation of the award was disbursed by defendant No.3 in the favour defendant No.1 without deciding the title and in violation of High Court's order. Since everything is based on the fraud, the entire proceedings are vitiated and he cannot take any benefit out of it.

11.4. It is settled position that for filing suit for declaration on the basis of title, there is no limitation on time. Even otherwise, the cause of action arose to plaintiff, when the contempt petitions as well as the reference under Section 30 was decided in the year 2000 and as such the present suit is within limitation.

11.5. Mahant Shukar Dass had filed an earlier suit in his individual capacity for permanent injunction on different cause of action in respect of the suit land. Now the present suit has been filed by the plaintiff-religious institution

through their Mahant for declaration, permanent injunction, mandatory injunction and consequential relief, which is on different cause of action. As such, provision of Order 2 Rule 2 CPC is not attracted. Even otherwise, the earlier suit by the Shukar Dass in his individual capacity was not decided on merits, but was withdrawn.

11.6 It was also pointed out by learned counsel for the plaintiff-appellant that in the initial written statement to the plaint, defendant No.1 had taken the plea of acquiring ownership of suit property by adverse possession. Thereafter, the plaintiff had with the leave of the Court, amended the plaint. While filing the subsequent written statement in answer to the amended plaint, defendant No.1 had deleted therefrom the averment in the initial written statement of acquiring ownership of suit property by adverse possession. On this basis, it was contended that defendant No.1's plea in the initial written statement of acquiring ownership of suit property by adverse possession could and ought to be taken into consideration. The said plea implied that earlier plaintiff was the owner of the property. Defendant No.1 having later on deleted this plea in the subsequent written statement and otherwise failed to prove acquisition of ownership of suit property by adverse possession, issue No. 1 was, therefore, required to be decided in favour of the plaintiff but the Courts below wrongly decided it against it.

12. *Per contra*, learned counsel for respondent No.1 and learned counsel for respondent No.3 have opposed the appeal and supported the judgments and decrees passed by Ld. Courts below. Learned counsel representing respondent No.3 would argue, *inter alia*, as below:

12.1. Property in question was owned by Dera, and the proprietary body of village Nizampur Kumbra appointed Mahant Mansha Ram on August 22, 1913. After his death, Mahant Uttam Dass was appointed on February 23, 1945, followed by Mahant Narain Dass on September 21, 1949. Subsequently, Garib Dass, who is alleged to be the Chela (disciple) of Mahant Narain Dass, filed a civil

suit claiming title being the Chela of Mahant of Bawa Narain Dass. The Ld. Sub Judge, Ambala, ruled that the proprietary body has the authority to appoint the Mahant of Dera, and after the death of Baba Narain Dass in 1980, the proprietary body appointed Baba Balwant Dass through a resolution. During this period, 39.20 acres of land were acquired in 1971. A dispute arose between the proprietary body and Mahant Narain Dass, which was referred to the Ld. Additional District Judge, Chandigarh. In a judgment dated September 3, 1979, the learned ADJ concluded that the property belongs to the Dera, and the Mahant is entitled to the compensation and interest. The proprietors then filed R.F.A No. 80 of 1980 in the Appellate Court. In this appeal, after the death of Narain Dass, Mahant Labh Dass also claimed to be the Chela of Narain Dass and filed an application to be impleaded as such, which was allowed on March 10, 1981. Mahant Balwant Dass also filed an application in the same RFA No. 80 of 1980, which was allowed on May 20, 1985. Another application, C.M. No. 9123-C-1 of 2003, was filed by Shukar Dass in the aforementioned RFA No. 80 of 1980, claiming to be the Chela of Narain Dass instead of Mahant Balwant Dass and Labh Dass. This application also contained challenge to the creation of the Trust concerning the property of the Trust on December 5, 2003. Notice was issued for February 10, 2004. Meanwhile, the main RFA No. 80 of 1980 was scheduled for final hearing on January 12, 2004, and the appellant's counsel stated that a Trust had indeed been created for the Dera's property, and the compensation amount had been paid to the Trust. As a result, the appeal became unnecessary and was disposed of. C.M. No. 9123-C-1 of 2003 came up for a hearing on May 21, 2004, and the application to implead the legal heirs of Narain Dass on record was dismissed as non-maintainable on the same day. The orders dated January 12, 2004, and May 21, 2004, became final between the parties and operate as *res judicata*. Neither the plaintiff nor any person from whom the plaintiff supposedly inherited the Chelaship or Gopal Dass raised any objection. Meanwhile, Mahant Narain Dass

passed away, and Labh Dass, who claimed to be his Chela, filed a lawsuit against Mahant Balwant Dass and others on February 7, 1983. The suit was dismissed on February 7, 1989, and Labh Dass's appeal was also dismissed on February 19, 2001. Additionally, the mutation of the Dera's property was recorded in favor of Mahant Balwant Dass in the cultivation column.

12.2. In year 1988, additional land was acquired and compensation was paid to Mahant Dass. The amount deposited under Ld. District Judge's award in 1979 was also paid to the Trust. The names of Mansha Ram, Uttam Dass, Narain Dass, Balwant Dass and Baba Mal Dass Trust were recorded in mutation entries and shown in the cultivation column of the revenue record. The appellant did not challenge these entries until 2002. Subsequently, 345 Kanals 1 Marla of land was acquired, and the compensation was also paid to the Trust. The appellant's earlier civil suit filed through Shukar Dass claiming to be the Chela of Panchayati Akahra, was withdrawn in 2003. Similarly, other applications and petitions filed by the appellant were dismissed by learned lower courts.

12.3. Aforesaid actions demonstrate the appellant's conduct of prolonging/multiplying the *lis* without justification. The property does not belong to the Panchayati Akhara, as there is no entry in the revenue record or any resolution from 1913 to 1998 to indicate the plaintiff Akhara had any right or interest in the Dera's property. Ld. trial Court also stated that plaintiff/appellant failed to provide any evidence that the Mahant is appointed by the Guru to the Chela tradition and not by the Proprietary Body. The trial court's judgment mentions mutations in favor of Mahant Uttam Dass, Mahant Narain Dass, Mahant Balwant Dass, and Baba Mal Dass Charitable Trust. These mutations indicate the devolution of Mahantship from Narain Dass by the Proprietary Body.

12.4. The appellant's suit was filed in year 2002 was highly belated and is/was barred by limitation. Furthermore, despite the dismissal of various previous applications and appeals, the appellant did not seek or get any *ad interim* stay in

any of the proceedings. Meanwhile, a huge building has been constructed on the remaining land by respondent No.1, serving public welfare purposes such as running a school and organizing camps for the poor.

12.5. Even otherwise, appellant society did not pass any fresh resolution authorizing Mahant Rattan Dass to file the present appeal. Appellant's claim that a resolution was passed in 2007 in favor of Mahant Narain Dass is *per se* unsustainable as he had already passed away in 1980.

12.6. The civil suit was/is also barred under Sections 10 and 11 of the Code of Civil Procedure, 1908, as similar matters had already been decided in previous suits between the parties. Reference was made to previously dismissed suits and appeals involving Labh Dass Chela Narain Dass, Mahant Labh Dass versus Isha rDass, and Garib Dass Chela Mansa Ram. The plaintiff/appellant has thus no right, title, or *locus standi* to file the suit, as it is neither the owner nor in possession of the disputed land.

12.7. A reference under the Land Acquisition Act, 1894 was sought by the Proprietary Body, which was decided in 2004, and the controversy raised by the plaintiff in the present suit was also decided therein, which also operates as *res judicata*.

12.8. Finally, they summed up by referring to a petition filed by Mahant Balwant Dass, which led to the release of compensation to the Trust by the Land Acquisition Collector under award No. 441 dated 27.03.1991.

13. Having heard and noted the rival contentions, let us see if the instant second appeal merits acceptance.

14. At the threshold, it is pertinent to note that the real controversy between the contesting parties herein seems about the method of appointment of the Mohtmim/Mahant of Dera Kahir, Nizampur Kumbra (for short hereafter 'Dera') and who was/is the Mohtmim/Mahant/Management Body of the Dera for management of its property. Apparently, the right to manage the Dera property

has been mistaken and mis-described as if, it were the right to own it. The parties do not seem to dispute that suit property was/is owned by Dera Kahir.

14.1. Plaintiff's case is that by custom, the appointment of Mohtmim/Mahant of the Dera is by succession from Guru to Chela and by that chain of succession Mahant Narain Dass is the incumbent Mohtmim/Mahant of the Dera. As against this, defendant No.1 asserted that the village Proprietary Body has been appointing the Mahant/Mohtmim of the Dera. It gave the up-to-date chain of such appointments by the village proprietary body starting from the appointment Mansa Ram on 22.08.1913 as Mohtmim/Mahant of the Dera till in that chain, the numerous persons (named in the impugned judgment of the learned trial Court) were appointed Mahant from time to time till the appointment of Mahant Narain Dass as Mahant on 21.09.1949. Upon his death, Mahant Balwant Dass was appointed Mohtmim/Mahant of the Dera by the village proprietary body. On 03.01.2000, Mahant Dass died. Before his death, the Trust/defendant No. 1 (Baba Mal Dass Charitable Trust, Dera Kahir) was created vide Trust deed dated 04.11.1996 (Ex D-95) for management of the Dera and its properties. The Trust/defendant No.1 is now managing the Dera and its properties. Baldev Singh son of Chet Ram is the incumbent Chairman of Trust/defendant No.1.

14.2. In land acquisition reference bearing No. LA case No. 1 of 27.04.2004/09.03.2004 filed under the Land Acquisition Act, 1894 by Proprietary Body of Khewatdars of Shamlat Deh, village Nizampur Kumbra v. Mahant Balwant Dass and others, the plaintiff and defendants No. 1 and 3 herein were parties to the said case and it was decided vide judgment/award dated 03.09.2014 (Annexure A-17) rendered by the learned Additional District Judge, Chandigarh. Issue No. 2, being relevant, as framed therein, is as under:-

“2. Whether the claimants being proprietors of village Nizampur Kumbra are owners of the disputed land or the disputed land is owned by Dera Kahir, Nizampur Kumbra being managed by Baba

Mal Dass Charitable Trust. If so, how he is entitled to receive compensation amount? ”

While deciding aforesaid issue, it was categorically held by learned Additional District Judge that the land belongs to Dera Kahir and Mahant Balwant Dass was Mohtmim of the Dera at the time of its acquisition and till his death during pendency of the reference petition; that after creation of the Trust with the consent of Mahant Balwant Dass, respondent No. 1 Baba Mal Dass Charitable Trust was entitled to receive the compensation amount.

14.3. Proceeding further, firstly, as observed above, the contesting parties herein do not seem to dispute that suit property was/is owned by the Dera Kahir Nizampur Kumbra. Secondly, in judgment/award dated 03.09.2014 (Annexure A-17), it was categorically held by learned Additional District Judge that the land belongs to Dera Kahir; that at the time of its acquisition and till his death during pendency of the reference petition, Mahant Balwant Dass was Mohtmim of the Dera and that after creation of the Trust with the consent of Mahant Balwant Dass, respondent No.1 Baba Mal Dass Charitable Trust was entitled to receive the compensation amount.

14.4. As noted above, the questions for determination herein *inter alia* are whether Mahant Balwant Dass was Mohtmim of the Dera; whether a Trust defendant No.1 (Baba Mal Dass Charitable Trust) was set up; whether after the death of Mahant Balwant Dass, the management of the Dera property came into hands of Trust - defendant No.1 and whether defendant- respondent No. 1 Trust (Baba Mal Dass Charitable Trust) was entitled to receive the compensation amount.

14.5. The aforesaid same very questions, were directly and substantially in issue and decided in favour of defendant No.1 vide judgment/award dated 03.09.2014 (Annexure A-17) rendered by the learned Additional District Judge, Chandigarh. It is not disputed that the said judgment/award has attained finality.

14.6. Learned counsel for the plaintiff-appellant strenuously argued that learned Additional District Judge, while deciding the reference under section 18/30 of the Land Acquisition Act, had no jurisdiction to adjudicate upon the question of title to the property. For this, he relied upon the following reported judgments:

- (i) **Sankara Nagamalieswara Rao and Another v. State of Andhra Pradesh¹;**
- (ii) **Dhulabhai and others v State of Madhya Pradesh & another²;**
- (iii) **Karnail Singh v Jagir Singh³;**
- (iv) **Malkiat Singh v Harnek Singh⁴;**
- (v) **Shyam Lal v. Sham Lal⁵;**

There seems nothing in these judgments to support the afore noted contention of the learned counsel for the plaintiff-appellant. In fact, to the contrary, in Karnail Singh's case (*supra*) as cited by him, this Court had held that the persons interested in the land acquired can get their dispute resolved either by asking the Collector to make a reference under section 18 of the Act or by a separate suit. I am, therefore, unable to accept the contention that learned Additional District Judge had no jurisdiction to adjudicate upon the question of title to the property while deciding the reference under section 18/30 of the Land Acquisition Act that the findings in that judgment in favour of defendant No. 1 herein on the aforesaid questions would not operate as *res judicata* against the plaintiff.

14.7. Furthermore, *qua* the judgment/award dated 03.09.2004, Annexure A-17, learned counsels for respondents No. 1 and 3 pointed out that the plaintiff did not even cause appearance in that case despite service and was proceeded against *ex-parte*. He had though moved application for condonation of delay of 840 days and with prayer for setting aside the judgment /award *ibid*, but his said application was dismissed. Later, the plaintiff's Civil Revision No. 6655 of 2009

¹JT 1998(2) SC 230

²AIR 1960 Supreme Court 73

³1985 RRR 645

⁴1991 SCC OnLine P&H 874

⁵2007(2) RCR Civil 484

against dismissal of that application, which too was also dismissed by coordinate bench of this Court on 22.11.2010. I find force in the contention of learned counsels for respondents No. 1 and 3 that the plaintiff cannot now turn around to canvass that the award dated 03.09.2004 is vitiated by fraud.

14.8. I also find merit in and accept the contention of the learned counsel for respondent No. 1 the judgment *ibid* operates as *res judicata* against the plaintiff-appellant *qua* the adjudication therein that Mahant Balwant Dass was Mohtmim of the Dera; that the Trust-defendant No. 1 had been created in the life time of Mahant Balwant Dass; that after his death, the management of the Dera property came into the hands of defendant- respondent No. 1 Baba Mal Dass Charitable Trust and that defendant- respondent No. 1 was entitled to receive the compensation amount.

14.9. Let us, for a moment assume, as contended by learned counsel for plaintiff-appellant that the filing and disposal of the earlier suit for injunction by Mahant Shukar Dass in his individual capacity would not bar the filing of present suit by the plaintiff religious institution through its Mahant on different causes of action, would not be barred by Order 2 Rule 2 CPC. Still, as held above, the judgment dated 03.09.2014, Annexure A-17, rendered by learned Additional District Judge, Chandigarh operates as *res judicata* against the plaintiff-appellant *qua* the adjudication therein to the effect that Mahant Balwant Dass was Mohtmim of the Dera; that the Trust defendant No. 1 had been created in the life time of Mahant Balwant Dass; that after his death, the management of the Dera property came into the hands of defendant- respondent No.1 Baba Mal Dass Charitable Trust and that defendant- respondent No.1 was entitled to receive the compensation amount.

14.10. I am also unable to accept the contention of the learned counsel for the plaintiff that by taking into consideration the defendant's plea in the initial written statement that it had acquired ownership of suit property by adverse

possession which would imply an admission of the plaintiff's earlier ownership of the property and on that basis, issue No. 1 was/is required to be decided in favour of the plaintiff-appellant. Firstly, it is not shown if, after the filing of subsequent written statement by defendant No. 1 in answer to the amended plaint, any such plea was raised in the pleadings or otherwise before the learned trial Court or before learned First Appellate Court. On this short score, this contention raised for the first time in the instant second appeal is not entertainable and is liable to be summarily rejected. Even otherwise, it is not disputed that the plaintiff had filed Civil Revision No. 1807 of 2012 against the order passed by the learned Civil Judge (Senior Division), Chandigarh dismissing his application *inter alia* for striking off the change in defendant No.1's stand *vis-à-vis* its earlier written statement. The said Revision was dismissed by coordinate bench of this Court vide order dated 22.03.2012, Annexure R-16, relying in turn upon a Division Bench judgment in **Girdhari Lal versus Krishan Datt**⁶, wherein it was categorically and unambiguously laid down that after amendment of the plaint, written statement is not required to be confined to the amended part of the plaint and rather defendant can take new pleas also and that defendant gets unrestricted right to file fresh written statement to the amended plaint. This being the position, at this stage, the plaintiff cannot fall back on the defendant's plea in the initial written statement that it had acquired ownership of suit property by adverse possession supposedly implying the plaintiff's earlier ownership. The contention to that effect is, therefore, rejected.

14.11. I may hasten to add here that, to support his arguments, learned counsel for appellant also attempted to fortify his arguments based on a few other judicial precedents cited by him, other than the ones specifically noted in the preceding part, but same are neither applicable nor relevant in facts and circumstances of the case in hand. The reliance placed on the citations being misplaced, is not being discussed.

15. Rest of the contentions raised before me were also raised before learned Courts below. The same were duly considered, discussed and rejected by recording detailed reasons, more particularly evident from the following part of the impugned judgment passed by learned First Appellate Court:

“XXXX XXXX XXXX XXXX

22. xxx xxx From the perusal of the documents which are available on the file, it is manifestly clear that prior to it, several litigations have already taken place wherein the plaintiff could not succeed and all the litigations initiated by the plaintiff were dismissed and despite that fact the plaintiff has instituted the present suit for getting the compensation amount despite the fact that compensation money pertaining to the land belonging to the dera was disbursed to the defendant no.1. Although, the plaintiff has instituted the present suit for getting itself declared as owner in possession of the suit property but there is not even an iota of documentary evidence from where, the plaintiff can be declared to be owner in possession of the suit property. If the plaintiff has any concern with the suit property, then its name would have figured in the revenue record at any point of time but name of plaintiff, Panchayati Akahara does not figure at all in the entire revenue record whereas on the contrary, the name of defendant figures in the revenue record right from the very beginning i.e. from the time of formation of the dera. A perusal of the case file reveals that almost 100 acres of Shamlat land had vested in the dera which was maufi land and Mansa Ram was made its Mahant in the year 1938 and after him on 23.1.1945, Uttam Dass was appointed its Mahant and mutation in this regard was also sanctioned, copy of which has been placed on the file as Ex.D-78. Thereafter, Narain Dass had become its Mahant on 21.9.1949 and Mutation Ex.D-79 was also sanctioned in his name and thereafter Balwant Dass was appointed as its Mahant on 31.8.1990 and mutation Ex.D-81 was sanctioned in this regard. Later on, a trust was created on 4.11.1996 and trust deed Ex.D-95 was also executed and all these documents categorically establish the title of defendant no.1, Dera over the suit property and since the plaintiff has challenged the title of the defendant no.1 over the suit property, hence it was required to establish its title by way of documentary evidence and in order to discharge its onus, the plaintiff has adduced evidence to establish that for the first time Panchyati Akahara had appointed Gopal Dass as its Mahant on 25.10.1995. After Gopal Dass, Panchyati Akahara had appointed Shukar Dass as its Mahant and after his death, present Mahant Rattan Dass was appointed Mahant vide resolution Ex.P-25 to P-29. Although these resolutions have been placed on the file but these have not been proved in accordance with law and except the photographs, there is not even a single document available on the file which can prove the title of the plaintiff over the suit property and the photographs which have been placed on the file are not sufficient to believe the revenue record and previous judicial pronouncements available on the file. At this stage, it would not be out of place to maintain that revenue record is reliable piece of evidence and presumption of truth is attached with it and if the

plaintiff was willing to rebut the said presumption attached with the revenue record, then he should have produced more convincing evidence on the file but the photographs and unproved resolutions cannot be a substitute to the revenue record and judicial verdicts.

Another important aspect of the present case is that on 21.9.1949, Narain Dass was appointed Mahant of the dera by the Managing Committee. Another important aspect of the present case is that a civil suit had been instituted by one Garib Dass, chela of Mansa Ram against Narain Dass @ Narain Singh son of Lachmann Singh for getting possession of land measuring 484 bigha 11 biswas situated at Mauja Nizampur Khumbra, Tehsil Kharar and by filing the said civil suit, Garib Dass had claimed himself to be owner of the suit property being chela of Mansa Ram who had executed a WILL in his favour on 29.3.1938. Mutation of mauafi land was also sanctioned in favour of the plaintiff on 22.5.1947 by the Collector and defendant was enjoying the possession of the suit property in a unlawful manner. The claim of plaintiff Garib Dass was contested by Narain Dass and the plaintiff had vehemently maintained in the said civil suit that defendant Narain Dass was a stranger to the suit property and villagers of the bhekh had no authority to appoint a Mahant of the dera. However, the contentions of the plaintiff were discarded by the court of Sh. J.M. Tandon, learned Sub Judge First Class, Ambala vide judgment and decree dated 23.7.1954, copy of which is available on the file as Ex.D-99 wherein specific findings have been returned that Mahant was to be appointed by the authority of the villagers and the plaintiff had no right to challenge the authority of the villagers to appoint the Mahant. It has also been observed by the said judgment that Mansa Ram was appointed as Maufidaar of the dera vide order dt. 22.8.1913 passed by the Collector and it has also been incorporated in the said document that Mansa Ram was appointed as Mahant with the consent of Lambardar of Village of Nizampur Kumbra which clearly establishes that villagers had a say in the appointment of the Mahant of the dera and in these circumstances, it was observed in the judgment that "in this dera, it is not always the chela who was appointed as Mahant after the death of the Guru". The said view is very material for the adjudication of the present suit because it has been observed in the said judgment that Uttam Dass had expired on 9.6.1949 and after his death, the mutation had been sanctioned in the name of Narain Dass as Chela of Uttam Dass. Garib Dass had contested the said mutation. However, the Revenue officer had passed a detailed order at the time of sanctioning of the mutation that a number of responsible proprietors of the village were present at the time of mutation and villagers had stated before the Revenue Officer that Uttam Dass had appointed Narain Dass as his chela and they had further stated that Uttam Dass had asked them to appoint Narain Dass as Mahant of the Dera, if they considered him to be suitable and thereafter they had appointed him Mahant of the dera after considering him suitable. it has also been further observed in the judgment that defendant had adduced oral evidence that after the death of Uttam Dass, the villagers had collected at the dera and sadhus had also come. A feast was arranged. The villagers had given turbans and some money in cash to Narain Dass and thus, he was appointed as Mahant. Although the present plaintiff was not a party to the said civil suit instituted by Garib Dass but findings

given by learned Sub Judge Ist Class, Ambala are relevant for the adjudication of the present suit. In the said suit, Narain Dass had satisfied the court that he had been appointed as Mahant of the dera not by his predecessor rather by the proprietors of the village and perusal of the said judgment categorically establishes that there is precedent of appointment of Mahant by the villagers and Mahantship of the dera was not to be awarded simply on the basis of Guru-chela relationship rather will of the proprietors of the village is prime consideration and the plaintiff has not placed on record even an iota of evidence to establish that he had ever been appointed as Mahant of the dera by the villagers.

At this stage, it would not be out of place to maintain that matter had gone upto Hon'ble High Court as a regular first appeal was filed by Bachan Singh etc. against the award dt. 3.9.1979 passed by the court of Additional District Judge in a petition under Section 30 of the Land Acquisition Act 1894 and the said appeal had been preferred by appellant against the award dt.3.9.1979 before the Additional District Judge, who had allowed the application filed by Narain Dass with the direction that disputed compensation amount in respect of the acquired land be deposited in the bank in the name of the dera and Baba Narain Dass as Mohtim of the dera would be entitled to receive the interest on the amount deposited in the name of the dera and it would be subject to the decision by a civil court. During the pendency of the said appeal, Baba Narain Dass had expired and two separate applications were filed for bringing on record his LRs. One application was filed by Labh Dass claiming himself to be chela of Narain Dass who had sought to be impleaded as LR of Baba Narain Dass. The said application was allowed subject to all just exceptions and subsequently another application was filed by Balwant Dass claiming himself to be chela of Narain Dass and also his legal representative. Vide detailed order dt. 20.5.1985, the said application was also allowed and Balwant Dass was also impleaded as additional legal representative of Narain Dass with further directions that both the LRs would act as legal representatives of Narain Dass. Regarding the fact that as to who was legal representative of Narain Dass, the matter was left open to be gone into by way of independent proceedings. Subsequently, another application was filed before the Hon'ble High Court by Shukar Dass claiming himself to be legal successor of Baba Narain Dass instead of Balwant Dass and Labh Dass had also challenged the creation of the trust in respect of the property of the dera vide order dt. 5.12.2003. Notice of the application was ordered to be issued to the counsel for the appellant as well as to counsel for Labh Dass and Balwant Dass and in the meanwhile the main appeal had been listed for final hearing. Hon'ble High Court had disposed of the said matter vide order dt. 12.1.2004, copy of which is available on the file as Ex.D-251, while giving the finding that compensation amount has already been paid to the trust and in view of the stand taken by learned counsel for Bachan Singh, the appeal had become infructuous and disposed of as such. The order passed by the Hon'ble High Court in this regard is not only relevant to the present litigation rather is binding upon it, because those findings have been returned by Hon'ble High court with regard to the property, which is subject matter of the present case.

At this stage, at the cost of repetition, this court does not find it out of place to maintain that version put forth by the plaintiff is patently dependent upon the fact that what is the mode of appointment of the Mahant of the dera as on one hand, the plaintiff has maintained that villagers have no concern with the said appointment whereas according to the version put forth by defendant no.1, Mahantship is granted only by the proprietors of the village and Mahant cannot appoint his successor only through his WILL and it is not for the first time that this dispute has arisen as in the past as well, an application had been filed in the court of Mohinder Singh, PCS, Assistant Collector Grade I, UT, Chandigarh which was decided on 12.5.1981 and copy of the order had been placed on the file as Ex.D-76 and while disposing of the said application, it had been observed in the said order that "as far as appointment of Labh Dass as chela is concerned, there is nothing on record to show that he was appointed as chela, as no evidence documentary or otherwise has been produced before me regarding appointment of Sh. Labh Dass as Chela as recited in the Will". It has been further observed that "it is evident that Panchayat, has been appointing mohatmin of the dera from time to time on certain conditions. These conditions were that the mohatmin will keep good conduct, will serve meals to Sadhus and travellers, will keep proper accounts and if a chela is to be appointed in his place, the appointment would be in consultation with the Panchayat of the village Nizampur Kumbra and these are the conditions for appointment of Mohtmins". These conditions were applicable to Mohtamins namely Uttam Dass and Narain Dass when they were appointed as Mahants of the dera on 23.3.1945 and 21.9.1949 respectively. According to extracts from the entries in the register of document written, the WILL executed by late Mahant Narain Dass is contrary to the letter and spirit of terms and conditions of his appointment as Mohitmim. It is the village proprietary body who has all along been making appointments of Mohitmims. Therefore, this court cannot allow the land in dispute to be mutated in the name of Labh Dass as executant of the Will has no right to own the land and appointment of Balwant Dass as chela to maintain the affairs of the dera appears to be proper and legal so name of Balwant Dass be entered in column of cultivation. While passing the said order, worthy collector had gone into the procedure of appointment of Mahant and even the Will executed by Mahant Narain Dass was ignored and mutation was sanctioned in the name of Balwant Dass. Although an appeal had been preferred against the said order but the same was dismissed by Shri Raghbir Singh, IAS, Collector, UT Chandigarh, vide order dated 9.11.1982 and copy of said order is available on the file as Ex.D-77 and both these orders minutely deal with procedure of appointment of Mahant which substantiates the version put forth by defendant no.1.

Another important aspect of the present case is that Labh Dass had instituted the civil suit for passing a decree to the effect that he was Mahant of the dera Ghar of Nizampur, UT, Chandigarh and for passing a decree for mandatory injunction for issuance of directions to the defendants to deliver the possession of the land in question and home therein and for passing a decree in the alternative for possession of the suit property and the said civil suit had been instituted by the plaintiff while maintaining that he was entitled to run the affairs of the dera being chela of Baba Narain

Dass who was legally competent to appoint him as Mahant of the dera. The said civil suit was hotly contested by Balwant Dass who was appointed Mahant of the dera by the respectables of the village Khumra, UT, Chandigarh and ultimately the said civil suit was dismissed by the court by Sh. G C Suman, the then Sub Judge Ist Class, Chandigarh vide judgment and decree dt. 7.2.1989. The findings given in the said judgment are very relevant for the adjudication of the present dispute because in the civil suit as well, the only dispute was with regard to process of appointment of the mohatmin and while deciding the said civil suit, learned Sub Judge Ist Class had returned the findings that mohatmin of the dera are appointed by the Proprietors of the village and ultimately the said civil suit was dismissed and in this manner, it is not for the first time that this issue has been agitated before the civil courts rather it has been done repeatedly without any positive result. Besides it, this court finds it proper to maintain that property of the dera in question was acquired on an earlier occasion as well. Since there was a dispute amongst Proprietary Body of Khewatdars of Shamlat Deh of Village Nizampur, Kumbra and Mahant Balwant Dass, chela Narain Dass through Baba Mal Dass Charitable Trust, Dera Kahir, Nizampur Khumbra through its Chairman Baldev Singh, Panchayati Akhara Bara Udasian Nirwan, Kurukshetra and Partap Dass chela Dayal Dass. Hence the counter claims were filed before the reference court and the said controversy was decided by the court of Sh.Balbir Singh, the then Additional District Judge, Chandigarh vide order dt. 3.4.2004 and the findings returned by the said court are very material for adjudication of the present appeal and since it is a detailed judgment, hence it would not be feasible to incorporate the findings in verbatim but still it would be appropriate to reproduce these findings in a summarised way as it has been observed therein that earlier Mahant Labh Dass had claimed his right in the acquired land, claiming himself to be chela of Mahant Narain Dass and he had filed a civil suit titled as Labh Dass Vs. Balwant Dass, which was dismissed by the court of Sh.G.C. Suman, the then Id. Sub Judge Ist Class and appeal filed against the said judgment and decree was dismissed by the court of Lld.ADJ, Chandigarh vide judgment and decree dt. 19.2.2001 and in this way, Labh Dass had lost the civil litigation and is left with no right/interest of any type in this property and specific findings were returned with regard to the fact that Shukar Dass and Labh Dass had no right or interest in the acquired land and actually the dispute regarding right/interest in the acquired land remained between the proprietors of the village and respondent no.1. It has been further observed in the said judgment that proprietary body or Management committee can only appoint Mahant or Manager of a religious math, but they cannot declare any chela as mohatmin and in this manner process of appointment of mohatmin of the dera and chela of the Mahant has been segregated by the court of Id. ADJ, and it is very much clear from the findings given in the said judgment that although mohatmin was competent to appoint his chela but he had no right to appoint Mahant of the dera and this right had only vested in the proprietors of the village and mohatmin of the dera was to remain of moral character and he was required to keep the accounts of the income of the dera and was to make proper arrangement for providing food to sadhus and travellers. The names of numbers of the villagers were also mentioned to whom the Mohtmin was to give such type of

information. It has been further observed that after the death of Uttam Dass, Narain Dass had become its mohatmin and similar types of undertakings were given by him. After the death of Narain Dass, Balwant Dass had been appointed Mahant of the dera by the proprietors of the village. Later on, a trust was also created under the chairmanship of BalwantDass and creation of said trust was not held illegal by any court of law. From perusal of the findings returned by the court of ld. ADJ, Chandigarh, it is manifestly clear that plaintiff Panchyati Akhara was in no way found to be in existence at any stage and the compensation amount of the land acquired has already been given to the mohatmin of the dera and process of appointment of the mohatmin has already been discussed in detail by several forums including Hon'ble High Court and the said process does not support the version put forth by the plaintiff. In view of the findings returned by the court of Sh. Balbir Singh in the land acquisition case, wherein the present plaintiff was also a party, this court has no hesitation in holding that learned trial court has decided the matter in a lawful and justified manner.

Another point raised by the ld. Counsel for the appellant is that ld. Trial court has wrongly decided the issue of court fees against the appellant as the present suit has not been instituted for recovery of amount in question rather, it has been instituted for issuance of directions to respondent no.3 to hand over the amount to the plaintiff. However, this court finds that ld. Trial court has rightly decided the issue of court fees against the appellant because the plaintiff has filed the suit for declaration with consequential relief and suit for mandatory injunction directing the defendants to release the money deposited with the State Bank of Patiala, Punjab to the plaintiff and suit for permanent injunction restraining defendant no.1 from withdrawing the money deposited with defendant no.2 and selling two acres of land still there in Village Nizampur Kumbra, with consequential relief that the amount deposited with or released to defendant no.1 should be released in the name of the plaintiff alongwith interest with consequential relief directing the defendants to hand over the possession of land measuring 32 Kanals situated in Khewat No.145 min. Khatauni no.185 min. Khasra no.24/8 (8-0), 9(8-0), 12 (8-0), 13(8-0), total 32 kanal situated in revenue state of Village Nizampur Khumbra. It is admitted fact that the said land is a maufi land. As per ratio of authorities Des Raj Vs. Bana Singh 1989(2) Revenue Law Reporter 259; BasantLal Vs. Baru; another AIR 1967 188 and Uday Chand Vs. Mohan Lal and others AIR 1957 Punjab 315 and Avtar Singh and another Vs. Smt. Kamlesh Kalia and other PLR 1975 640 Wherein it has been held that "it is settled law that where a suit is filed for a part of an estate such part is not separately assessed to land revenue, the court fees has to be paid on the market value of land under Section 7 (v) (d) of the Court Fees Act". Besides it, it would be appropriate to maintain here that by simply twisting the language of the plaint, the relief sought by the plaintiff cannot be substituted because basically the plaintiff has instituted the suit for recovery of an amount of Rs.4 crores approximately but in order to avoid the payment of court fees, language of the plaint has been twisted and it is settled proposition of law that mere astuteness in framing the plaint cannot help the plaintiff for avoiding the court fees. A perusal of the plaint itself

reveals that facts have been twisted by the plaintiff with sole purpose of avoiding the payment of court fees which cannot be allowed.

With these observations, this court finds that the ld. Trial court has decided the issue of court fees in a lawful and justified manner.

The authorities (supra) relied upon by learned counsel for the appellant are not applicable to the facts of the present case because while discussing the merit of the present appeal in the proceeding paragraphs of the judgment, this court has clearly observed that the plaintiff is a stranger to the suit property and in the revenue record pertaining to last more than 100 years approximately, the name of the plaintiff does not figure at any stage, even for once and in these circumstances, the facts of the authorities(supra) relied upon by ld. Counsel for appellant are distinguishable from the facts of the case in hand.”

16. Having perused the reasoning as aforesaid, as well as in the judgment rendered by learned Trial Court, my considered opinion is that all the submissions made before learned Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

17. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

18. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

19. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code, 1908.

20. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
21. Pending application/s, if any, shall also stand disposed of.
22. No order as to costs.

(ARUN MONGA)
JUDGE

June 01, 2023
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No