

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

RSA-292 of 2019 (O&M)
Date of decision: 17.08.2023

Avtar Singh

.....Appellant

vs.

Sant Sohan Singh Chela Sant Ram Singh (since deceased) through LRs
and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Rahul Sharma-I, Advocate,
for the appellant.

NAMIT KUMAR, J. (ORAL)

CM-625-C of 2019

1. This application has been filed by the applicant-appellant under Section 5 of the Limitation Act for condonation of delay of 138 in filing the appeal.

2. In view of the averments made in the application, which is duly supported by an affidavit, same is allowed. Delay of 138 days in filing the appeal is condoned.

RSA-292 of 2019

1. Through this Regular Second Appeal defendant No.2/appellant has challenged the finding recorded by the Court of learned Civil Judge (Senior Division), Anandpur Sahib, on issue No.4-A vide judgment and decree dated 03.08.2015 while dismissing the suit filed by plaintiff/deceased-respondent No.1 for declaration with consequential relief of permanent injunction as well as the judgment and decree dated 26.02.2018 passed by the Court of learned District Judge, Rupnagar,

whereby appeal filed by defendant No.2/appellant has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The plaintiff filed a suit against the defendants for declaration alongwith consequential relief of permanent injunction pleading that the plaintiff is the Chela of Sant Ram Singh of Dera Bishanpuri and he was appointed Chela by Sant Ram Singh during his life time due to his old age. It is further stated that as per rules of Nirmal Bheikh, Doaba Mandal, Panchayat Akhara and Kankhal, they considered the request of Mahant Ram Singh and on 30.06.2000, a meeting was held and the plaintiff was appointed as Mahant of the Dera and his Dastarbandi was conducted by Mahant Ram Singh Ji and resolution to this effect was duly passed by Doaba Nirmal Mandal and from the same day, the plaintiff started working as Mahant and Sant Ram Singh was left with no interest or control in the management of the Dera. It is further stated that as per the rules, the Mahant is the only Manager or Mohtmim of the Dera and the properties attached to it and that the Dera Bishanpuri, Nangal Khurd is the owner of the property in dispute and earlier to that, the property belonged to Baba Bishan Singh Ji, who was the Manager/Mahant of said Dera and after the death of Baba Bishan Singh, the defendant No.1 in connivance with other persons tried to grab the property of the Dera and took Sant Ram Singh to Tehsil complex, Mahilpur and got registered a forged and fabricated Trust, which was dissolved lateron just to grab the property of Dera and that Satinder Kaur, Gurdass Singh and Harbhajan Kaur in connivance with each other procured a forged and fabricated Will in their favour alleged to be executed at Delhi and when the plaintiff came to know of this illegal act, the plaintiff moved an application to the police

and ultimately, a case has been registered against abovesaid persons. It is further stated that not only this, one Avtar Singh of District Amritsar procured unregistered Will of Sant Ram Singh pertaining to the property in dispute and moved an application for sanctioning the mutation and matter was referred to SDM, Anandpur Sahib, who cancelled the Will and the defendant No.1 in the fag end of the case moved an application for impleading him as a party, which was allowed and mutation No.634 has been sanctioned in the name of defendant No.1 illegally and wrongfully. It is further stated that the defendant No.1 is claiming the Chela of Sant Ram Singh being his grandson, whereas he has no knowledge regarding preachings of Nirmal Akhara etc. and the SDO (C), Anandpur Sahib has not taken into consideration all the facts and figures regarding the Mahantship and has wrongly sanctioned the mutation in the name of defendant No.1. It is further stated that the plaintiff is the owner in possession of the property in dispute as Mahant of Dera Bishanpuri and that the plaintiff requested the defendants many times not to interfere or disturb his possession over the property in dispute, but the defendant No.1 is claiming himself as owner on the basis of said mutation and refused to admit the claim of the plaintiff.

3. Upon notice of the defendants appeared through their counsels. Defendant No.1 filed his written statement taking preliminary objections to the effect that the suit is not maintainable in the present form; the suit is barred under provisions of Order 2 Rule 2 CPC; the plaintiff has got no *locus standi* to file the present suit and that the plaintiff has not come to the Court with clean hands. On merits, it is admitted that the plaintiff was baptized as Chela by Sant Ram Singh of Dera Bishanpuri, Nangal Khurd,

but it is denied that Sant Ram Singh had ever asked the Nirmal Bhekh, Doaba Mandal etc. to relieve him from the responsibility of Mahantship of Dera Bishanpuri and to appoint the plaintiff as Mahant. It is further stated that the answering defendant was also baptized as Chela by Sant Ram Singh and the answering defendant was also serving Sant Ram Singh during his illness. It is further stated that the plaintiff after the cancellation of his general power of attorney given to him by Sant Ram Singh and cancellation of Will allegedly executed by Sant Ram Singh in favour of the plaintiff, was ousted by Mahant Ram Singh from Dera Bishanpuri, Nangal Khurd and since then, the plaintiff never entered and took possession of any property of Dera Bishanpuri as well as property in dispute. It is further stated that ultimately, the plaintiff has been appointed as Mahant of Dera Barkat Kutia, Ropar after the death of Sant Nahar Singh by Doaba Nirmal Mandal and similarly on 01.10.2009, Doaba Nirmal Mandal approved the appointment of answering defendant as Mahant of Dera Bishanpuri and cancelled the alleged resolution dated 30.06.2000 regarding appointment of plaintiff as Mahant of Dera Bishanpuri and thus, the plaintiff has no right, title and interest in the property of Dera Bishanpuri as well as the property in dispute. It is further stated that the plaintiff was never appointed as Mahant of Dera Bishanpuri nor any Dastarbandi was conducted and the alleged resolution as well as alleged photographs are forged and fabricated document and the defendant is managing and controlling all the affairs of Dera Bishanpuri. It is further stated that the answering defendant performed all the last rites of Baba Ram Singh being his Chela and that Panchayati Akhara Nirmala, Kankhal, Haridwar has further given in writing that since Giani Nahar Singh has

expired, who has been given power of attorney to contest the cases regarding the property of Dera Bishanpuri and they have approved the appointment of answering defendant as Mahant of Dera Bishanpuri and further authorized the answering defendant to all accounts of banks, post offices etc. and to receive the amount. It is admitted that the plaintiff is Mahant of Dera Barkat Kutia, Ropar, however the plaintiff has no concern with the property in dispute and the plaintiff has filed the present suit only to usurp and grab the property in dispute. All other averments of the plaint have been denied and a prayer has been made for the dismissal of the suit. Defendant No.2 filed his separate written statement taking preliminary objections to the effect that the suit is neither competent nor maintainable in the eyes of law; the plaintiff has no locus standi to file the present suit and that the suit is barred under Section 11 of CPC. On merits, it is stated that the plaintiff was never appointed by Sant Ram Singh as Mahant of Dera and no such Dastarbandi was conducted and no Pagri was offered by deceased Mahant Ram Singh and there is no resolution passed as alleged. It is further stated that the plaintiff has concealed the fact regarding Will dated 20.05.1999, which was executed by deceased Ram Singh in favour of the plaintiff and same was revoked later on 20.09.2001 and the plaintiff was ousted by deceased from the suit land. It is further stated that the suit land is not the property of any Dera, rather the same is the ownership and possession of deceased Ram Singh. It is admitted that the answering defendant moved an application for sanction of mutation on the basis of Will dated 05.01.2002, which was decided in favour of defendant No.1 and the plaintiff has no right, title or concern with the suit property. It is further stated that Sant Ram Singh was unmarried and he has not

appointed any Mahant during his life time, because the suit land was of his own and the plaintiff got executed a Will dated 20.05.1999 in his favour and also got general power of attorney of Sant Ram Singh on 05.08.1999 to usurp the suit property and then deceased Ram Singh revoked the Will dated 16.04.2001 and cancelled power of attorney on 05.06.2001. It is further stated that the answering defendant was only the person, who was nearer to deceased Ram Singh and accordingly, deceased Ram Singh executed Will dated 05.01.2002 in favour of answering defendant and died on 26.05.2002. It is further stated that the plaintiff has already filed a suit titled as Mahant Sohan Singh Vs Avtar Singh & Ors., which was dismissed as withdrawn on 18.05.2009 and as such, the present suit is barred under Section 11 CPC. All other averments of the plaint have been denied and a prayer has been made for the dismissal of the suit.

4. Replications to written statement of defendants were filed by the plaintiff reiterating the facts as mentioned in the plaint and denying those made in the written statements. From the pleadings of the parties, the following issues were framed by the trial Court:-

1. Whether the plaintiff is owner in possession of land measuring 6K-8M as detailed in head note of plaint?
OPP
2. Whether the plaintiff is entitled to get relief of declaration, as prayed for?OPP
3. Whether the plaintiff is entitled to get consequential relief of permanent injunction, as prayed for?OPP
4. Whether present suit is not maintainable?OPD
- 4(A) Whether deceased Sant Ram executed a valid Will dated 05.01.2002 in favour of Avtar Singh defendant No.2?OPD

5. Whether the suit is barred under Order 2 Rule 2 CPC?
OPD

5. Parties led oral as well as documentary evidence in support of their respective contentions.

6. After hearing learned counsel for the parties and evaluating material on record, trial court vide judgment and decree dated 03.08.2015 dismissed the suit of the plaintiffs.

7. Defendant No.2/appellant filed appeal challenging the finding of the trial Court recorded on issue No.4(A), which has been dismissed by the lower appellate Court vide judgment and decree dated 26.02.2018.

8. Only argument raised by learned counsel for the appellant is that findings recorded by both the Courts below on issue No.4(A) are erroneous as defendant No.2/appellant duly proved the 'Will' on record by examining the son of Karma, attesting witness, who had expired. He contended that findings recorded by Courts below on issue No.4(A) being perverse are liable to be set aside.

9. I have heard learned counsel for the appellant and perused the record.

10. Perusal of the record shows that without seeking any permission to prove the 'will' dated 05.01.2002 only a photocopy of the same was produced on record. Even the whereabouts of the original 'will' were not disclosed by the appellant. Further no attesting witness of the said 'will' was examined by the appellant to prove the valid attestation of the 'will'. Therefore, appellant has failed to prove the execution of 'will' in his favour. Thus, I do not find any illegality or perversity in the findings recorded by the Courts below.

11. No question of law, muchless substantial question of lawhas
been raised or arises for consideration in the present appeal. No other point
has been urged.
12. In view of the above, present appeal is dismissed.
13. Pending application(s), if any, stand disposed of accordingly.

17.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No