IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3816 of 2000(O&M)
and connected cases
Reserved on: 21.02.2024
Date of Order:05.03.2024

Prem Chand

.Appellant

Versus

Dera Asan Narnaund and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Atul Lakhanpal, Sr. Advocate, with
Mr. Arvinder Grover, Advocate
for the appellant.

Mr. R.K.Gupta, Advocate
for the appellant (in RSA-3816-2000)

Mr. Chandrhas Yadav, Advocate
for the respondents.

ANIL KSHETARPAL, J

1. INTRODUCTION & BRIEF FACTS

1.1 With the consent of the learned counsel representing the parties, a batch of 12 second appeals challenging the concurrent findings of fact arrived at by the courts below involving common issues shall stand disposed of by this order.

1.2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be considered.

1.3. Dera Asan is located in village Narnaund, for the last 2/3 centuries. It includes temple having idols of Lord Shiva and various other Gods and Goddess of Hindu religion. Apart from the temple, it has 9 shops, dera building and agirucltural land measuring 126 kanals and 10 marlas. It is a dera of Gosian Sadhus and Sanyasis which is being administered and managed by a Mahant belonging to the sect of Gir Gosian Sanyasis. Originally, the property was a 'Shamlat' property. Residents of three adjoining villages, namely, Narnaund, Bhaini Amirpur or Aurangshahpur created a 'Dholi' in favour of Sadhus and Sanyasis for establishing a public religious and charitable institution which is in the nature and character of a public trust. In ***Sewa Ram vs. Udegir, AIR 1922, Lahore, 126***, the case relating to this very dera , the Dholi tenure was explained as under:-

> *"The Dohli tenure is a peculiar kind of tenure to be found in the south-eastern districts of Punjab. It is rent free grant of a small plot of land by the village community for the benefit of a temple, mosque or shrine, or to a person for a religious purpose. In the revenue records, the propeietary body are recorded as the woenrs of the property, and the grantee is recorded as a tenant in the column of cultivation. So long as the purpose, for which the grant is made, is carried out, it cannot be resumed, but should be holder fail to carry out the duties of his office, the proprietors can eject him and put in some one else under a like tenure."*

1.4. As per evidence available on record, on 30.06.1902, mutation no.427 and 428 Ex.P39 and Ex. P40 were sanctioned in favour of Baba Tehalgir. It was specifically recited that the Mahant/Manager would not have authority to sell or mortgage the property. On 08.12.1927, Ex.P38 mutation was sanctioned after the death of Tehalgir in favour of his disciple Sh. Surjitgir. In that mutation also it was recorded that the Mahant have no authority to mortgage or sell the property. At the relevant time, Baba Birgir, defendant no.2, was Mahant of the Dera. He started drinking liquor, charas, smoking, sulfa, ganja etc. and the dera building became a gambling spot. He gave up worship of idol kept in Shivayala. He also transferred the properties of the Dera to various persons. The inhabitants of three villages under the guidance of Baba Kishangit filed a civil suit under Section 92 of the Code of Civil Procedure, 1908, to remvoe Baba Birgir and to settle a scheme for the proper administration and management of the Dera. The then Additional District Judge, though, held that Baba Birgir is indulging in immoral activities, however, dismissed the suit on the ground that it has been filed after the lapse of period of limitation. In appeal, the aforesaid finding of the Additional District Judge was set aside and the High Court remanded the matter back to the trial court for settling scheme for proper administration and management of the Dera property. The Additional District Judge vide judgment dated 22.04.1981, Ex.P29, decreed the suit and ordered removal of Baba Birgir from the office of the Mahantship. Subsequently, Baba Om Naraygir was nominated by the villagers as well as Sadhus and Sanyasis as the Mahant. Baba Birgir had also transferred the entire agricultural land in favour of Mahabir and Dr. Raj Singh Malik. As regards, the sale in favour of Dr. Raj Singh Malik, the Dera was able to salvage the land, whereas the dispute with respect to the transfer of property in favour of Mahabir was finally decided by the Supreme Court. The High Court in a detailed judgment reported in 1993 PLJ 771, Ex.P71, held that Dera was a public religious and charitable institution and the land was Dholi land. In fact, it was held that the Mahant does not have authority to sell or mortgage the property.

1.5. Baba Birgir has executed the following sale deeds with respect to shops and residential premises of the Dera:-

1. Sale deed No.2015, dated 25.3.75

2. Sale deed No.1833, dated 24.2.75

3. Sale deed No.1424, dated 07.1.75

4. Sale deed No.1518, dated 17.1.75

5. Sale deed No.1391, dated 02.1.75

6. Sale deed No.150 dated 24.7.1977

7. Sale deed No. 1832, dated 24.2.75

8. Sale deed No.1517, dated 17.1.75"

1.6. Some suits were filed in the year 1980, whereas as many as 8 suits were filed in the year 1988, for grant of decree of declaration and possession. As many as 8 suits were consolidated by the trial court vide order dated 03.06.1989 and the pleadings of Civil Suit no.597 of 21.09.1988 titled as Dera Asan vs. Kashmiri Lal etc. was treated as the lead case.

1.7. Both the courts on appreciation of evidence have arrived at a conclusion that these sale deeds are without jurisdiction and illegal, null and void. Thus, the decrees for possession of the property has been passed in all these cases. Challenging the correctness of the aforesaid judgments and decrees, as many as 12 appeals have been filed.

1.8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book as also the written submissions filed by the learned counsel representing the respondent.

2. ***ARGUMENTS BY THE PARTIES***

2.1 The learned senior counsel representing the appellant in as many as 11 appeals has contended that the suits filed by the plaintiffs were beyond the period of limitation as the sale deed executed in the year 1975 were sought to be for the first time challenged in the year 1985, 1988 or 1989. He submits that the suit was required to be filed within a period of three years from the date of the sale deed. He further submits that the judgment passed on 22.04.1981, while removing Baba Birgir is not binding on them because the appellants were not a party in the aforesaid suit. He further submits that it is the case of the plaintiffs that Baba Birgir was a Dholidar. He submits that in view of the provisions of the Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010 (hereinafter referred to as 'the 2010 Act'), dholidar became owner of the property and therefore, the sale in favour of the appellants is valid. In the end, he submitted that Baba Birgir was occupancy tenant and in view of the provisions of Punjab Occupancy(Vesting of Propriety Right) Act, 1952, he became the owner. Hence, the sale deeds in their favour are valid. Lastly he submitted that the appellants are bonafide purchasers for valuable consideration and therefore, their rights are required to be protected.

2.2. On the other hand, the learned counsel representing the respondent has submitted that the appellants have not led any positive evidence to prove that they are bonafide purchasers. He submits that from the revenue record, it is apparent that the property in dispute belongs to the Dera. Vide mutation no.120 Alif, Ex.P12, it is evident that the property was originally recorded as "Shamlat Deh" in the ownership column with the remarks that it has been given on Dholi in favour of Dera through Mahant Balgir. Subsequently, after the death of Tahhgir his disciple Surjitgir was recorded as the owner. He submits that the period of limitation for filing such suit is 12 years and from the judgment reported in 1993 PLJ 779, it is established that Baba Birgir had indulged in immoral activities forcing the courts to order his removal. He submits that the Mahant of the Dera does not possess the right to transfer the property. He submits that there is no evidence to prove that Baba Birgir was occupancy tenant so as to entitle him the benefit of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952.

3. ***DISCUSSION***

3.1. This court has considered the submissions of the learned counsel representing the parties.

3.2. These cases will be governed by Article 96 of the Schedule attached to the Limitation Act, 1963, which reads as under:-

96. By the manager of Hindu, Muslim or Buddhist religious or charitable endowment to recover possession of movable or immovable properly comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years	The date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as manager of the endowment, whichever is later.

3.3. It is evident that if the Manager of Hindu, Muslim or Budhist of any religious or charitable endowment prays for recovery of possession of movable or immovable property comprised in the endowment which has been transferred by a previous Manager for a valuable consideration, the period of limitation is 12 years which will begin to run from the date of death/resignation or removal of the transferrer or the date of appointment of the plaintiff as Manager of the Endowment whichever is later. Thus, column no.3 of Article 96 provides that the time from which the period for filing the suit will begin to run is either the date of death or resignation or removal fo the transferor. In the alternative it is the date of appointment of the plaintiff as Manager of endowment. Out of the aforesaid two options, the period of limitation will begin to run from the date whichever is later. In this case, Baba Birgir was ordered to be removed vide judgment and decree dated 12.04.1981. Thereafter, Mahant Om Naraingir was appointed as Mahant. It is evident that all the suits were filed within a period of 12 years from 1981.

3.4. Both the courts have also held in the same manner. Such suits are not governed by Article 58 of the Schedule to the Limitation Act, 1963. Once, there is a specific and distinct Article dealing with the recovery of possession of movable/immovable property comprised in the religious/charitable endowment, the suits will be governed by Article 96 and not Article 58.

3.5. The next argument of the learned counsel also lacks substance. It may be noted here that decree dated 22.04.1981 removes Baba Birgir from the office of the Mahant. It also declares that the property is a constructed trust created for public purposes of a charitable or a religious nature. In this case, the plaintiff has led sufficient evidence to prove that Dera Bir Gosain is a public religious and charitable institution which is in nature and character of a public trust. Even the defendants while appearing in evidence have admitted that Sadhus and Sanyasis do visit the dera and all the religious festivals are celebrated in the Dera. Moreover, the plaintiffs have also produced judgment Ex.P71, passed in the case of Mahavir, wherein also it was held that the Dera property was misutilized by Baba Birgir, who misconducted himself. He himself had undertaken by writing and undertaking into Bahi on 23.03.1978 in a panchayat that he stands removed from the office of Mahant. The competent court also ordered his removal vide judgment dated 22.04.1981. The judgment passed by the competent court in a suit under Section 92 is in a representative capacity.

3.6. The next argument of the learned counsel cannot be accepted. It is not the case of the plaintiffs that Dholi was created in favour of a particular Mahant. It is the case of the plaintiffs that Dholi was created in favour of a Dera which is a public religious and charitable institution. On 30.06.1902, it was recorded by the revenue authorities that the Mahant would not have authority to sell or mortgage the property. The same entry was reiterated on 08.12.1927. Thus, Mahant/Manager of the Dera is required to administer and manage the property, however, they have no right to alienate the same. Hence, there is fallacy in the argument of the learned senior counsel representing the appellants. Baba Birgir would not become owner of the property on enactment of 2010 Act.

3.7. The last submission of the learned senior counsel representing the appellant also lacks substance because it is nowhere proved that Baba Birgir was inducted as occupancy tenant by the villagers. No evidence has been led to prove that predecessors of Baba Birgir were inducted as occupancy tenants. There is no evidence to prove that Baba Birgir was a tenant who was paying the rent equivalent to the amount of land revenue to the landowners. In fact, Dholi is a peculiar kind of tenure which is in the nature of rent free grant granted by the village community for the benefit of a temple, mosque or shrine or to a person for religious purpose. In this case, it is proved that the Dholi tenure was granted in favour of the Dera Assan, the plaintiff. Hence, the argument lacks substance.

3.8. The last argument of the learned senior counsel needs detailed examination. Undoubtedly, the appellants have purchased the property through registered sale deed, however, in the sale deed itself it has been recorded that Baba Birgir is chela of his own Guru. It is known to everybody in the area that the property belongs to Dera which is a public, religious and charitable institution. Hence, the claim of the appellants to the effect that they are bonafide purchasers cannot be accepted. Moreover, once it is established that the property is in the nature of a public property because a public trust was created and the manager had no right to sell the same, the plaintiffs cannot be held to have derived better title then possessed by Baba Birgir. Still further, Baba Birgir has not stepped into the witness box, though, he was party to the suit and was served. Had he stepped into the witness box, the respondents would have got an opportunity to cross-examine the witness in order to know the correct facts.

3.9. Moreover, the appellants (the defendants) have failed to lead evidence to prove that they carried out due diligence in order to verify the antecedents title of Baba Birgir to sell the property particularly when in the entire area, it is known that the property belongs to a religious and charitable institution which is in the nature and character of a public trust.

4. ***DECISION***

4.1. Keeping in view the aforesaid facts and discussions, finding no merit, all the appeals are dismissed.

4.2. All the pending miscellaneous applications, if any, are also disposed of.

05th March, 2024 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO