

127. 2024:PHHC:062499
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-23634-CII-2023 IN/AND
RA-CR-172-2023 IN CR-5954-2023
Date of decision: 29.04.2024

Gurudwara Gurdarshan Parkash and another Petitioners
Versus

Rashpal Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Ms. Divya Jerath, Advocate,
for the applicants/respondents.

Mr. Amit Jhanji, Senior Advocate with
Ms. Priyanka Kansal, Advocate,
for the non-applicant/petitioners.

GURBIR SINGH, J.

CM-23634-CII-2023

Prayer in this application filed under Section 5 of the
Limitation Act by the applicants-respondents is for condonation of delay of
7 days in filing the present application for review of judgment dated
15.11.2023 passed by this Court.

For the reasons mentioned in the application, same is allowed
and delay of 7 days in filing the review application is condoned.

RA-CR-172-2023 in CR-5954-2023

1. Prayer in this application filed under Order 47 Rule 1 CPC
read with Article 226 of the Constitution of India is for review of judgment
dated 15.11.2023 (Annexure A-1) passed by this Court.

2. In brief, the facts necessary for the disposal of present application are that the petitioners (hereinafter called, “plaintiffs”) filed a suit for grant of permanent injunction restraining the respondents-applicants (hereinafter called, “defendants”) from interfering in any manner in the property as shown in the site plan attached and mentioned in the heading of the plaint and situated at Dera Baba Jawahar Dass Ji (for short, “Dera”) Village Soos, District Hoshiarpur, which is in the ownership of Astham Dera Baba Jawahar Dass Ji and is being managed by Dera’s Charitable Trust. In the said suit, application under Order 39 Rules 1 and 2 read with Section 151 CPC was filed, however, vide order dated 18.02.2020, it was dismissed. Appeal against the said order was also dismissed vide order dated 22.09.2023 but the learned Appellate Court by way of interim management while disposing of the appeal, appointed Sub Divisional Magistrate, Hoshiarpur as Receiver-cum-Administrator of the Dera. Against the said order, Civil Revision No.5954 of 2023 was filed before this Court, which was allowed vide judgment dated 15.11.2023 and the orders passed by the courts below were set aside and the defendants were restrained from interfering in the management of Dera/suit property except in due course of law. It was further ordered that the plaintiffs shall properly and regularly maintain the record of receipts and expenditure and shall file a copy of the account statement in the learned trial Court after three months till disposal of the suit.

3. Learned counsel for the applicant-defendants has argued that this Court has wrongly observed that after every two years, no committee was formed. Records were very well maintained and those registers were produced before this Court during course of hearing. Vide judgment dated 15.11.2023, this Court has wrongly declared the property as a Gurudwara whereas case of the plaintiffs is that the suit property consists of Samadhs. There are distinctive features of a Sukh Gurudwara which are not part of instant suit property. This Court has wrongly observed that panchayatnama dated 13.05.2018 has been signed by 300 villagers. Said panchayatnama is in violation of the judgment passed by Civil Court and the same was not signed by minimum number of persons that were required to take any such decision. The basic quorum was also not complete. There was need of only 24 people. 700 villagers opposed the decision of handing the Dera to Damdami Taksal. The antecedents of defendants have been misjudged by this Court and their antecedents were required to be verified. The trustees are neither the residents of the village rather are unknown persons whose creditability is questionable. The plaintiffs have criminal antecedents and the appointment of Receiver is in larger good of villagers. This Court has wrongly concluded that possession is with the plaintiffs and they are managing the affairs. Reliance is placed on case ***Krishnaswamy Chetty Versus C. Thangavelu Chetty and others, AIR 1955 Mad 430.***

3.1 Learned counsel for the applicant-respondents has produced copy of proceedings before the panchayat, which are taken on record.

4. Notice in the application.

5. Mr. Amit Jhanji, Senior Advocate with Ms. Priyanka Kansal, Advocate, has caused appearance on behalf of non-applicant/petitioners. He has argued that the power to review is very limited. An error which is not self-evident and which can be discovered by long process of reasoning cannot be treated as an error apparent on the face of record. The applicants cannot be permitted to re-agitate the matter which has already been addressed and decided. He has further argued that review on the basis of new evidence is without jurisdiction. The court has not been given any evidence that property belongs to Gurudwara. Even in the main suit, only management of the property is sought and no ownership has been claimed by the plaintiffs. No document is annexed with the revision petition that 700 villagers had opposed the petition for handing over Dera to Damdami Taksal. There is no finding that defendants have been termed as criminals. This review application is without any basis and deserves to be dismissed.

6. I have heard the submissions of learned counsel for the parties and have gone through the record.

7. Order 47 Rule 1 CPC reads as under:-

1. Application for review of judgment.- (1) Any person considering himself aggrieved,-

(a) by a decree or Order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or Order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or Order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or Order made against him, may apply for a review of judgment to the Court which passed the decree or made the Order.

(2) A party who is not appealing from a decree or Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review. Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

7.1 In case ***S. Murali Sundaram Versus Jothibai Kannan and others, 2023(2) R.C.R. (Civil) 111***, Hon’ble Apex Court has explained that the scope of review under Order 47 Rule 1 read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reargue the questions which have already been addressed and decided. An error which is not self-evident has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying

the court to exercise its power to review. In case ***Arun Dev Upadhyaya Versus Integrated Sales Service Ltd. and another, 2023(8) SCC 11***, it has been held that power to review cannot be exercised as appellate power and has to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. Error on face of record must be such error which on mere looking at the record should strike and it should not require any long drawn process of reasoning on points where there may conceivably be two opinions. In case ***Anmol Singh Nayar Versus State of Haryana and others, 2023(4) R.C.R. (Civil) 565***, a Division Bench of this Court has held that power of review under Order 47 Rule 1 CPC is very limited and it may be exercised only if there is mistake or error apparent on face of record. Such application for review cannot be decided like regular intra court appeal. In case ***Soma Jassal Versus Dhilpreet Singh Gill and others, 2022(4) R.C.R. (Civil) 776***, this Court has held that if there is no mistake apparent on face of record, review of judgment on the basis of new evidence will be illegal and without jurisdiction.

7.2 Coming to the case in hand, a detailed order has been passed after considering all the documents which were placed on record. The operative part of impugned order reads as under:-

“19. The specific case of the plaintiffs is that Dera Baba Jawahar Dass Ji, Village Soos, District Hoshiarpur is well known among the Sikh followers. After the death of its last care-taker, the up-keep of this institution is being done by Gram Panchayat of Village Soos. The said Gram Panchayat, vide its resolution dated 13.05.2018, unanimously decided and

handed over the management and services of the said place to the plaintiffs. Charitable Trust was created on 25.06.2018 and the said religious institution/Dera is being run by the said Trust. Thus, it can be said that on the day of filing the suit, plaintiffs are managing the affairs of the Dera/suit property and the said management has been handed over to the plaintiffs by none else but Gram Panchayat of Village Soos. It is not the case of the defendants that Holy Shri Guru Granth Sahib is not installed in the said Dera. So, such an institution is to be prima facie managed and served as per the Sikh tenements. Earlier, dispute arose regarding the management of the Dera. The said suit was decreed vide judgment and decree dated 25.09.1984. In the appeal, compromise was effected. As per resolution dated 16.02.1987, a 32 persons Committee was constituted for the purpose of managing the Dera. The plaintiffs have placed on the file Annexure P-18, whereby Managing Committee was constituted for a period of two years, in pursuance of the compromise, but thereafter, there is no other document showing that the Committee has been actually functioning thereafter. Prima-facie, there is no record that at the time of handing over the management of Dera to the plaintiffs, such Committee was actually working. The part of the suit property is owned by Shamlat, which vests in Gram Panchayat and Gram Panchayat has handed over the management of the Dera to the plaintiffs. There is nothing to show that the Dera is not being managed properly, any litigation has arisen or any complaint has been filed with any Authority with regard to usurping the funds of the Dera. The plaintiffs have not acquired the management of the Dera by force or by unlawful means but the same has been handed over to them by Gram Panchayat of the Village itself. Plaintiffs are

not claiming any ownership rights in the property of Dera. Thus, prima-facie, the Gram Panchayat has given responsibility to the plaintiffs to manage the affairs of Dera/suit property in the year 2018 and plaintiffs are properly managing and serving the Dera as per Sikh tenements. So, plaintiffs have got every right to manage the same till this management is taken back in accordance with law. The First Appellate Court, apprehending that there would be law and order problem, appointed the Receiver to manage the affairs of the Dera. When a person is natural or juristic or a Trust and is managing the property, then such person cannot be deprived of the Management/custody of the property by appointing Receiver. The management from the plaintiffs can only be taken back in accordance with law and not forcibly and same cannot be given to the Receiver without any basis. The question whether plaintiff has right to manage the Dera/suit property or defendants have right to manage the same, can only be decided during trial of the case. The appointment of Receiver is one of the extreme measures which the Court normally takes with a view to protect the property being squandered. Before appointing a Receiver, the Court is to keep in view, the rights of the parties, parties interested and there being no adequate remedy to take care of others' interest. A Receiver cannot be appointed to deprive a party of a *de facto* possession. The appointment of Receiver is considered to be very harsh remedy and such jurisdiction should be exercised only in extreme case with utmost care and caution. A Receiver can only be appointed if it appears to the Court to be just and convenient. The meaning of "***just and convenient***" has been explained By Hon'ble Kerala High Court in the case of **Mary and others vs. Biju P. Sebastian** reported as **2011(1)**

R.C.R.(Civil) 43. Para 4 and para 5 of the said judgment read as under :-

“4. What is meant by "just and convenient"? The word, "just" is derived from the Latin word "justus" which came from the Latin word, "jus" which means "a right, more technically a legal right". The word "just" is defined in Century Dictionary as "right in Law or ethics". In the Standard Dictionary that word is defined as meaning "conforming to the requirements of right or positive law". The word "convenience" means "suitability of a thing". Fletcher Moulton, CJ. in ***Edwards & Co. v. Picard [(1909) 2 KB 903]*** has construed the expression "just or convenient" occurring in the Judicature Act, Sec.25(8) thus:

"The effect of the words "just or convenient" is to my mind much the same as "where it is practicable and the interest of justice require it".

Jessel, M.R. in ***Beddow v. Beddow [(1878) 9 Ch.Div. 89]*** stated that in ascertaining what is "just", regard must be had to what is "convenient" as well. 5. Lindley, CJ. stated in ***Holmes v. Millage*** (supra) that court should appoint a Receiver for the protection of rights or for the prevention of injury, according to the legal principles. Referring to Section 503 of the Code of 1882 (quoted supra) Straight, J. held in ***Srimathi Prosonomoyi Devi and another v. Ma Hob Rai and others [(1883) 5 ILR Allahabad 556]*** that the power (for appointment of a Receiver) is not to be exercised as a matter of course and that it is not a reason for allowing an application for appointment of a Receiver that it can do no harm to appoint one. The discretion given by that Section is one

that should be used with the greatest care and caution. The Madras High Court in ***Krishna Swamy Chetty v. Thangavelu Chetty and others (AIR 1955 Madras 430)*** has quoted with approval the following passage from ***Crawford v. Ross [39 Ga 44 (Z 28)]***:

"The high prerogative act of taking property out of the hands of one and putting it in pound under the order of the Judge ought not to be taken except to prevent manifest wrong immediately impending."

Reference was also made to the following words of Atkinson, J. in ***Dozier v. Logan [101 Ga 173 (Z 29)]*** :

"The appointment of a receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the creditors is exposed to manifest peril"

Thus, the order of appointment of Receiver by learned First Appellate Court is per se wrong and is against settled principles of law."

8. The photocopy of proceedings of Gram Panchayat which have been placed today in Court, were not brought on record of this Court and it is not the case of the applicants that despite due diligence, the applicant-defendants could not produce the same. Moreover, these proceedings are of Gram Panchayat and not of any Committee. On 22.05.2018, Gram Panchayat admittedly has handed over the management of the Dera to the plaintiffs and since then, the plaintiffs are managing the said Dera

continuously. The responsibility has been given by the Gram Panchayat to the Dera and earlier also, Gram Panchayat was giving responsibility of the management to the Dera, so at this stage, these documents are of no help to the applicant-defendants. It is nowhere held that defendants are having criminal antecedents. In appeal filed before the District Judge, various FIRs were mentioned which were registered against some of the defendants and there was no denial to that effect. So that evidence is only with regard to registration of criminal cases against some of the defendants. Moreover, said observation is only for the decision of the revision petition and not beyond that. In para 24 of the impugned judgment, it is specifically written that “nothing stated herein above shall have any effect on the merits of the case.” It is also the case of the defendants that the management of the Dera has been given to the Damdami Taksal and Trust has been formed and it is managing the affairs of Dera. The conclusion drawn by this Court that possession of Dera and its properties is with the plaintiffs and they are managing the affairs, is only prima facie as per evidence available on record and said conclusion cannot be called as illegal.

9. I do not find any merit in the application for review. The same is without any merit and is dismissed accordingly.

(GURBIR SINGH)
JUDGE

April 29, 2024
sanjeev

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