

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****123****RSA-2610-2023 (O&M)****Date of decision: 04.05.2026****Geeta Bhawan Trust (Regd.) Hansi****...Appellant(s)****Vs.****Shri Sanatan Dharam Kanya Varishth Madhymik Vidyalaya/****Shri Sanatan Dharam Kanya Maha Vidyalaya, Hansi,****District Hisar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vikas Mohan Gupta, Mr. Vineet Jain,
and Mrs. Tanvi Aggarwal, Advocates
for the appellant.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned District Courts, whereby the suit filed by the appellant for declaration as owner in possession of suit property, has been dismissed by both the District Courts.

2. Brief facts of the case are that plaintiff had filed the present suit seeking declaration that plaintiff-Trust is owner in possession of suit land as described in the plaint; as also mandatory injunction to direct defendant No.3/Tehsildar-cum-Assistant Collector IInd Grade, Hansi, to enter the name of the plaintiff as owner in possession of suit land total measuring 22K-7M.



3. It was the pleaded case of the plaintiff-Trust that it is owner in possession of the suit land by way of adverse possession since the year 1968. The plaintiff-Trust has built a temple of Lord Krishna and Geeta Bhawan on the suit property in the early 50s. Vide Agreement dated 20.01.1968 executed by various partners of the land and registered document No. 69 dated 04.10.1968, the plaintiff-Trust has become legal owner in possession of suit land. Plaintiff-Trust has accordingly applied to defendant No.3/Tehsildar-cum-Assistant Collector IInd Grade, Hansi, District Hansi for getting the suit land transferred/mutated in their name but they avoided the request. Therefore, the revenue entries borne in the name of defendant No.1 are wrong and illegal. Finally, defendants No. 1 to 3 had refused to get the suit land mutated in the name of the plaintiff on 04.08.2008. Accordingly, plaintiff had filed the present suit on 07.08.2008.

4. Alongwith the written statement, defendant No.1 has also filed counter claim stating therein that Moti Ram had purchased land measuring 51K-5M in open bid from custodian and was in possession as owner. However, at the behest of Param Pujya Barahmin Acharya M.M.Swami Ganesh Chand Ji Maharaj, Moti Ram had donated the entire land measuring 51K-5M to defendant No.1 vide Gift Deed dated 22.07.1967 registered on 24.07.1967 and handed over possession of the same to defendant No.1; with the condition that the said land will not be sold or mortgaged; and that defendant No.1 has no power to alienate the same except with the prior permission of donor Moti Ram. Defendant No.

1 had then donated above suit land to the plaintiff vide Gift Deed No. 68



dated 04.10.1968 Ex.P2 with the consent of Moti Ram on the condition as mentioned in the said Deed especially to the effect that number of trustees is not more than 6 and less than 4. However, the plaintiff had started misusing his powers and had even filed a criminal case against some trustees. It was averred in the counter claim that illegal compromise was arrived at which was against the interest of the Trust and against the terms of the Gift Deed.

5. Defendant No.1 also took additional preliminary objection that Sanatan Dharam Kanya Mahavidyalaya Hansi i.e. defendant No.1 is ready to get the suit land entered and sanctioned in revenue record in the name of plaintiff if the plaintiff gives in writing an undertaking that the suit land will neither be sold or transferred by the plaintiff or any one else to any person as per the term 10 of Trust Deed in any condition.

6. In counterclaim the defendant no.1 has sought the relief that the compromise and terms of compromise arrived at between the parties in Geeta Bhawan Vs. Devender Kumar is against law and facts and not binding upon the right of the Sanatan Dharam Kanya Mahavidyalaya Hansi and Geeta Bhawan Hansi. Sh. Sajjan Kumar Aggarwal at present Manager of Sanatan Dharam Kanya Mahavidyalaya Hansi SDKM is a trustee of plaintiff and resignation obtained from Sajjan Kumar Aggarwal was under undue pressure, fraud and illegality. Devender Kumar Garg is liable to furnish the true and accurate account of the plaintiff for the last 12 years duly audited. Devender Kumar Garg be directed to get the account of the plaintiff regularly maintained and audited every year. All the proceedings



for last five years and further in which signatures of the Pritam Aggarwal, Sajjan Aggarwal and Swami Ganeshanand Ji Maharaj or any of them have not been obtained are null and void ab initio and against law and objects of the trust. The expenses occurred and all resolution passed and adopted are against law and fact. Devender Kumar Garg is a person unfit to hold the post of chairman and is liable to be removed from the post of Trustee and Chairmanship of the plaintiff trust.

7. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Hansi, District Hisar had dismissed the suit of the plaintiff as well as counter-claim of defendant No.1 vide judgment and decree dated 22.02.2014.

8. The Civil Appeal filed by the plaintiff as well as cross-objections filed by defendant No.1 were dismissed by the learned District Judge at Hisar vide judgment and decree dated 01.03.2023. Hence, the present second appeal by the plaintiff.

9. It is *inter alia* submitted by learned counsel for the appellant that learned District Courts are in error in non-suiting the appellant as they failed to appreciate that plaintiff had led cogent evidence to establish its possession over the suit property.

10. It is further submitted by learned counsel for the appellant that both the District Courts have erred in not considering the fact that gift of the suit land made in favor of the plaintiff in the year 1968 was an admitted fact. Therefore, once such fact of gift deed was not disputed and on the other hand was not mutated in the revenue records, a simplicitor suit for



declaration and mandatory injunction for entering the mutation based upon the title of the plaintiff ought not to have been dismissed.

11. Learned counsel for the appellant further submits that both the District Courts have erred in not considering Ex. P-2, which was also admitted by the defendants, whereby the suit property was given by defendant No.1 in favor of the plaintiff. However, in the absence of giving up of defendant No.1 by the counsel for the plaintiff, non examination of such plea and admitted documents has been taken against the plaintiff which is erroneous and against law as admittedly in the pleadings, once a stand was taken that all the rights of defendant No.1 have been granted / consigned to defendant No.2, thus such issue cannot be discarded only on account of the fact that defendant No.1 has given up, whereas, said compromise was entered by defendant No.1. Therefore, findings to such effect are liable to be set aside.

12. It is further submitted by learned counsel for the appellant that both the District Courts have erred in not considering and to decide an issue that where a declaration has been sought based upon a title and question of title in dispute, a categorical finding has to be recorded as who is the owner of the suit property. Such findings not being considered at all by both the courts below would lead to passing of perverse and illegal judgment and decree which are liable to be set aside.

13. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.



14. No other argument is raised on behalf of learned counsel for the appellant. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellant.

15. Perusal of the record reveals that on 07.10.2010, the plaintiff had suffered a statement before the learned Trial Court thereby giving up defendant No.1 stating him to be unnecessary party. At the time of argument, plaintiff had also recorded his statement that he does not press the ground of adverse possession as taken in the plaint. The record further reveals that on 04.04.2012, defendant No.2 had recorded a statement withdrawing his counter claim.

16. On a Court query, learned counsel for the appellant/plaintiff has admitted the above said facts; however, has argued that defendant No.1 may not be a necessary party, but he is a proper party to the suit. The said argument of the appellant is merely playing with semantics. Argument of the plaintiff cannot be accepted as, admittedly, vide the present suit, plaintiff is seeking relief against the defendant no.1. As such, the said defendant no.1 is necessary and proper party to the suit.

17. There are concurrent findings of fact returned by both the District Courts that suit was bad for non-joinder of the parties as a perusal of the Jamabandi for the year 2002-2003 Ex.PW2/D and Ex.PW2/E clearly establishes that defendant No.1 is the owner of the suit property. Perusal of Gift Deed dated 04.10.1968 Ex.P2 shows that defendant No.1 had given the suit land to plaintiff-Trust as per the terms and conditions of the said Deed.

However, Plaintiff has made the statement dated 7.10.2010 to the effect



that *"I state that I give up defendant No.1 Shri Sanatan Dharam Kanya Varishth Madhymik Vidyalaya by considering as not necessary party."* By making statement dated 07.10.2010 and giving up defendant No.1 from the array of parties, plaintiff has acknowledged that he is not seeking any relief against defendant No.1. However, the entire relief sought by the plaintiff in the present suit was against defendant No.1. As such, suit of the plaintiff was correctly dismissed for non-joinder of necessary parties as per provision of Order 1 Rule 9 CPC.

18. The First Appellate Court has further found that the present suit has been filed by the plaintiff-Trust through Devender Garg as a Trustee and Chairman of the plaintiff-Trust. However, no resolution in his favour to file the present suit was produced. Therefore, he has no authority to file the present suit without arraying all the trustees of plaintiff Geeta Bhawan Trust. The First Appellate Court has dismissed cross-objections of defendant No.1 holding that under Order 41 Rule 22 CPC, cross appeal should have been filed against the Trial Court judgment; and not cross-objections.

19. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

20. In view of the above undisputed facts, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts below. The present Regular Second Appeal is hereby **dismissed.**

21. Pending applications, if any, stand disposed of.

04.05.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No