

**(1995) 07 P&H CK 0018**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 2425 of 1987

Mahant Brahm Dass Chela

APPELLANT

Mahant Janki Dass

Vs

Mahant Sarju Dass

RESPONDENT

**Date of Decision:** July 18, 1995

**Acts Referred:**

- Evidence Act, 1872 - Section 65

**Citation:** (1995) 111 PLR 337

**Hon'ble Judges:** N.K. Kapoor, J

**Bench:** Single Bench

Advocate: M.L. Sarin and Rahul Rathore, for the Appellant; G.S. Jaswal, for the Respondent

Final Decision: Allowed

**Judgement**

N.K. Kapoor, J.

This is plaintiffs regular second appeal against the judgment and decree of the Additional District Judge reversing the judgment and decree of the trial Court thereby dismissing the suit of the plaintiff.

2. Briefly put, there is a Dharamsala Bonia at Hoshiarpur which belongs to the Bairagi sect. It was under the Mahantship of Mahant Janki Dass who was a Bairagi Sadhu. He had been in its lawful possession and managing the Dharamsala till he died in the year 1988. Plaintiff laid claim to the Mahantship on the death of Mahant Janki Dass on the basis of will-cum-nomination deed dated 18.2.1923 duly executed by Mahant Janki Dass and this way be become Mahant of the Dera Alawalpur. Since the property in dispute was attached to the Bairagi Dera of Alawalpur so the plaintiff had the legal right to be in its possession and manage the same. Sarju Dass-defendant was appointed vide writing dated 30.9.1926 by Mahant Janki Dass for rendering the service to the Mahant of the Dera and for which he was entitled to food, clothing and maintenance etc. It is the case of the plaintiff that defendant had

been rendering accounts to Mahant Janki Dass and after his death to the plaintiff and so his status was as that of Karjun/agent. It is subsequently that he became dishonest and started proclaiming himself as owner of the suit property. Hence the suit. Seeking relief of perpetual injunction restraining Sarju Dass @ Bhagti from alienating the suit property by way of sale, mortgage, gift, lease or will as well as from creating charge or encumbrance in respect thereto.

3. Defendant contested the suit inter alia stating that he was Chela of Mahant Janki Dass and was appointed as Mahant by the Bheikh/Sewaks on 31.3.1940, and a writing was duly executed on 31.3.1940 and ever since then he is in possession of the property and managing the same as Mahant. Execution of will-cum-nomination dated 18.2.1928 by Mahant Janki Dass in favour of the plaintiff was denied. It was further averred that there was no custom providing for nomination of the successor Mahant by way of will. According to the defendant, it is Bheikh/Sewaks who have the final authority to appoint/nominate him. Defendant, however, denied that he was a Karkun/agent. On the pleadings of the parties following issues were framed :-

1. Whether the plaintiff is the Chela of Mahant Janki Dass and that after the death of Mahant Janki Dass the plaintiff became Mahant of Dharamsala Bonia ? OPP.

2. Whether the suit is within limitation? OPP.

3. Whether the plaintiff is in possession of the suit property? OPP.

4. Whether the plaintiff is entitled to the injunction as prayed ? OPP.

5. Relief.

4. Trial decided issues No. 1 to 4 in favour of the plaintiff and so decreed the suit as prayed for.

5. In appeal the lower appellate Court examined the matter on facts as well as law and came to the conclusion that the plaintiff failed to prove that he succeeded to the title of Mahantship as per writing i.e. will-cum-nomination deed dated 18.2.1928 and since this claim set up by the plaintiff had been resisted by the defendant in the earlier suit between the parties the present suit having been filed on October 10, 1981 i.e. more than 3 years since the plaintiff's title to the Mahantship was disputed was thus barred by limitation. Accordingly, lower appellate Court reversed the findings of the trial Court on issue No. 2.

6. Examining the documents i.e. will-cum-nomination deed dated 18.2.1928, certified/photo copy of "Muzharnama" dated 22.10.1938 and the order dated 19.7.1939 with regard to the grant of succession certificate the lower appellate Court came to the conclusion that these documents too did not prove the case of the plaintiff. According to the lower appellate Court will-cum-nomination deed was produced in a suit bearing No. 276 of 1946. Plaintiff in that suit was rejected and so it was open to the plaintiff to take back the original document and produce the same

in the present case. But this was not done. Since the plaintiff only produced the certified copy of the will-cum-nomination deed no presumption as to its execution and attestation can be drawn and in the alternative even if this document could be considered yet there is no reasonable explanation for not laying claim to the property during the last four decades. As regards the Muzharnama dated 22.10.1938 the original is stated to have been lost and the present document was prepared from the certified copy thereof. Thus, the present document is copy of a certified copy and so its execution/attestation cannot be presumed even if it is more than 30 years old. Accordingly, the lower appellate Court discarded this document as well. As regards the declining of the succession certificate claimed by the defendant, Court came to the conclusion that the same relate to only specified goods of Mahant Janki Dass. This way that too does not affect the rights of the defendant in any manner. On the contrary document dated 31.3.1940 clearly prove that the defendant had been appointed as Mahant Bheikh/Sewaks. So the appeal was accepted thereby setting aside the judgment and decree of the trial Court.

7. Challenging the judgment and decree of the Additional District Judge the learned counsel for the appellant after briefly narrating the various salient facts leading to the present controversy urged that the conclusion arrived at by the Court below are not only erroneous as per admitted facts but otherwise also not sustainable in law. Infact, the Additional District Judge has not really comprehended the real dispute nor has examined the matter in the light of well laid down judicial principles. Elaborating, the counsel urged that present was a suit for permanent injunction restraining the defendant from making any transfer of any kind or creating any charge or encumbrance of any kind in respect of the property known as Dharamsala Bonia and so the question of limitation infact has no bearing upon the mater in controversy. Otherwise too, the lower appellate Court has simply glanced over the certain admitted facts i.e. the appointment of the plaintiff as Mahant as per writing duly proved on record by Mahant Janki Dass, the approval of such an appointment by the Bheikh/Sewaks as per writing dated 22.10.1938 and there being no dispute that plaintiff is Mahant of Bairagi Dera of village Alawalpur. Similarly, the lower appellate Court for no valid ground chose to discard the will-cum-nomination deed, Muzharnama and the decision of the Court in the proceedings under the Succession Act. Criticising the lower appellate Court for ignoring the will, the Muzharnama as well as the decision on a succession certificate application counsel highlighted that the plaintiff examined Shri Om Parkash PW1, who deposed that the original will dated 18.2.1928 bears the signatures of his father Baru Ram. Plaintiff himself has appeared as a witness and deposed that Mahant Janki Dass executed this will in his favour. Om Parkash PW1 further deposed that the scribe witnesses including his father had died. It is in these circumstances that Om Parkash, alone appeared as a witness to prove the signatures of his father upon the will. It has come in the evidence of the plaintiff that subsequently the appointment of the plaintiff was put to the Bheikh/Sewaks who vide writing called as Muzharnama

approved his appointment as well. Muzharnama is dated 22.10.1938. It has come on record that original Muzharnama was produced by the plaintiff in the proceedings relating to succession certificate which has been duly noticed by the Court in its decision. It is subsequently that the original Muzharnama was taken from the Court with its permission but had been lost and so the necessity arose of getting a certified copy from a copy produced in the succession certificate proceedings. For the reasons explained such a document could not be discarded by the lower appellate Court. Similarly, the order of the Court in respect of the succession certificate proceedings is a judgment in rem wherein the Court held the plaintiff to be the Mahant as per will, Exhibit P-1 and Muzharnama, exhibit PA, and so declined the defendant's application for grant of succession certificate. With such an impeachable evidence on record the approach of the Court in upsetting the well considered judgment of the trial Court is not only illegal but perverse also. Lastly, the counsel urged that since whereabouts of the defendant are not known rather an application was filed by certain persons seeking permission to be substituted in place of Mahant Sarju Dass proves without any doubt that there is no responsible person looking after the property of this Dera and since the solitary prayer made by the appellant is to restrain the defendant from transferring the suit property or creating any charge by way of sale, mortgage, gift, lease or will or creating any charge or encumbrance of any kind the relief sought ought to have been granted by the Court below.

8. Learned counsel for the respondent supported the conclusion arrived at by the lower Court. According to the counsel, it is for the plaintiff to prove his case. Basis of the claim of the plaintiff is will-cum-nomination deed dated 18.2.1928 and the Muzharnama dated 22.10.1938. Both these documents have not been proved according to law and so the lower Court rightly discarded these documents. Since, admittedly the defendant had been appointed to manage the Dharamsala at Bonia by Mahant Janki Dass, the plaintiff has rightly not been held to the injunction prayed for. According to the counsel declining of the defendant's application for succession certificate in respect of some specified goods of Mahant Janki Dass in no manner advances the case of the plaintiff. Accordingly, the decision of the Court below is according to law and the appeal deserves to be dismissed with costs.

9. I have heard the learned counsel for the parties, perused the judgments as well as other relevant documents referred to by the respective counsel. The primary dispute centres around the determining of the will-cum-nomination deed and Muzharnama as both these documents have been discarded by the lower Court. Will-cum-nomination dated 18.2.1928 was earlier produced in a case between the parties and proved according to law. Since a controversy again had been raised by the defendant, the plaintiff procured a certified copy from the official record and placed it on record. With a view to prove this document plaintiff examined Om Parkash son of Baru Ram who proved the signatures of his father upon the will. The plaintiff deposed in his statement that neither scribe nor any of the attesting

witnesses of the will survive. This precise point has either escaped the notice of the Court or has simply been glossed over. The lower Court has also gone wrong in ignoring the fact that document is more than 30 years old and so there was no need to prove its attestation etc. The matter can be examined from another angle also i.e. in the succession certificate proceedings the present plaintiff contested the claim of the defendant for the grant of succession certificate and with a view to prove his case adduced in evidence the will-cum-nomination deed as well as Muzharnama. The Court relying upon these documents found merit in the contention of the plaintiff and so declined the defendant's prayer for grant of succession certificate. Order dated 30.7.1939, Exhibit P-3, on the application for grant of succession certificate is a judgment in rem which by itself also negatives the stand of the defendant. Similarly, the lower Court for no good reason ignored the Muzharnama dated 22.10.1938. This document too was produced in the Court and proved as well. Subsequently, a certified copy of this document was placed on record and original was taken with the permission of the Court. It has come in evidence that original Muzharnama, Exhibit P-A, was lost. It is in these circumstances that the plaintiff got a certified copy from a certified copy on record and adduced the same in evidence to prove his claim. There is ample evidence on record that the original Muzharnama was proved in the previous suit and has subsequently been lost. Support in this connection has been sought from the decision in Munshi Ram v. Baisakhi Ram and Ors. A.I.R.1947 Lah 335 in which it was held that "where the original document which was proved in the previous suit has been proved to have been lost, a copy of its translation is admissible in evidence...." In the present case, not only the document was proved on record, the same was accepted as a valid document as per Exhibit P-3, order passed by the Court in succession certificate application. The decision of the lower Court is otherwise also not sustainable as admittedly, this Dharamsala is the property of the gadi at Alawalpur of which the plaintiff is admittedly a Mahant. Thus, I am of the view that it is amply proved on record that the plaintiff has been appointed as Mahant as per writing dated 18.2.1928 and approved by the Bheikh/Sewaks vide Muzharnama dated 22.10.1938. Since the solitary claim of the plaintiff is that defendant be restrained from selling or creating any charge upon the property of the Dera such a suit cannot be said to be barred and finding of the lower Court in this regard is accordingly reversed.

10. Thus, I accept the appeal, set aside the judgment and decree of the Additional District Judge and affirm the judgment and decree of the Trial Court thereby decreeing the suit of the plaintiff.

No order as to costs.