

(2006) 10 P&H CK 0094

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Kuldeep Singh @ Kuldeep Dass

APPELLANT

Vs

Uttam Dass and Others

RESPONDENT

Date of Decision: Oct. 18, 2006**Citation:** (2007) 147 PLR 689 : (2007) 3 RCR(Civil) 63**Hon'ble Judges:** Mahesh Grover, J**Bench:** Single Bench

Judgement

Mahesh Grover, J.

This judgment shall dispose of the above mentioned three Regular second Appeals as they are governed by common set of facts.

2. Briefly stated, the facts are that one Uttam Dass claiming himself to be Chela Sher Singh, Chela Kahan Singh filed civil suit No. 75 of 3.2.1986 seeking a declaration to the effect that he is the duly appointed Chela of Sher Singh. In the said proceedings, Sher Singh and one Kuldeep Singh were arrayed as defendants. It was, inter alia, pleaded by Uttam Dass that he was in possession of the land measuring 90 kanals and 5 marlas which is in the ownership of Dera Udasia Rajgarh and that decree dated 18.5.1985 passed in civil suit No. 258 of 2.5.1985 suffered by Sher Singh in favour of Kuldeep Singh is null and void. A prayer for grant of consequential relief of permanent injunction was also made seeking to restrain Kuldeep Singh from alienating the suit land. Uttam Dass further claimed that he was the duly appointed Chela of Sher Singh in the presence of the panchayat after following due procedure governing Udasia sect.

3. Kuldeep Singh, who was one of the defendants in the suit filed by Uttam Dass, also filed civil suit No. 151 of 7.3.1986 for permanent injunction seeking to restrain Uttam Dass, Sucha Singh, Paramjit Singh, Harpal Singh, Mehar Singh, Puran Singh and Sher Singh, Chela Kahan Singh (defendants therein) from interfering in his possession over the land in question and from raising any construction thereon. It was pleaded that the aforesaid persons have no concern with the suit land.

4. Both the above suits were consolidated by the trial Court vide its order dated 28.11.1986 and the proceedings were directed to be conducted in the suit filed by Uttam Dass in which the following issues were framed:

1. Whether the plaintiff is the perokar and duly appointed chela of Sher Singh, defendant No. 1? OPP
2. Whether the plaintiff manages the property of the dera on behalf of defendant No. 1 and is in possession of the same as defendant being old and is unable to manage the same? OPP
3. Whether the decree dated 18.5.1985 was obtained by misrepresentation and fraud and is collusive and is not binding being, nullity as mentioned in para No. 3 of the plaint? OPP
4. Whether the mutation No. 975 sanctioned on the basis of the said decree is not binding on the plaintiff? OPP
5. Whether defendant No. 2 is not duly appointed chela of defendant No. 1 as stated in para No. 4 of the plaint? OPP
6. Whether the plaintiff has locus standi to file the present suit? OPP
7. Whether the plaintiff is entitled to the declaration prayed for? OPP
8. Whether the suit has not been properly valued for the purposes of court-fee and jurisdiction? OPD
9. Whether Kuldeep Singh defendant No. 2 is duly appointed mohitmim of the dera as stated in para No. 1 of the written statement? OPD
10. Relief.

After examining the oral as well as documentary evidence led by the parties, the trial Court disposed of both the suits vide judgment dated 25.8.1989. It was declared that the suit land measuring 90 kanals and 5 marlas was owned by Dera Udasia, Rajgarh and that decree dated 18.5.1985 passed in civil suit No. 258 of 1985 and consequential mutation are void. The other prayers made by the Uttam Dass in his suit were declined, whereas the suit filed by Kuldeep Singh was dismissed in toto.

5. Feeling aggrieved, Uttam Dass and Paramjit Singh, Harpal Singh, Mehar Singh, Puran Singh and Sucha Singh filed two separate appeals, whereas Kuldeep Singh and Slier Singh, Chela Kahan Singh filed Cross Objections against the judgment and decree of the trial Court.

6. The learned Lower Appellate Court dismissed both the appeals and the Cross Objections, which resulted in filing of the present Regular Second Appeals by Uttam Dass and Kuldeep Singh (two by Uttam Dass and one by Kuldeep Singh).

7. I have heard learned Counsel for the parties and perused the record.

8. In the present proceedings, Uttam Dass at whose behest the whole controversy was generated, has chosen not to pursue his appeal and has gone unrepresented at the time of final arguments. So, the only question that has to be addressed herein is as to whether Kuldeep Singh or Uttam Dass was the duly appointed chela of Sher Singh and whether Paramjit Singh, Harpal Singh, Mehar Singh, Puran Singh and Sucha Singh have any concern with the suit land owned by Dera Udasia, Rajgarh, which would entitle them to interfere with the same.

9. A scrutiny of the record reveals that there is over-whelming evidence in the form of statement of Sher Singh, Chela Kahan Singh, himself, who has admitted that Kuldeep Singh was appointed as his Chela in the presence of Sadhus and that Kuldeep Singh had been serving him since childhood. Exhibit D-I is the writing dated 5.4.1983 to that effect. Even in his testimony as DW-6, Sher Singh (described as Sher Dass while recording his statement) has admitted the fact that Kuldeep Singh is authorised to manage the affairs of the Dera. There is nothing on record to suggest that the said testimony is not free from any blemish.

In view of the above, the right of Kuldeep Singh to manage the affairs of the Dera as Chela of Sher Singh is, therefore, duly established.

10. Besides, R.S.A. No. 662 of 1994 was filed jointly by Kuldeep Singh and Sher Singh, implying their joint and common interest. Sher Singh's name was deleted from array of the appellants vide this Court's order dated 18.8.1994 passed in C.M. No. 3280-C of 1994. On 9.3.1999, Kuldeep Singh filed CM. No. 1380-C of 1999 stating therein that Sher Singh has died on 25.3.1997 leaving behind him (Kuldeep Singh) as his only legal representative vide registered Will dated 4.2.1991. It was prayed therein that the name of Sher Singh be deleted and Kuldeep Singh be impleaded as his legal representative. That C.M. was allowed vide order dated 12.3.1999.

11. That apart, there is no controversy about the fact that the property in question belongs to Dera Udasia as determined by a Division Bench of this Court in F.A.O No. 36 of 1965 - Shiromani Gurdwara Parbandhak Committee, Amritsar v. Sher Singh Chela Kahan Singh decided on 1.10.1973. The fact that Sher Singh was the Meharant of the Dera is also not in dispute. Concededly, the land of the Dera is in possession of the tenants and Kuldeep Singh is receiving rent thereof being its manager.

12. As far as Paramjit Singh and others are concerned, they have not been able to show as to in what capacity they were involved in the affairs of the dera or as to how they were interested in its property except as strangers with an intention to meddle in its affairs unauthorisedly. To a pointed question by this Court during the course of hearing, learned Counsel for Paramjit Singh etc. could not throw any light on this aspect.

13. The question of law that would arise in the present appeals is, "Whether in view of the categorical admission made by Sher Singh in favour of Kuldeep Singh, the findings recorded by the lower Appellate Court can be termed as perverse or not?"

After thoughtfully considering the matter and for the foregoing reasons, I have no hesitation to hold that the findings of the lower Appellate Court are perverse. Once an admission is made in favour of a person by a sworn testament, then it is to be given its due, by placing reliance on it, unless shown to be suffering from some blemish. The totality of facts and circumstances is to be weighed in the backdrop of the said admission and if found inspiring, ought to be accepted.

14. Resultantly, R.S.A. No. 662 of 1994 is allowed and R.S.A. Nos. 1184 and 1674 of 1994 are dismissed. It is held that Kuldeep Singh shall be entitled to manage the affairs of Dera Udasia, Rajgarh and Uttam Dass, Sucha Singh, Paramjit Singh, Harpal Singh, Mehar Singh and Puran Singh (respondents in R.S.A. No. 662 of 1994) are restrained from interfering in the suit property in any manner.