

(2003) 03 P&H CK 0124

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1012 of 2003

Nachhattar Singh

APPELLANT

Vs

Rajinder Singh and ors.

RESPONDENT

Date of Decision: March 7, 2003

Citation: (2003) 3 ICC 158 : (2003) 2 RCR(Civil) 687

Hon'ble Judges: M.M.Kumar, J

Advocate: Shri Harkesh Manuja, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

This appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for brevity the Code) is directed against the concurrent findings of facts recorded by both the Courts below holding that the property in dispute does not belong to Gram Panchayat or Gurdwara Sahib or Shri Guru Granth Sahib. It has further been held that the property belongs to the Dera of Nirmala Bheikh which is an independent sect of Sadhus recognised by the Supreme Court in the case of Mahant Harnam Singh v. Gurdial Singh and, others AIR 1967 SC 1415. The views of the learned appellate Court read as under:

"..... plaintiffs could not show by any reliable evidence as to how they had any acknowledged interest in the institution in village Mahla Kalan and being a pure Nirmala Sadhu Dera where free kitchen has been run also does not entitle the plaintiffs to institute a suit contrary to the provisions contained in Section 92 of the CPC. So, in view of the acknowledged fact on the record which has also been duly proved, it is held that the suit property belongs to the institution Nirmala Sadhus and as such even Mahant Rajinder Singh who was the Mohatmam of the Dera managing the property could not by any means create a trust as per Ex.P.4 and Ex.P.4A and the resolutions Ex.P.2 and Ex.P.3 for the removal of Rajinder Singh are also illegal and invalid as the village Panchayat has no right to remove a Mahant whose removal could be as per custom of Nirmala Sadhus and it is very well established on the record that after the death of Mahant Rajinder Singh, defendant

No. 15, Mahant Lakhbir Singh has succeeded to Mahantship and rather Mohatmamship of the dera and who as such is obliged to manage the affairs of the Dera and very trust deed Ex.P.4 created by deceased Mahant Rajinder Singh is invalid and illegal and does not confer any power to the trustees."

2. I have heard Shri Harkesh Manuja, learned counsel for the plaintiff appellant who has vehemently argued that the property belongs to Gram Panchayat and the document Ex.P.1 executed by Mahant Rajinder Singh would prove that fact. Learned counsel has made an attempt to persuade me to take a view different than the one taken by the Courts below and to hold that the findings recorded by both the Courts below suffer from legal infirmities warranting interference under Section 100 of the Code.

3. Having heard the learned counsel, I do not find that there is any substantive question of law raised before me warranting admission of this appeal. Both the Courts below have concurrently found that plaintiff respondents have failed to prove any interest in the institution situated in village Mahila Kalan which is held to be Nirmala Sadhu Dera. These are pure findings of facts based on proper appreciation of evidence. Both the Courts below have relied on document ExD1 and the testimony of DW 1 Sham Singh, DW 2 Mahant Lakhbir Singh to hold that the property belongs to the institution known as Nirmala Sadhu Dera. It is well established that the findings of facts cannot be reversed by this Court in second appeal even if another view is possible. In a catena of judgments, the Supreme Court has held that in the absence of any material to show that the findings arrived at could not have been reached by taking into consideration the evidence left out or by omitting the evidence which has been taken into consideration, the findings cannot be interfered with by the High Court in a second appeal. The Apex Court has laid down and reiterated this proposition of law in the cases of *Tirumala Tirupati Devasthanams v. K.M. Krishnaiah*, 1998(3) RCR(Civil) 6 (SC) : (1998)3 SCC 331; *Satya Gupta v. Brijesh Kumar*, 1998(4) RCR(Civil) 37 (SC) : (1998) 6 SCC 423; *Chandrabhagabai v. Ramakrishna and others*, 1998(3) RCR(Civil) 391 (SC) : (1998) 6 SCC 207; *Ram Prasad Rajak v. Nand Kumar and Bros. and another*, 1998(2) RCR(Rent) 249 (SC) : (1998) 6 SCC 748; *M.G. Hegde and others v. Vasudev*, (2000) 2 SCC 213; *State of Rajasthan v. Harphool Singh (dead) through L.Rs.*, 2000(3) RCR(Civil) 191 (SC) : (2000) 5 SCC 652; *M. Nadar Kesavan Nadar v. Narayanan Nadar Kunjan Nadar*, (2000) 10 SCC 244; *Baidyanath Bhattacharya v. S. Karmakar*, (2000) 9 SCC 505; *Manorama Thampuratti v. C.K. Sujatha Thampuratti* (2000) 9 SCC 233; *Chandragouda and another v. Shekharagouda S. Pittanagoudar*, (2000) 10 SCC 617; *Thimmaiah and others v. Ningamma and another*, 2000(4) RCR(Civil) 609 (SC) : (2000) 7 SCC 409; *Mohd. Abdul Muqtedar v. Sk. Fakruddin*, (2000) 9 SCC 384; *G. Thankamma Amma v. N. Raghava Kurup*, (2000) 9 SCC 517; *Ananta Kalappa Jaratakhane v. Krishtappa*, (2000) 9 SCC 735; *Kempaiah v. Doddanaraiah*, (2000) 9 SCC 60; *Mohd. Hadi Hussain v. Abdul Hamid Choudhary*, (2000) 10 SCC 248 and *Ajit Chopra v. Sadhu Ram*, 1999(4) RCR(Civil) 635 (SC) : (2000)1 SCC 114. Their Lordships of the Supreme

Court have also held that for the exercise of jurisdiction by the High Court under Section 100 of the Code the existence of substantial question of law is a sine qua non. It has further been held that where the findings of fact of the lower appellate Court are based on evidence, the High Court in second appeal cannot substitute its own finding on reappreciation of evidence merely on the ground that another view was possible. Even in the cases concerning title and ownership, the findings of fact as recorded by the courts below are considered by their Lordships to be the final. The same view has been reiterated in the recent judgment rendered in the case reported as *Kulwant Kaur v. Gurdial Singh*, 2001(2) RCR(Civil) 277 (SC) : (2001) 4 SCC 262 wherein Section 41 of the Punjab Courts Act, 1918 has been declared ultra vires of Section 100 of the Code. The appeal is devoid of any merit and is thus liable to be dismissed.

For the reasons recorded above, this appeal fails and the same is dismissed.