
Vikas Sharma Vs Varun Sharma & Ors.

CMPMO No. 124 of 2015

Court: High Court of Himachal Pradesh

Date of Decision: May 31, 2018

Acts Referred:

Code of Civil Procedure, 1908 " Order 40 Rule 1

Hon'ble Judges: SURESHWAR THAKUR

Bench: Single Bench

Advocate: Bimal Gupta, Rubeena Bhat, Neeraj Gupta

Final Decision: Disposed Of

Judgement

Sureshwar Thakur, J.

1.The plaintiff, claims succession, to the Guru Gaddi Baba Jhalla Ji. He has prayed, for rendition of a declaratory decree, qua his being entitled to

inherit, the Guru Gaddi Baba Jhalla Ji, besides has sought a declaration, qua, defendant No.2, being disentitled to declare himself, as, the Mahant

(Jhalla Ji). The substratum, of the claim reared, in the plaint, by the plaintiff, is, squarely rested, upon, there existing customs and traditions,

whereunder, succession, to, the Guru Gaddi Baba Jhalla Ji, is bestowable only upon the eldest surviving son, of the preceding Mahant, of, Guru Gaddi

Baba Jhalla Ji. Furthermore, the plaintiff avers, of, one Gurdiyal Singh, erstwhile Mahant, of, Guru Gaddi Baba Jhalla Ji, executing a will, on

26.07.2008, in consonance, with, the apt customs and usages, whereunder, he appointed, the plaintiff, being his eldest grand son, to succeed vis-a-vis,

the Guru Gaddi Baba Jhalla Ji, upon, occurrence, of, demise of one Virender Sharma. However, Virender Sharma, upon, occurrence of his demise, on,

22.09.2012, is, disclosed to be survived, by only female issues, and, his widow one Indra Sharma, rather collusively appointing, and, declaring defendant

No.2, one Varun Sharma, the youngest grand son, of, one Gurdiyal Singh, to be the Mahant, of, Guru Gaddi Baba Jhalla Ji. In sequel, the plaintiff,

avers qua hence derogation vis-a-vis the customs enjoined to be revered, qua succession, to the spiritual seat of Mahant of Guru Gaddi, Baba Jhalla Ji,

hence, occurring, derogation whereof, is comprised in the plaintiff, despite, being the eldest grand son, of, Gurdiyal Singh, also, his being bequeathed,

the Guru Gaddi Baba Jhalla Ji by his grand father, one Gurdiyal Singh, who, during his life time held the spiritual seat, of, Guru Gaddi Baba Jhalla Ji,

rather his youngest grand son, defendant No.2 Varun Sharma, declaring himself, to be the Mahant, of, Guru Gaddi Baba Jhalla Ji.

2. Written statement to the plaint, was, instituted by defendants No.2 to 5, wherein they denied the claim, of the plaintiff, especially, the one occurring,

in, the apposite paragraph No.2, contains, a denial, of, their existing custom, tradition, and, usages, vis-a-vis, the succession to the spiritual seat, of

Mahant to Guru Gaddi Baba Jhalla Ji, comprised, in the eldest male concerned, being alone entitled to occupy the seat of Mahant of Guru Gaddi Baba

Jhalla Ji. It is also contended, in the apposite paragraph No.2, of, the written statement furnished, to, the corresponding paragraph thereof, qua the

Guru Gaddi Baba Jhalla Ji, being a spiritual seat, and, succession thereto being only, on, spiritual merit. The learned trial Court, during, the pendency of

the suit, on an application cast under the provisions of Order 40, Rule 1 of the CPC, provisions whereof stand extracted hereinafter:-

“1. Appointment of receivers.- (1) Where it appears to the court to be just and convenient, the court may by order—

(a) appoint a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(C) commit the same to the possession, custody or management of the receiver; and (d) confer upon the receiver all such powers, as to bringing and

defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits

thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as

the court thinks fit.

(2) Nothing in this rule shall authorise the court to remove from the possession or custody of property any person whom any party to the suit has not a

present right so to remove. by the plaintiff/petitioner herein, for hence appointing, a receiver for managing the funds of the apposite Guru Gaddi

Baba Jhalla Ji, allowed the apposite application, whereas, the learned Appellate Court, upon the defendant instituting, an appeal therefrom before it,

allowed, the latter's appeal. The plaintiff/petitioner herein is aggrieved therefrom, hence, has instituted the instant petition before this Court.

3. The respective Wills propounded by the plaintiff, and, by defendant No.2, Varun Sharma, respectively, of Gurdiyal Singh, and, of one Virender

Sharma, the apposite preceding Mahants, of, Guru Gaddi Baba Jhalla Ji, yet remain to be pronounced, to be validly executed. Moreover, the customs,

traditions and usages, espoused by the plaintiff, governing, the inheritance, to, the spiritual seat of Mahant, of Guru Gaddi Baba Jhalla Ji, AND, as

comprised in the eldest son, being solitarily entitled to succeed thereto, are, also under contest. However, the contention raised by defendant No.2, one

Varun Sharma, in respect of the aforesaid claim nor the propagation made by the plaintiff in respect thereof, is availed, upon, any prima facie material,

in support(s) thereof, yet existing on record. However, the apt paragraph 2, of the plaint, makes a graphic/uncontroverted disclosure qua hence

succession, to the spiritual seat of Mahant of Guru Gaddi Baba Jhalla Ji, being bestowed, upon, the eldest son, of, the preceding Mahant, of, Guru

Gaddi Baba Jhalla Ji, (I) thereupon, it is prima facie hence inferable qua the relevant customs, usages, and, traditions, rather hence enjoining

succession to the apt spiritual seat, of, Mahant of Guru Gaddi Baba Jhalla Ji, by the eldest son, of, the preceding Mahant, of Guru Gaddi Baba Jhalla Ji,

prima facie, may be, acquiring some tenacity, dehors, no documentary material in respect thereof yet existing, on record. If so, defendant No.2, Varun

Sharma, who, is the youngest grand son, of, one Gurdiyal Singh, the latter whereof, in his life time, held, the apt spiritual seat, of, Mahant of Guru

Gaddi Baba Jhalla Ji, and, who bestowed in prima facie conformity, with, the afore referred customs AND, also, bequeathed the spiritual seat of

Mahant of Guru Gaddi Baba Jhalla Ji, upon the plaintiff, given the preceding Mahant, one Virender Sharma, being survived by only female issue(s), (ii)

does apparently confer vis-a-vis the plaintiff, dehors the apposite wills, being yet not proven, to be validly executed, a right superior to the claim,

foisted, by defendant No.2, Varun Sharma, to hence succeed to the spiritual seat, of Mahant, of, Guru Gaddi Baba Jhalla Ji.

4. The aforesaid trite factum, does override, and, benumb, all the conclusions, made by, the learned Appellate Court, contrarily, hence the mandate, of,

the Hon'ble High Court Madras, in a case titled as T. Krishanaswamy Chetty v. C. Thanguvelu Chetty and others, reported in AIR 1955 Madras 430,

the relevant portion whereof, is, extracted hereinafter, qua upon existence, of, imminent proof, of the plaintiff prima facie, holding an excellent chance

of succeeding, the Court hence appointing a receiver for the relevant purpose, does obviously, hereat, attain satisfaction.

“(1) The appointment of a receiver pending a suit is a matter relating, resting in the discretion of the Court.

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has a very excellent chance of succeeding in the

suit.

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but he must show some emergency or danger or loss

demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important

consideration.

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause

irreparable wrong. It would be different where the property is shown to be 'in medio', in the enjoyment of no one. And

(5) The Court, on the application made for appointment of a receiver, looks to the conduct of the party who makes the application and will usually

refuse to interfere unless his conduct has been free from blame.~Sequel thereof, is, that with the spiritual seat of Mahant, of Guru Gaddi Baba Jhalla

Ji, being blessed, with offerings, by its, followers, and, also its possessing immense assets, and, funds, thereupon, for ensuring the proper management,

of all, the apt assets, appertaining, to the Guru Gaddi Baba Jhalla Ji, and, for appropriate management, of the all the offerings, made to the Guru Gaddi

Baba Jhalla Ji, thereupon, the appointment of a receiver, as made by the learned trial court, is required to be validated.

5. For the foregoing reasons, the instant petition is allowed and the order render by the learned District Judge concerned in Civil Misc. Appeal No. 04-

CMA/14 of 2014 is set aside, whereas, the order rendered by the learned trial Court on 28.12.2013 is affirmed and maintained. The parties are

directed to appear, before, the learned trial Court, on 11th June, 2018. However, it is made clear that the observations made hereinabove shall have no

bearings on the merits of the case. No order as to costs. All pending applications also stand disposed of . Records, if received, be sent back forthwith.