
(2000) 02 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 80 of 1990

Laj Dass

APPELLANT

Vs

Parkash Muni, Chela Swami Shankra Nand Ji and Others

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

Citation : (2000) 125 PLR 404

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : O.P. Goyal and Munish Jolly, for the Appellant; P.K. Palli Jai Bhagwan and Sangita Dhanda, for the Respondent

Judgement

M.L. Singhal, J.—Parkash Muni chela Swami Shankranand Ji filed suit for declaration against Harsarup Brahamcharje son of Laj Dass son of Bachan Dass, Laj Dass, Krishna Kumar, Surjit Kaur and Sukhdev Dass who are son, daughters and son of Bachan Dass to the effect that he (plaintiff) being the chela of Swami Sankranand Ji inherited land measuring 68 kanal 19 marla as recorded in jamabandi for the year 1979-80 situated in village Latala, Tehsil and District Ludhiana and a dera built on the said land and that mutation sanctioned in favour of Laj Dass and others defendants 2 to 5 by Assistant Collector, First Grade, Ludhiana vide order dated 6.2.85 was illegal, ineffective so far as his rights are concerned and that he is the exclusive owner of the property on the same terms and conditions is held by Swami Shankranand Ji. He sought permanent injunction restraining the defendants from alienating any portion of the property in any manner whatever. He also sought possession of the property.

2. It was alleged in the plaint that this property was donated by the proprietors of the village about a century ago to the Udasin sect. This property was treated as religious dedicated property thereafter. Daya Ram was holding this property as owner on behalf of the Udasin sect. On his death, which took place in 1912, the property devolved upon Shri Bishan Dass as chela and spiritual son of Daya Ram.

Bishan Dass also held the property on behalf of Udasin sect. The character of the property was religious endowment property subject to inheritance by Chela of Bishan Dass. Property devolved upon Bishan Dass being chela as according to the tenets and practices of Udasin sect, chela is equivalent to spiritual son and inherits property of guru as son. Bishan Dass executed gift deed in favour of his chela Ramsarup dated 2.1.1918. Execution of the gift deed was in acceleration of succession in favour of his chela Ramsarup. On 13.11.1946, Ramsarup executed gift deed in favour of his chela Shankranand and that was in acceleration of succession. Mutation was entered in favour of Shankranand on 6.3.1948. Shankranand died on 17.12.1983 when he was on a religious mission to Calcutta. Plaintiff Parkash Muni claiming himself to be chela of Sahnkranand Ji claimed to have inherited the entire property. He was accepted and acknowledged as chela by Shankranand Ji in the trust deed and also purchase deed executed by him during his lifetime. Last rites of Shankranand Ji were performed by the plaintiff. He thus claimed succession to Shankranand Ji being his chela. Harsarup Brahamcharji defendant set up a will dated 6.4.1983 alleged to have been executed by Shankranand Ji in his favour. He applied for mutation of the property in suit in his favour. Plaintiff contested his prayer for mutation of the property in his favour. Revenue Officer did not accept the will but he held the property to be the personal property of Shankranand Ji and ordered the mutation to be effected in favour of defendants 2 to 5 being the legal heirs of Shankranand Ji. It was alleged in the plaint that the order mutating the property in favour of defendants 2 to 5 by the revenue officer was illegal and void as the plaintiff was the only legal heir being the spiritual son and chela of late Shankranand Ji in whom the property vested being the chela of Ramsarup. It was property dedicated for religious purpose in which dera has been built where Udasin sadhus come and stay. It could not be termed to be personal property of Shankranand Ji.

3. Defendants 2 to 5 contested the suit of the plaintiff urging that Shankranand and his relations are Hindus. They are governed by the Hindu Succession Act in matters of succession. Shankranand's real name was Baldev Dass son of Bachan Dass son of Sahib Dass. Shankranand alias Baldev Dass was unmarried. He left behind Laj Dass etc. Defendants 2 to 5 who are his brothers and sisters. Defendants 2 to 5 are the only heirs of Shankranand Ji and as such they had the right to succeed Shankranand Ji being his brothers and sisters. Shankranand Ji executed valid will dated 6.4.1983 in favour of Harsarup Brahamcharji. After the death of Shankranand, Harsarup Brahamcharji was appointed mohtmim/mahant in place of Shankranand alias Baldev Dass by the gathering. Installation ceremony was conducted on 28.12.1983. Land in suit was the exclusive property of Shankranand alias Baldev Dass and, therefore it had to devolve upon his natural heirs in accordance with the provisions of Hindu Succession Act. It was denied that the plaintiff Parkash Muni was the chela of Shankranand alias Baldev Dass. Assuming that he is proved to be the chela of Shankranand, this property cannot devolve upon him being the personal property of Shankranand. It was denied that the property in suit was religious and dedicated property. Harsarup

Brahamcharji was appointed mohtim/mahant of personal property of Shankranand alias Baldev Dass Harsarup Brachamcharji was rightly claiming the property of Shankranand on the basis of will dated 6.4.1983." This background has been given with a view to be able to understand better the facts of application made under Order 6 Rule 17 CPC for amendment of the written statement by Laj Dass etc. defendants before the Sub Judge which was declined by him vide the impugned order dated 11.12.1989 which is the subject of challenge before this Court through this revision. Through this application, Laj Dass etc. defendants 2 to 5 sought to plead that Laj Dass was put in possession as tenants during the lifetime of Shankranand in Kharif 1982 and he is continuing in possession as tenant and that if Laj Dass is in possession as tenant, civil Court has no jurisdiction to entertain the suit so far as relief of possession is concerned. This application was opposed by the plaintiff urging that the proposed amendment cannot be allowed to be effected in the written statement as proposed amendment runs counter to the defence set up by them originally. Originally, their defence is that this property was the personal property of Shankranand alias Baldev Dass son of Bachan Dass. They are his brothers and sisters and as such succeed to the property as his natural heirs. If this property is held to be the property dedicated for a religious purpose, this property devolved upon Harsarup Brahamcharji who had been appointed as chela by him through will dated 6.4.1983 and whose appointment as Chela was approved by the Udasin sect at the installation ceremony that took place on 27.12.1983. If they are allowed to incorporate the proposed amendment, the effect would be pertaining them to withdrawn what they had earlier said so far as their stand is concerned.

4. I have heard Shri O.P. Goyal, Sr. Advocate for the petitioner and Shri P.K. Palli, Sr. Advocate for the respondent-plaintiff Prakash Muni.

5. It was submitted by the learned counsel for the petitioner that petitioner and his brothers and sisters have originally thwarted the claim of the plaintiff who is claiming this property as chela appointed by Shankarnand Ji on whom this property had developed from his guru through gift deed dated 13.11.1946 which was in acceleration of succession on the ground of its being personal property of Shankarnand Ji. Through the proposed amendment, they want to thwart his claim to possession saying that Laj Dass was inducted as tenant to this land by Shankranand in Kharif 1982. Civil Court cannot dispossess Laj Dass if he is tenant. A tenant can be dispossessed if there is an ejectment order by the revenue court against him it was submitted that in the original written statement they put up resistance only to the plaintiff respondent's claim to ownership. They forgot to put up resistance to his claim to possession and through the proposed amendment, they want to put up resistance to the plaintiff's claim to possession assuming that he is able to carry the day so far as ownership is concerned. It was submitted that the law is liberal so far as the amendment of pleadings is concerned. Law is still more liberal so far as amendment to written statement is concerned. It was also submitted that the proposed amendment should have

been allowed as it is not in negation of the attack originally launched to thwart the claim of the plaintiff. It was submitted that the relief claimed is divisible into two parts. In the first place, the plaintiff has claimed relief of declaration of ownership. In the second place, which is consequence of the first relief he has asked for possession. Reading of the plaint suggests that the plaintiff claimed relief of possession as a consequence of the relief of declaration and the defendants 2 to 5 have put up resistance to his claim to ownership only. By way of proposed amendment, they want to plead that plaintiff was not entitled to possession even if he is able to prove that this property was religious property held by Shankranand Ji and it devolved upon him as his chela because he (Laj Dass) was inducted as tenant to this land by Shankranand Ji in Kharif 1982 and that his possession was that of a tenant and no decree for possession could be passed by a civil Court against a tenant. It was submitted that rules of procedure are mere hand-maid of justice. They have been devised with a view to enable the courts to do substantial justice. Amendment can only be refused if it is barred by some statutory provision or the party has acquired a right which cannot be taken away in the garb of amendment or that amendment sought is mala fide. In support of this submission, he drew my attention to *M/s Asian Chawla Udyog v. Sushma Bansal* (1989) 96 P.L.R. 538. It was submitted that the amendment of pleadings should be allowed even if through amendment case inconsistent to the case originally set up is sought to be set up. If the new plea sought to be set up is little inconsistent amendment should be allowed provided the new plea sought to be raised is not in negation of the original plea and both the pleas can exist side by side and are alternative to each other. In support of this submission, he drew my attention to *Gulwant Kaur Vs. Mohinder Singh and Others*, where the original plea of the defendant was that the property was gifted to her and that she was in possession of the house as owner from a particular date. Plea sought to be raised through amendment was that if gift is not proved she being in continuous possession of the property from that particular date, she became absolute owner by adverse possession. This plea was allowed to be incorporated through amendment of the written statement.

6. Learned counsel for the respondent-plaintiff, on the other hand, submitted that the proposed amendment should not be allowed. Plaintiff filed the suit for declaration, injunction and possession in June, 1995. Defendants 2 to 5 filed written statement in September 1985. Application for amendment of the written statement was moved by them in February 1989. Issue were framed on 22.2.1986. It was submitted that the prayer for amendment was made mala fide with a view to remain in possession as long as they can remain in possession. It was submitted that if Laj Dass was tenant indicated by Shankranand in Kharif 1982, this fact was very well known to them and this fact could be incorporated in the original written statement filed by them in September 1985. It was further submitted that if the proposed amendment is allowed, that would tantamount to enabling them to withdraw what they had said earlier. Earlier they were putting claim to this property being the natural heirs of Shankranand and if they fail to

prove this fact, there will be nothing in their armoury to put up resistance to the claim of the plaintiff. There is another suit filed by Laj Dass and Sukhdev Dass son of Bachan Dass, against Jethu son of Inder Dass (proclaiming himself as Parkash Muni chela Shankranand) and Krishan Kumari and Surjit Kaur defendants for declaration that they; Krishna Kumari and Surjit Kaur and owners in equal share of land measuring 73 kanal 16 marla. In that suit, it has been clearly pleaded that land is being cultivated by Laj Dass in the capacity of tenant since Kharif 1982 which status will continue in the event of their failure to claim the primary relief of declaration of ownership. In para 3 of the plaint of that suit, there is a very clear averment to this effect. That suit was filed in September, 1985. It is thus clear that in the written statement filed in the suit in hand, there was omission by Laj Dass etc. to take up this plea. Laj Dass etc. cannot, however, be allowed to take up this plea that the suit is not cognizable by the civil Court even with regard to the relief of declaration and injunction in view of the proviso to Section 77 of the Punjab Tenancy Act because it is the civil Court which is the primary forum to determine the question of status cannot be determined by the revenue Courts. If the civil Court finds that Laj Dass was inducted as tenant by Shankranand, the civil Court may be unable to grant the relief of possession. Revenue Court can proceed to determine the question of ejectment of Laj Dass from the land without re-opening the finding of the civil court as to status. It is true that the amendment prayed for was made belatedly but it is equally true that if defendants 2 to 5 are found to be in possession of the land unauthorisedly, the plaintiff can seek mesne profits from them. If Laj Dass is held to be tenant of the land and on the question of title the plaintiff comes out victorious, the plaintiff can claim arrears of rent from him in the revenue Court. While dealing with the plaint, the defendants were required to deal with every facer of the plaint. If they forgot to deal with the facet of the plaint relating to possession, the proposed amendment should not be refused. Plaintiff can be compensated with costs if the defendant have made this application belatedly.

7. For the reasons given above, proposed amendment is allowed but only to this extent as mentioned in para 4 of the application for amendment. Defendants 2 to 5 are not allowed to incorporate amendment in the written statement as mentioned in para 5 of the application for proposed amendment. Defendants 2 to 5 shall pay Rs. 5,000/- as costs to the plaintiff-respondent (Parkash Muni).