

(1991) 09 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from the Order No. 720 of 1980

Mahant Amar Dass Chela Mahant Jai Ram Dass	APPELLANT
Vs	
Shiromani Gurdwara Parbhandak Committee, Amritsar	RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 92
Evidence Act, 1872 — Section 13
Sikh Gurdwaras Act, 1925 — Section 10, 14(1), 43, 43, 7

Citation : AIR 1992 P&H 288

Hon'ble Judges : Harmohinder Kaur Sandhu, J;G.R. Majithia, J

Bench : Division Bench

Advocate : Mr. Harbhagwan Singh and Mr. Arun Walia, for the Appellant; Mr. Gurbachan Singh, for the Respondent

Judgement

C.R. Majithia, J.—This appeal is directed against the judgment of the Sikh Gurdwaras Tribunal, Punjab, Chandigarh dismissing the petition filed by the appellant u/s 10 of the Sikh Gurdwaras Act, 1925 (hereinafter called the Act).

2. The facts :--

After the publication of notification dated August 11, 1961 under sub-section (3) of Section 7 of the Act, relating to Gurdwara Sahib Dharamsala Baba Gursaran Dass, situate in the revenue estate of Nabha, District Patiala, along with a consolidated list of properties claimed to be belonging to the said Gurdwara, the appellant presented a petition u/s 10 of the Act to the appropriate Secretary to the Government, Punjab, asserting claim to certain properties which had been allegedly belonging to the Gurdwara. The State Government treated the petition as under Sections 8 and 10 of the Act and forwarded the same to the Sikh Gurdwaras Tribunal, Punjab (the Tribunal, for short) for adjudication, under sub-section (1) of Section 14 of the Act. The appellant claimed that the properties mentioned in the notification was his personal property. The plea was controverted by the Shiromani Gurdwaras Par-bandhak Committee, Amritsar (the

Committee, for brevity) and this led to the framing of the following issues:--

1. What right, title or interest has the petitioner in the property in dispute?
2. What right, title or interest has the Gurdwara in question in the property in dispute?

Issue No. 1 was decided against the appellant and the properties in dispute were declared to be belonging to the Gurdwara.

3. Learned counsel for the parties did not dispute that the disputed property was subject-matter of dispute in the earlier litigation between the Interim Gurdwara Board, PEP-SU, Patiala and the appellant in civil suit File No. 27/269 of 13-9-1956/19-11-1958 (Interim Gurdwara Board, Pepsu, Patiala through S. Dalip Singh, Mukhtiar-e-am of the said Board v. Amar Dass Chela Jai Ram Dass, Mohatmim Dera Baba Gursaran Dass of Nabha), decided on June 19, 1961 by Sh. Rajinder Lal Garg, Sub-Judge Ist Class, Nabha but are at issue if the judgment will operate as res judicata in the instant proceedings. Interim Gurdwara Board, PEPSU, Patiala (the "Board", for brevity) comprised of renowned Mahants/Saints and other dignitaries of the Pepsu State and was constituted to manage the affairs of religious and charitable institutions. The Board filed a suit u/s 92 of the CPC for removing Mahant Amar Dass Chela Jai Ram Dass (appellant in the appeal) from the management of the Dera known as Dera Baba Gursaran Dass, Nabha. It was alleged that the land attached to the Dera was given as Dharamarth by the then Nabha Government. The appellant joined issues with the Board and pleaded that Baba Gurcharan Dass or his Chelas never founded the Dera in question, that no property was given as Dharamarth to the Dera by the nabha Government; that Gursaran Dass or his Chela were not the managers of the Dera; though they were Udasi Sadhus being devotees of Baba Siri Chand, the founder of the Udasi sect; that besides Guru Granth Sahib, the religious books of other sects are also kept in the Dera; that he (the appellant) is in possession of the property of the Dera as a Chela of the Successive Mahants of Baba Gursaran Dass; that the disputed property was the private property of Jai Ram Dass, the previous mahant of the Dera and after his death, the property devolved upon the appellant. Issue No. 1 reads thus:--

"Is the dera in dispute a religious and charitable institution of which Baba Gursaran Dass and his chela Mohan Dass were Mohtamims. And further there has always been, on different occasions, a commemoration, since long, in this dera regarding the various religious days connected with Shri Guru Nanak Devji, Shri Guru Gobind Singh Ji and Shri Arjan Dev Ji as given in para No. 2 of the plaint? (Onus on plaintiffs)"

The trial Judge, on evidence, found that the Dera in dispute was the private property of the appellant. In coming to this conclusion, he relied upon the document Ex. D. 1, a copy of the Khasra Abadi of the town of Nabha of 1932 BK, which shows that Gursaran Dass was the owner of the Dera in question. He also relied upon the report, Ex.D.6, of Shri Bijram Singh, Naib Tehsildar, Nabha that

the property mentioned in Exhibit D.I was the same which is now in dispute. The Board also produced before the trial Judge a copy of the will Ex.BB/I, made by Jai Ram Dass in favour the appellant in respect of the Dera in question. In this Will, Jai Ram Dass has described himself as the owner and Mahant of all the properties of the Dera and the same devolved upon the appellant after the death of Mahant Jai Rani Dass. This judgment was not appealed against and allowed to attain finality. The Tribunal did not rely upon this judgment of the civil Court (Ex.P-5) simply on the ground that it was not inter partes and it will not operate as res judicata.

4. The Act was extended to the erstwhile territories of PEPSU by Act No. 1 of 1959. Before that, management of the religious and charitable institutions vested in the Interim Gurdwara Board. Part III of the Act relates to the control of Sikh Gurdwaras. Section 40 of the Act relates to the constitution of the Board for purposes of the Act and the Committees for the management of the notified Sikh Gurdwaras. The management of the notified Sikh Gurdwaras was to administered by a Committee or the Board in accordance with the provisions of Part III of the Act. Identical functions were being performed by the Interim Gurdwara Board for the management of the Sikh Gurdwaras. For this reason, the suit culminating in the judgment dated June 19, 1961 (Ex.P-5) was filed by the Interim Gurdwara Board, PEPSU, Patiala against the appellant (who was a defendant in the suit) and the Civil Court held that the Dera and the land attached thereto was the private property of the appellant.

5. Interim Gurdwara Board was constituted by Ijlas-i-khas order No. 52, dated November 8, 1946. After the commencement of the Amending Act, the Ijlas-i-khas was repealed and the Interim Gurdwara Board ceased to function from the date of the commencement of the Act. Chapter XII "A" was added to the principal Act containing Sections I48-B to I48-F. By virtue of Section 148B the Members of the Interim Gurdwara Board, Patiala constituted by Punjab Government (Home Department) notification dated January 10, 1958, became members of the Board constituted under S. 43 of the Act. According to the provisions of S. 148-E, all lands and buildings (together with all interests of whatsoever nature and kind therein) belonging to or owned by the Interim Gurdwara Board, Patiala, immediately before the commencement of the Amending Act, was to pass on to and vest in the Board constituted under S.43 of the Act. It will be relevant to reproduced the provisions Chapter XII "A" of the Act :--

"143-B. Additional Members of the Board constituted under S. 43 and Executive Committee constituted u/s 62.-

(1) As from the commencement of the Amending Act, in addition to the members of the Board constituted under S. 43 and till the next election of the new board under S. 43-A.

(a) every person in the extended territories who, immediately before the

commencement of the Amending Act, is a member of the Interim Gurdwara Board, Patiala, constituted by Punjab Government, Home-Department, notification No. 18-Gurdwaras, dated 10th January, 1958, shall be deemed to be a member of the Board, constituted u/s 43; and

(b) thirty-five Sikhs including six Sikhs belonging to the Scheduled Castes residents in the extended territories, to be divided among different districts thereof in proportion to the Sikh population of each district in the prescribed manner, who shall, within forth day pf the commencement of the Amending Act, be elected by the persons specified in sub-section (2) in accordance with the Rules made in this behalf by the State Government shall become the members of the Board from the date specified in sub-section (3).

(2) The thirty-five persons referred to in clause (b) of sub-section (1) shall be elected by-

(i) the persons who deemed to be the members of the Board under clause (a) of subsection (1);

(ii) the twelve members of the board being residents of Pepsu as are referred to in clause?

(iii) the sitting Sikh members of Parliament and the two Houses of State Legislature returned from any constituency or part thereof from the extended territories;

(iv) the Sikh Members of Municipal Committees in the extended territories;

(v) The Presidents or Chairman of such Singh Sabhas and the Managers or Secretaries of such Sikh educational institutions or Sikh religious organisations as are registered on or before the 1st December, 1958, in the extended territories; and

(vi) the Sikh Sarpanchas and Sikh Nayay Pardhans of Nagar Panchayats and Pancha-yati Adalats, respectively;

Provided that the electors under clauses (in), (iv), (v) and (vi) are not disqualified under the proviso to Section 49 of the Act.

(3) The prescribed authority shall, as soon as possible, intimate to the State Government the names of persons elected under clause (b) of sub-section (1) for being notified in the Official Gazette and the date of publication of the notification shall be deemed to be the date ?from which each person shall become a member of the Board.

(4) As soon as may be after the election of members has been notified under sub-section (3), a meeting of the members of the Board belonging to the extended territories shall be called by the Deputy Commissioner, Patiala, at Patiala to elect four persons 10 be the members of the Executive Committee of the Board in accordance with the provisions of S. 62 and, notwithstanding anything to the

contrary contained in that section the persons so elected shall be the members of the Executive Committee of the Board till the next annual election of the office-bearers and the Executive Committee of the Board.

(5) For carrying out the purpose of this section, the State Government may by notification make rules, and such rules may, among other things, provide for-

(a) the delimitation of constituencies for holding the election and allocation of seats to each constituency in a district; and

(b) all or any of the matters specified in sub-section (2) of S. 146 in so far as they relate to or are connected with, the election under this section.

"148-C. Provisions relating to the existing Committees functioning under the interim Gurdwara Board, Patiala.

Notwithstanding anything contained in this Act, every local committee in the extended territories functioning for the management of one or more Gurdwaras under the control of the Interim Gurdwara Board, Patiala, immediately before the commencement of the Amending Act, shall till the constitution of the new Committees be deemed to be a Committee for such Gurdwaras, under this Act.

148-D. Provisions as to employees of the Interim Gurdwara Board, Patiala, and local committee functioning under it. -

Every person in the extended territories who, immediately before the commencement of the Amending Act is an employee of the Interim Gurdwara Board, Patiala, or of a local committee functioning under such Board, shall, on and from such commencement, be transferred to and become a servant of the Board or of the committee, as the case may be and shall hold office on the same terms and conditions of service as he would have held if the Amending Act had not been passed and shall continue to do so unless and until such terms and conditions are duly altered by the Board or the Committee, as the case may be.

148-E. Special provisions regarding the assets and liabilities of Interim Gurdwara Board, Patiala.

As from the commencement of the Amending Act,--

(a) all lands and buildings (together with all interests of whatsoever nature or kind therein) belonging to or owned by the Interim Gurdwara Board, Patiala, immediately before such commencement shall pass to and vest in the Board;

(b) all assets, including stores, articles, and movable properties belonging to the Interim Gurdwara Board, Patiala, immediately before such commencement and utilized for or in connection with the Interim Gurdwara Board, Patiala, shall pass to and vest in the Board.

(c) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Interim Gurdwara Board, Patiala immediately before such commencement, shall be deemed to have

been incurred into, engaged to be done by, with or for the Board.

(d) all rents and other sums of money due to the Interim Gurdwara Board, Patiala, immediately before such commencement shall be deemed to be due to the Board;

(e) all suits, prosecutions and other legal proceedings instituted or which might have been instituted by or against the Interim Gurdwara Board, Patiala, immediately before such commencement, may be continued or instituted by or against the Board.

148-F. Power to remove difficulties.-- If any difficulty arises in giving effect to the provisions of this Act in the extended territories, the State Government may, by order as occasion requires, do anything which appears to it to be necessary for the purpose of removing the difficulty."

6. A reading of these statutory provisions indicates that the members of the Interim Gurdwara Board were to become the members of the Board constituted under S. 43 of the Act. The Local Committees functioning for the management of one or more Gurdwara under the control of the Interim Gurdwara Board became the Local Committees for such Gurdwaras under the Act. The employees of the Interim Gurdwara Board or of a Local Committee functioning under such Board became servants of the Board or of the Committee after the commencement of the Amending Act. All properties including lands and buildings (together with all interests of whatsoever nature or kind therein) belonging to or owned by the Interim Gurdwara Board passed to and vested in the Board after the commencement of the Amending Act. All debts, obligations and liabilities incurred, contracts entered into and matters and things engaged to be done by, with or for the Interim Gurdwara Board immediately before the commencement of the Amending Act were deemed to have been incurred into, engaged to be done by, with or for the Board constituted under S. 43 of the Act. The Board constituted under S. 43. of the Act became the successor-in-interest of the Interim Gurdwara Board. S. 148-E of the Act specifically provides that all suits, prosecutions and other legal proceedings instituted or which might have been instituted by or against the Interim Gurdwara Board, immediately before such commencement, may be continued or instituted by or against the Board. The implied effect of these provisions is that the judgment and decree rendered by a Court of competent jurisdiction, to which the Interim Gurdwara Board was a party, will be deemed to be binding on the Board. The Board being the successor-in-interest of the Interim Gurdwara Board, Patiala will be deemed to be a party to all those proceedings. Section 11 of the Code of Civil Procedure, 1908, embodies the doctrine of res judicata or the rule of conclusiveness of judgments, as to the point decided, in every subsequent suit between the same parties. To constitute a matter res judicata the following conditions must concur :---

i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue either

actually or constructively in the former suit.

ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.

iii) The parties as aforesaid must have litigated under the same title in the former suit.

iv) The Court which decided the former suit must have been a Court competent to try the subsequent suit or the suit in which such issue is subsequently raised.

v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit.

7. In the earlier suit, i.e. File No. 27/269 of 13-9-1956/19-11-1958, the Civil Court was called upon to decide whether the disputed Dera was the private property of the defendant (appellant in this appeal). In a suit under S. 92, Civil Procedure Code, it is imperative for a plaintiff to prove that the suit relates to "a public, charitable or religious trust; that it is founded on an allegation of breach of trust or the direction of the Court is required for administration of the trust and the reliefs claimed are those which are mentioned in the section. It was on these premises that the civil Court was called upon to decide whether the Dera and the Property attached to it was the personal property of the Mahant and the plaintiff had no cause of action. The civil Court had negatived the plea of the Interim Gurdwara Board and held that the Dera and the land attached to it was the personal property of the Mahant. The judgment of the civil Court, Ex.P-5, will operate as *res judicata* in the present proceedings. Additionally, it will be relevant under S. 13 of the Evidence Act. The appellant, who was a defendant in the judgment, Ex.P-5, had asserted his private right before the Civil Court, which was upheld by it. It is not even remotely suggested that the judgment, Ex.P-5, is vitiated in any manner. The judgment and decree stood the test of time for three decades.

8. Mutation with regard to the disputed property was sanctioned in favour of the Dera purporting to be under the Firman-i-shahi dated 16-4-1921 issued by the ruler of the erstwhile Patiala State to the Deputy Commissioner, Patiala, for mutating "the lands attached to different religious institutions such as Deras, temples, etc., in the revenue record in the name of the institution itself under the Mohntmimship of the present Mahant". The appellant challenged the order, sanctioning the mutation of the agricultural lands attached to the Dera in favour of the "Dera" itself through Civil Misc. Nos. 3 and 4 of 1952 in the Pepsu High Court. These civil miscellaneous applications were allowed and the mutation order was quashed. The judgment of the Pepsu High Court is reported as *Amar Dass v. Govt. of Patiala and East Punjab States Union* AIR 1953 PC 58 . Some evidence has also been brought on the record to show that some muafi was given in the name of one Puran Dass Chela Biram Dass, Sadh Udasi, as Mahant of Dera Baba Gursaran Dass. Granting of Muafi will not convert private property into religious and charitable in character. Muafi can be for the personal benefit of

the Muafidar and not for the benefit of the "Dera". There is no document on the record which shows that the Muafi was given to the Dera. In fact, it was given in the personal name of Puran Dass Chela Biram Dass, who was a muafidar. The muafi appears to be personal to him and it will not in any manner lead to an inference that it was given to the Dera, which was treated as a religious or charitable in character. There is no prohibition in law that a person belonging to Udasi sect cannot acquire or hold secular property. Property acquired or held by an Udasi Sadhu will pass on to his Chela being his spiritual son. A person coming to the Udasi fold does not marry. Succession of property from Guru to Chela will not convert the secular property into religious or charitable property unless express dedication is established. In AIR 1938 195 (Privy Council) , it was held thus (at page 196) :--

"The principal ground upon which the judgment of the High Court proceeds is that the Bagichi and other properties have decend-ed from guru (religious preceptor) to (religious disciple); but this circumstance does not necessarily lead to the conclusion that a property, when acquired by a mahant, loses its secular character and partakes of religious character. It is common ground that the mahants of institution belonged to an ascetic order called Udasi. The Udisis rarely marry; and if they do so, generally lose all influence; for the dharmshala or Gurdwara soon becomes a private residence closed to strangers: MacLagan's Census Report for the Punjab, Part I, Chap. 4, p. 152. When a person enters the Udasi order, he severs his connection with the members of his natural family. It follows that neither he nor his natural relative can succeed to the property held by the other. There is however no reason for holding that an Udasi cannot acquire private property with his own money or by his own exertions. If he does acquire private property, it cannot be inherited by his natural relatives, but passes on his death to his spiritual heir including his chela who is recognised as his spiritual son. The decent of the property from a guru to his chela does not warrant -the presumption that it is religious property."

9. For the reasons recorded above, the appeal succeeds, the order of the Tribunal under challenge is set aside and the petition under S. 10 of the Act, filed by the appellant is allowed and it is declared that the properties mentioned in the notification published under sub-sec. (3) of S. 7 of the Act are the private properties of the appellant. In the circumstances of the case, we make no order as to costs.

10. Appeal allowed.