
(2013) 04 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1572 of 1985

Mani Singh Chela Mit Singh

APPELLANT

Vs

Shromani Gurdwara Parbandhak Committee

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 372
Evidence Act, 1872 — Section 101, 102, 103, 104
Sikh Gurdwaras (Supplementary) Act, 1925 — Section 3, 3(2), 3(3), 3(4)

Citation : (2013) 171 PLR 8

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : R.S. Mittal, with Mr. Amarjit Markan, for the Appellant; Sukhbir Singh, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.

I. The basis of suit

1. The appeal is against the judgment of the District Judge, Sangrur granting the relief of recovery of possession of property to Shiromoni Gurdwara Parbandhak Committee (in brief "SGPC"), Amritsar. The suit had been instituted u/s 28 of the Sikh Gurdwaras Act, 1925 for possession of the Gurdwara known as Guru Granth Sahib situate in village Chima as well as the land measuring 28 bighas 8 biswas. From the reading of the plaint, it is clear that the suit had been instituted on 09.03.1964 and numbered on 13.03.1964. The SGPC claimed that as per the resolution passed on 12.12.1963, the plaintiff committee had been granted a right of the management of the Gurdwara, which had been notified as Sikh Gurdwara as per the notification of the Punjab Government No. 1191 dated 10.07.1959 and on an application of several Sikhs, the Punjab Government issued a notification u/s 3(2) on 30.11.1959 publishing a list of properties

claimed on behalf of the Gurdwara and called upon public objections and when no objections had been received from any person staking a claim to the property, the Government issued yet another notification u/s 5(3) of the Act that no person had put in claim pertaining to the property and that the claim of Gurdwara to the property was undisputed. A notification to that effect had been issued on 03.10.1960. Since the Committee of management of the Gurdwara was not in possession of the property mentioned in the plaint and was entitled to take its immediate possession, it had brought the suit on behalf of the Gurdwara for recovery of possession and setting out the notification issued by the Government on 03.10.1960 and constitution of the Committee on 12.12.1963 as giving the cause of action for the suit. It was pleaded that the constitution of the Committee having been made on 12.12,1963, the suit instituted on 09.03.1964 was within a period of limitation as prescribed u/s 28(2) of the 1925 Act. II. Contentions in defence

When the suit was instituted one Mit Singh Chela Hira Singh was described as the defendant. Later on his death, on an application moved for impleading the legal representative, a person who claimed himself to be the Chela of the former defendant, Mani Singh was impleaded as party. The contest was entered by him pleading that the suit was barred by limitation in view of the fact that the notification was purported to have been issued on 10.07.1959 and the suit filed on 09.03.1964 was beyond time. By an order dated 01.04.1965, the Court found that as per the averments in the plaint, a Committee of Management had been constituted on 12.12.1963 and u/s 88 of the Sikh Gurdwaras Act, 1925, it was necessary that the notification should have been issued regarding the constitution of the committee. As per the said provision, it was the date of publication of the notification that should be taken as the date of constitution of the Committee and since no notification had been shown to have been issued, it was held that suit was premature and dismissed on the preliminary ground on 01.04.1965. It appears that the order of the Court had been assailed in the High Court by the Gurdwara Committee and the High Court by its order dated 22.07.1976 set aside the order and remanded the matter to the District Judge for consideration of the case on merits. A written statement was subsequently filed on 15.02.1977 wherein objections had been taken that the Gurdwara Committee had not been duly notified and it was not a legal entity. It was also denied that the SGPC had any locus standi to file a suit since the suit property was not a Sikh Gurdwara and all the proceedings and notifications purporting to have been effected were null and void and had no effect. The defendant claimed that he had not been served with any notification or notice by the Government either u/s 3 or Section 5 of the Sikh Gurdwaras Act and therefore, the notifications could not be put out against him.

III. The issues of contention at the trial

2. The trial Court settled the issue of the locus standi of the plaintiff to institute the suit and also put an issue in dispute whether a lawful notification had been

issued u/s 5(3) of the Sikh Gurdwaras Act. Taking up the defence that the property in suit was asserted to be a Dera of Nirmala Sadhus, an issue was also struck whether the land belonging to Dera Pucca as alleged in the written statement and placing the burden of proof on the defendant. When Mani Singh Chela was impleaded as party after deleting the name of Mit Singh, he took up a defence that no notice had been issued u/s 3(3) of the Act and sought for a dismissal of the suit on preliminary ground that the suit was not maintainable. When the petition was rejected, the matter went up in appeal to the High Court which had passed an order dated 07.11. 1984 framed an issue whether the notice u/s 3(3) of the Act had been served upon the defendant and if not, what was the effect thereof.

IV. Trial Court's finding: Locus standi of SGPC fully concluded

3. Taking up the issue of the locus standi of SGPC to institute the suit on the basis of resolution dated 12.12.1963, the trial Court found that the order passed by the High Court at the preliminary stage when the suit had been dismissed as premature and taken up an appeal before it where the High Court by its order dated 22.07.1976 has observed that by virtue of a resolution passed on 12.12.1963, a copy of which had been produced as Ex.PI, the suit was within limitation. The High Court had also held that it is the constitution of Committee, which was relevant for considering the issue of limitation and there was no requirement of even a notification for such constitution. Consequently, the locus standi of the plaintiff to institute the suit on the basis of resolution cannot be reopened again. The trial Court had also held the same and also, therefore, found no error in the institution of the suit and the locus standi of the plaintiff to seek for the relief sought for in the plaint.

V. Whether the religious institution is a Gurdwara

4. The most crucial issue that was urged with vehemence before this Court was whether the Gurdwara notified as Guru Granth Saheb situate in village Cheema and the land measuring 28 bighas 8 biswas mentioned in jamabandi belonged to the Gurdwara. Since the plaintiff relied on a notification issued already u/s 5(3) of the Sikh Gurdwaras Act describing the property as undisputed property of the Gurdwara, the question is whether it is possible to reopen the issue for a fresh adjudication by a Court. Since the defendant pleaded in defence that it is not a Gurdwara and that it belonged to Nirmala Sadhus, the issue that fell for consideration simultaneously was whether the provisions of Sikh Gurdwaras Act itself were not applicable. Some of the notifications brought out through exhibits are required to be reproduced with their contents to appreciate the controversy involved in the suit. The notification has been issued by the Government u/s 3(2) of the Gurdwaras Act by notification No. 1191 dated 10.07.1959 and published in the Gazette on 11.07.1959. 77 items have been set out in the notification and the particular entry regarding the Schedule relating to the Gurdwara is reproduced as under:-

Subsequently a notification has been issued on 30.11.1959 that states that pursuant to the notification already issued u/s 3(2) of the Sikh Gurdwaras Act, the consolidated list of rights, titles and interests claimed to belong to Sikh Gurdwaras Act was being notified. This notification reproduces literally the manner of notification already issued as extracted above. In Schedule accompanying it, there is additional information given about the name of the person in possession and it reveals the name Mit Singh Chela Hira Singh. Ex.P6 is a further notification issued by the Government of Punjab on 03.10.1960 u/s 5(3) of the Act setting out the consolidated rights, titles and interests pursuant to the notification issued on 30.11.1959. This notification records the fact that no claim had been received u/s 5(1) of the Act.

5. As against the documents filed by the plaintiff referring to the notification issued u/s 3(2) with list of properties and claims made against the same and also the person in possession of property as required to be given u/s 3(3), the defendant was relying on Ex.R1 that showed that on the death of Mit Singh, Mani Singh was made the Mohtamin being the Chela of Mit Singh and was installed by the bhaikh. Ex.R1 is a mutation order that refers to the ownership of the property as Guru Granth Sahib through Mohtamin Mani Singh Chela Hira Singh. There is also a site plan attached to the same that shows a Smadh. Referring to the description of the property as being in possession of the defendant and that the defendant is a Nirmala Sadhu, the contention that is made is that Gurdwara Sahib cannot be the owner. The contention, which was urged before the trial Court which is also reiterated before this Court is that Nirmala Sadhus do not fall within the Sikh sect and the place of worship cannot be a Gurdwara. Referring to the application, which is attached to the notification issued u/s 3(2) that describes the existence of Gurdwara and also a Smadh, the contention urged is that a place which is a Smadh cannot be a Gurdwara. Reference to the Gurdwara in the notification issued u/s 3(2) and further notification issued u/s 5 are challenged as invalid since the property cannot be a Gurdwara where Nirmala Sadhus inhabit and that notification without actual service to the defendant under possession was, therefore, not valid.

VI. Decisions relied by appellants considered

6. Learned Senior Counsel appearing on behalf of the appellant relies at the forefront of his arguments a decision of the Supreme Court in Mahant Dharam Das and Others Vs. The State of Punjab and Others, referring to the effect of declaration of a Gurdwara made u/s 7(3) and 8 of the Sikh Gurdwaras Act, 1925. The Supreme Court was considering the case of a Gurdwara declared to be a Sikh Gurdwara long prior to the Constitution and managed by Interim Gurdwara Board constituted in 1946 by Firman of Erstwhile Ruler of State of Patiala. On a challenge made by some persons, who contended that it was not a Sikh Gurdwara, the Supreme Court held that Firman of Maharaja was a law of the State after the Constitution by virtue of Article 372 and continued to be law till it was repealed and substituted by law made by competent legislature. The status

of Gurdwara as a Sikh Gurdwara determined before the Constitution could not be challenged on the ground of violation of fundamental rights. Even if a person was continued to be in possession of property, he cannot acquire right of management when once that right was vested in another person. I cannot understand as to how this judgment can help the appellant in any way. On the other hand, it lays down categorically that there cannot be a defence by a person in possession to contend that his fundamental rights are defeated and to non suit an institution that is declared as a Gurdwara. It is literally a judgment in support of the plaintiff-respondent that if there had been a declaration from a notification of the property as belonged to Gurdwara then it shall not avail to a defendant to deny the status of such Gurdwara. The learned Senior Counsel referred to several decisions that held that Nirmala Sadhus are not Sikhs and Smadhs could not be in Gurdwara.

7. In *Shiromani Gurdwara Parbandhak Committee Vs. Mahant Harnam Singh C. (Dead), M.N. Singh and Others*, the Supreme Court held that a Committee, which had asserted that the institution was a Sikh Gurdwara, has to assert the same and Nirmala Sadhus were not Sikhs. The Supreme Court was holding that a mere fact that at some point of time, there was a Guru Granth Sahib in Dera could not lead to any conclusion that the management was meant for or belonged to the followers of Sikh religion. This judgment was in a situation where a petition had been filed u/s 7(1) of the Gurdwaras Act by about 60 persons, who claimed to be worshipers for declaring the institution in question as Gurdwara, Guru Granth Sahib as situate in revenue village of Jhandawala. The Government had issued a notification u/s 7(3) of the Act describing the institution as Sikh Gurdwara. When a petition u/s 7(1) had been notified, Mahant Harnam Singh, Chela Narain Singh, Nirmala Sadhu, the original respondent filed a petition u/s 8 of the Act claiming that the institution in dispute was not a Sikh Gurdwara but it was a Dera Bhai Saida Ram. Similar petition u/s 8 of the Act was also moved by 58 persons of the Dera alleging that the institution in dispute was not a Sikh Gurdwara. Both these petitions had been forwarded by the State Government to the Tribunal for disposal. In both the petitions, SGPC had been cited as respondents. The persons, who had petitioned u/s 7(1) for declaring it to be a Gurdwara had actually filed a civil suit earlier u/s 92 of the CPC for the removal of the persons in possession from Mahantship but it appears that the suit had been dismissed. The Civil Court held that it was not a Sikh Gurdwara and the Sikhs had no interest. The Civil Court had also held that it was a Dera of Nirmala Sadhus but in appeal to the High Court, it reversed the conclusion reached by the trial Court but this was again reversed and the trial Court judgment was restored by the Supreme Court in the decision reported as *Mahant Harnam Singh, Chela of Bhai Narain Singh Vs. Gurdial Singh and Another*, The petition u/s 7(1) was prosecuted afresh. The objection that had been taken was with reference to earlier adjudication made and that stood up to the Supreme Court declaring the property to be not the property of the Gurdwara. The Tribunal before which the case was referred, therefore, framed an issue as to the effect of

earlier judgment rendered by the Civil Court that stood restored by the Supreme Court judgment and framed also an issue whether the institution in dispute was a Sikh Gurdwara. It would be seen, therefore, that in this judgment there was a Civil Court decree already rendered in a suit filed u/s 92 CPC that it was not a Sikh Gurdwara and when the matter was sought to be re-agitated before the Tribunal at the instance of the persons claiming it to be a Sikh Gurdwara u/s 7(1), The Supreme Court held that a property of Nirmala Sadhus cannot be a Sikh Gurdwara.

VII. Effect of notification under SG Act; Vesting of property in Nirmala Sadhus not established

8. We do not have such a situation in this case where there was an adjudication before a Tribunal relating to issue of whether it was a Gurdwara or not. On the other hand, we have to contend with the situation of the effect of notification which is issued u/s 3(2) and (3) and further notification that declared the rights, titles and interests of the Gurdwara u/s 5(3) of the Act. This judgment cannot, therefore, in my view help the defendant-appellant. The judgment of the Supreme Court in Harnam Singh's case (supra) could be used only in a situation where adjudication on whether it was a Gurdwara was not still possible and where the dispute was taken before the Tribunal in such an adjudication. We are not here in a situation of an adjudication rendered by the Tribunal that is brought for any reappraisal before the Court. Indeed, there could be no such reappraisal if there had been already adjudicated claim by the Tribunal. The suit besides is u/s 29 for recovery of possession of property for an undisputed Gurdwara. If the suit was properly laid by persons who were competent to institute the suit as we have in this case, the defence could be restricted only to a situation of whether the defendants could be slated to be under lawful possession representing the Gurdwara and there could be no scope for reopening an issue of whether the institution is Gurdwara or not.

9. The several decisions cited by the learned Senior Counsel referring to Nirmala Sadhus as not belonging to the Sikh community and that place of worship as Dera cannot be a Gurdwara, cannot be of any avail, for I have no difficulty in accepting the contention that Nirmala Sadhus are a different sect and the Deras cannot be Gurdwaras. I will merely refer to the judgment setting out such a proposition for the sake of fullness of consideration. In Akhara Dharam Dhajan Sadhan Vs. Kehar Singh, etc., , a Division Bench of this Court had held that Nirmala Sadhus was a different sect from the Sikhs. In Shiromani Gurdwara Prabhandhak Committee, Amritsar Vs. Mahant Kirpa Ram and Others, the Supreme Court held that Deras for Sadhus and Faquirs of Udasi Sect was not a Pritam Dass Mahant Vs. Shiromani Gurdwara Prabandhak Committee, the Supreme Court held that the sine qua non for an institution being a Sikh Gurdwara is that there should be established Guru Granth Sahib and worship of the same by the congregation and a Nishan Sahib, a flag staff with a yellow flag of Sikhism flying from it which served as a symbol of the Sikh presence. There

may be other rooms of the institution meant for other purposes but the crucial test of the existence of the Guru Granth and the worship thereof by the congregation and Nishan Sahib were held to be the key elements of proof of Gurdwara. The Supreme Court also held that it was not necessary that there must be a Granthi in Gurdwara and any learned person could read Guru Granth Sahib and explain the congregation. Where in an institution the succession was from Guru to Chela and founder of the institution was a Udasi Saint and there were Smadhs in the premises, one being the founder and the other being the mother and there were photos of Hindu deities in the institution, the Supreme Court found that these three facts, without anything more, would be sufficient to reject the claim of the institution as a Sikh Gurdwara. Existence of Samadhs and succession from Guru to Chela would clearly be destructive of the character of the institution as a Sikh Gurdwara because they would be inconsistent with the tenets of the Sikh religion. In AIR 1936 93 (Privy Council) the Privy Council held that Udasi were not Sikhs. In AIR 1934 Lahore 13 a Division Bench of the Lahore High Court held that in order that a Gurdwara may be a Sikh Gurdwara, it must be proved that a Gurdwara was established for use of Sikhs for the purpose of public worship and was used for such worship by Sikhs. A grant to a holy Udasi Sadh for the purpose of supplying his personal needs and those of other ascetics and needy travelers would not make the institution a Sikh Gurdwara.

10. All these decisions lay down the law that in a case where there was a dispute of whether a particular institution is a Sikh Gurdwara or not, the fact that an institution is run or managed by Udasi or Nirmala Sadhus and the administration was managed from Guru to Chela would itself undermine the status of institution as Gurdwara. The institution established by Nirmala Sadhus or Udasi that asserts for a particular character shall be required to prove such assertion. This is merely setting out a rule of evidence enunciated u/s 101 to 104 of the Indian Evidence Act. We have already extracted the issue, which was framed, that has raised the point of whether the institution and the properties belonged to Nirmala Sadhus. All that the defendant-appellant has been able to show in this case is that the property at the time when the notification was made u/s 3(2) and later u/s 5(3), it had referred to possession of the property as being in the hands of Mit Singh Chela Hira Singh. On his death, the property had fallen to the hands of Mani Singh Chela Hira Singh. The fact that the property was in the hands of the defendant was an admitted issue when the suit was filed u/s 28 for recovery of possession. All that is required to be seen is whether an undisputed Gurdwara is notified as such and the suit is filed within time to secure possession of property. In fact, Section 28 itself could be invoked only in situations where on the date of notification, the property was not in the possession of Gurdwara. There are inbuilt mechanisms, which are set out in the Act to allow for persons, who staked the claim, to deny that the property was not a Gurdwara and the property which was attached to it did not vest in it. When a notification is, therefore, made u/s 3(2), which we have extracted above, a person who is in possession of property is required to state his objection with reference to the notification, which could

lead to a final notification that it was an undisputed Gurdwara. Therefore, when a notification was issued u/s 3(2) on 30.11.1959, the claims relating to the property must be made. Section 3(3) reads as follows:-

3(3) Notices of claims to property entered in the consolidated list to be sent to persons shown as in possession.- The State Government shall also, as soon as may be, send by registered post a notice of the claim to any right, title or interest included in the consolidated list to each of the persons named therein as being in possession of such right, title or interest either on his own behalf or on behalf of an insane person or minor or on behalf of the gurdwara, provided that no such notice need be sent if the person named as being in possession is the person who forwarded the list in which the right, title or interest was claimed.

The sub-section requires that the State Government shall send a registered post notice of the claim to any right, title or interest included in the consolidated list to each of the persons named therein as being in possession of such right, title and interest either on his own behalf or on behalf of an insane person or minor or on behalf of the gurdwara. When a notification is issued under sub-section 2 and the consolidated list under the said Section, it shall be conclusive proof that the provisions of sub-section (1), (2) and (3) are duly complied with and that Gurdwara is a Sikh Gurdwara. When the suit is instituted u/s 28 after the notification is issued, it shall not be open for any one to contend that the procedure followed under sub-section 3 relating to notices had not been really followed. That would mean annulling the effect of subsection, which is also reproduced as under:-

3(4) Effect of publication of declaration and consolidated list under sub-section (2),- The publication of a declaration and of a consolidated list under the provisions of sub-section (2) shall be conclusive proof that the provisions of subsection (1), (2) and (3) with respect of such publication have been duly complied with and that the Gurdwara is a Sikh Gurdwara, and the provisions of Part II shall apply to such Gurdwara with effect from the date of the publication of the notification declaring it to be a Sikh Gurdwara.

This sub-section makes it clear that it shall not be possible for a person to contend that no notice had been issued. Indeed, the constitutionality of this provisions making a conclusive presumption was put in challenge in Mahant Lachman Dass Chela Mahant Ishar Dass v. State of Punjab, 1968 (2) ILR P&H 499 and this Court had held that if the classification of certain Gurdwaras in Schedule 1 is valid and intra vires, the relevant presumption u/s 3(4) in respect thereof which logically flowed from the said classification could not be stated to be unconstitutional. The effect of these notifications is brought out through several judgments relied on by the learned counsel appearing on behalf of the respondent.

VIII. Conclusive presumption of Gurdwara not displaced by defendant on whom the burden of proof lay

11. Learned counsel appearing on behalf of the respondent would rely on Mahant Sahib Singh Vs. Shromani Gurdwara Prabandhak Committee and Another, . A Division Bench of this Court had held that when Section 3(4) and Section 5(1) of 1925 Act were read together, the status of the institution being a Sikh Gurdwara remained conclusive and any claim to right, title and interest contrary to the notification was barred. No further challenge to the nature of institution would be permissible. In Jalour Singh and another v. SGPC, in RFA No. 374 of 1965, a Division Bench held that when Government notification is issued u/s 3(2) of the Act publishing a list of property claimed on behalf of the Gurdwara and called upon the persons in possession to file their claims but no objection had been filed and subsequently the Government had also issued a notification u/s 5(3) of the Act declaring the institution as Gurdwara, the claim of the property attached thereof is required to be taken as undisputed. In the AIR 1933 1041 (Lahore) a Division Bench held that when a consolidated list was published, a person who comes forward u/s 5(1) must prove that he has a right, title or interest in the property included in the list and if no such claim is made, the SGPC has right to bring a suit for possession which must be automatically decreed. This judgment is a clear authority to the possession in a suit u/s 28. There could hardly be any defence for any person in possession, if he had not already made a claim u/s 5(1) and stave off a subsequent notification issued u/s 5(3) of the Act. In AIR 1934 54 (Lahore) the effect of notification u/s 5(3) was treated as conclusive and the Division Bench held that the suit must be decreed.

12. The above decisions show clearly that after the notification issued u/s 3(2) and 5(3), there is simply no scope left for the person in possession to defeat the plaintiffs right to recover possession. If it were ever to be contended that the conclusive presumption drawn under the Act could not be invoked then the burden of proof would be on the person denying the validity of notification to establish the same and show the contrary to what the law presumes. If in this case, therefore, the contention is that the notification had been issued without serving any notice on the person in possession and therefore, the defendant had lost the right to put in his claim, it was necessary for the person in possession to take upon himself the burden and prove that there had been no notice. It must be remembered that the SGPC does not cause the notice to be issued. It is the Government that is required to issue notice to the party in possession before a notification is issued u/s 3 as well as u/s 5. If the Government, therefore, issues a declaration that there had been no objections received but the person in possession were to contend that there had been no notice received then the defendant must take upon himself the burden of summoning the records from the Authority, at whose instance the notification is issued, and bring to Court all the necessary documents to show whether the notice as contemplated u/s 3(3) was issued or not. The defendant had made no such attempt and rest contended by pointing out to the obvious that the defendant is in possession of property and that he has been shown to be a Chela of Mil Singh. Neither his status as Nirmala Sudhu nor he being a Chela of previous person could prove that the

property belonged either to Dora or that he had not been served with notice. That has to be independently established by the defendant. As far as the want of notice is concerned, the plaintiff was entitled to merely show the notification and rest his case on the conclusive presumption of what the Act makes possible for the plaintiff to rely on.

IX. Limited area of justifiability in Section 28 suits

(i) defences taken are frail and not established

13. If suit u/s 28 cannot be defeated by the person in possession by virtue of conclusive presumption that flows from it, the status of the defendant as belonging to Nirmala Sadhus is totally irrelevant. His own status does not alter the character of the property as Gurdwara or the identification of the property as Gurdwara. There are still two obstructions that come in the way before a plaintiff could be stated to be fully entitled to the reliefs as sought for. Assuming for any reason that it is possible for the defendant to still contend that in respect of the notification issued declaring the property as Gurdwara u/s 5(3) that it was not really a Gurdwara then it is understood on two contentions. One, that there is a Samadh and therefore, it cannot be a Gurdwara, Two, that the property belongs to Nirmala Sadhus and therefore, the property cannot be handed over to the plaintiff as an institution representing Sikh community for restoration of the property of a Gurdwara. As regards the first contention, I have seen through the sketch attached to the notification issued u/s 3(2), the Samadh in one corner of the place where the Gurdwara is shown. An institution of Gurdwara cannot come upon a Samadh but if a Gurdwara exists and Samadh has come about subsequently, it cannot detract from the character of the Gurdwara as such. Many institutions are in Punjab where within the precincts of Gurdwara, there are also Samadhs. At Gurdwara Angetha Sahib at Khadur Sahib, 19 kms away from Tarn Taran, Guru Angad Dev had been cremated. A Gurdwara at Khem Karan (Gurusar) has the tomb of Bhai Sevva. At a distance of about 1/2 km from Smadh of Babu Hudha is a Gurdwara at Ramdas Village, 45 kms from Amritsar towards Dera Baba Nanak (see Gazetteer Amritsar, First Edn. 1976 Punjab Revenue (punjab.revenue.nic.in/gaz.absl.html)). More important as a historical relic, within Gurdwara Fatehgarh Sahib lie entombed the two sons (Sahibzade Fateh Singh and Zorawar) of the 10th Guru, Guru Gobind Singh, as well as the Jailer's mother Mala Gujri (Sirhind Trust Circuit and Cities of Punjab: Punjab govt.nic.in). I, therefore, reject the argument that the Gurdwara will lose its character as such Gurdwara by the fact that a Samadh is shown to be in one corner of the property notified as Gurdwara.

14. The other contention that the property belonged to the Nirmala Sadhus must be brought out through some documents showing a dedication of the property to Nirmala Sadhus. None of the documents relied on from the years of 1901 relating to jamabandies makes any reference to any such dedication. Every jamabandi contains a reference to the owner of the property as Guru Granth Sahib and the person in possession is shown to be the defendant. The mere fact

that the defendant is in possession does not also prove ownership when with every entry of the defendant in possession, there is simultaneous reference to the Guru Granth Sahib as the owner of the property. There is not even a single entry that shows an exclusive reference to a defendant. With no dedication shown to be made to the Nirmala Sadhus, the tact of possession of defendant cannot vest with him a right to claim title of the property.

X Disposition

15. The trial Court has, therefore, correctly dealt with all the issues and I find that there is no scope for interference. The issues that have been rendered in favour of the plaintiff are maintained and I hold that the defendants have not shown their entitlement to the property. That "an undisputed property" of a "notified Gurdwara" could be stultified from securing a legal redress assured through a statutory provision u/s 28 of Sikh Gurdwara Act 1925 is a sad reminder to how we make statutory presumptions and misuse High Court's revisional jurisdiction to challenge every interim order that the trial court passes in the course of trial. A sense of urgency is necessary to be recorded in this case to ensure that the decree delivers a fitting denouement against a recalcitrant defendant to hand over possession forthwith. Having regard to the fact that the suit instituted in 1964 has stood on for close to 5 decades, it shall be the responsibility of the defendant/appellant to deliver up possession without any further delay. It shall not be even necessary for the decree holder to file an independent petition to deliver up the property, if the defendant does not deliver the property. On a mere intimation given to the court through a written memo, the executing court competent to execute the decree, viz., the court which tried the suit shall direct the property to be delivered to the decree holder and anticipatory to any obstruction, the court would be competent to direct the jurisdictional police authority to accompany the decree holder and the bailiff to deliver up the property. A section 28 suit could not just afford to be obstructed in this manner, save for absolutely untenable defences, as I have found in this case. In Shub Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna and Others, , the court was dealing with the issue of preliminary decree in partition proceedings and the need to expedite the execution process by adopting a seamless procedure to pass a final decree even without an application from a litigant. The Court said, "it is duty and function of the court. Performance of such function does not require a reminder or nudge from the litigant. The mindset should be to expedite the process of dispute resolution." The appeal is, therefore, dismissed with costs, and the legal fees payable to the respondent in appeal is assessed at Rs. 25000/-.