

(2011) 11 P&H CK 0224

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1902 of 1983 (O and M) and Civil Writ
Petition No. 791, 888 and 914 of 2000 (O and M) and Civil Writ
Petition No. 865, 869, and 1525 of 2008 (O and M)

Surjit Singh and another

APPELLANT

Vs

Bunga Madrassa Sikh Gurdwara under the control and
management of Shiromani Gurdwara Parbandhak Committee,
Takhat Damdama Sahib, Talwandi Sabo and others

RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Citation : (2012) 4 RCR(Civil) 212

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Pritam Singh Baath in CWP Nos. 865, 869 and 1525 of 2008 and Mr. Paramjit Singh Thiara in CWP Nos. 791, 888 and 914 of 2000, for the Appellant; Navdeep Sukhna, DAG, Punjab, Advocate and Mr. Mrigank Sharma, Advocate, for No. 5-Boonga Madrassa in CWP No. 1525 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—All these cases are connected. While the regular second appeal is against the concurrent decrees for recovery of possession in favour of the plaintiff, the civil writ petitions are in respect of orders passed by the revenue authorities determining the mense profit in favour of the plaintiff and in some matters where adjudication has been direction to await the decision. CWP Nos. 865, 869 and 1525 of 2008 are at the instance of the petitioners against the determination of mense profit, while CWP Nos. 914, 791 and 888 of 2000 at the instance of the respondents-plaintiff. The whole issue will revolve on the entitlement only of the plaintiff to secure possession of the property from the defendant appellant, who admittedly is in possession of the suit properties. The plaintiff is described in plaint as Bunga Madrassa Sikh Gurdwara under the control and management of Shiromani Gurdwara Prabandhak Committee, Takhat Damdama Sahib, Talwani Sabo, Tehsil and District Bhatinda. The description of

the property is set out only because the contest is on the frame of suit and the adjudication of whether the plaintiff is a "juristic person", who could claim the reliefs. The case comes up for discussion not merely on the issue of ownership but the entitlement of the plaintiff to maintain the action. The plaintiff has brought upon itself the obstacles initially, by the way the plaint had been drafted and how the plaintiff made attempts during the course of the trial to improve the situation by seeking to make certain amendments which were denied to it. It would, therefore, be necessary to examine the issues at their peripheries before we approach the core issue of ownership. Originally, the plaintiff moved an application u/s 32 of the SGPC Act for transfer of the suit pending in the Court for deciding the claim relating to the notified Sikh Gurdwara on the ground that the property really belonged to the Takhat Damdama Sahib, Talwani Sabo and that since the said Takhat Damdama Sahib was a notified Gurdwara, it should be forwarded to the Tribunal for adjudication. The Court dismissed the application holding that the suit had been filed only by Bunga Madrassa through its Manager and not Takhat Sri Damdama Sahib. Bunga Madrassa itself was not a notified Sikh Gurdwara and consequently, the suit could not be prosecuted before the Tribunal. Finding that there was an error in claiming the property to be the property of Bunga Madrassa, the plaintiff again filed an application for amendment under Order 6 Rule 17 CPC and wanted to amend the cause title differently as Gurdwara Sahib, Damdama Sahib and Bunga Madrassa. This amendment was also rejected by a finding that the attempt was to bring a new plaintiff instead of Bunga Madrassa. The plaintiff had not taken any steps to modify this order and the suit came to be prosecuted in the same manner in which it was originally drafted. The learned counsel for the appellant would bring at the forefront of the arguments the non-maintainability of the suit at the instance of Bunga Madrassa, contending that "Bunga Madrassa" is merely a "rest house" for pilgrims travelling to Harmander Sahib. It cannot hold any property by itself. The learned counsel would also contend that if Bunga Madrassa through the petitioner to be termed as a Sikh Gurdwara under the control of SGPC, SGPC is a body corporate and the suit cannot be instituted without an appropriate authority through a resolution authorizing the institution of the suit.

2. The learned counsel for the appellants would contend placing reliance on the judgment of the Hon"ble Supreme Court in *Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv Rattan Dev Singh and Others*, that explained the word "Bunga". The judgment held "a Bunga is a hostel where pilgrims coming from various parts of India to pay a visit to the Golden Temple, stay". The Hon"ble Supreme Court was deciding the case in a private suit filed for declaration by Raja Shiv Rattan Dev Singh, the Raja of Poonch that the house known as Bunga Raja Dhian Singh and shops appurtenant thereto were his own private property and they did not belong to the Sikh Gurdwara. The suit had been dismissed in the year 1938 on certain preliminary issues which were reversed in first appeal and remanded to the trial Court. On a second appeal against the order, the High Court dismissed it. The dismissal of the trial Court

was restored and against the said judgment, there was a LPA to a Bench. The Division Bench allowed the appeal and returned the case back to the trial Court for disposal in accordance with law and it was this decision that was a further challenge before the Hon''ble Supreme Court. All along the case had, therefore, been only on preliminary issues. The Hon''ble Supreme Court was considering whether the Civil Court had jurisdiction in relation to a declaration that the particular property was a Sikh Gurdwara or not. The objection was with reference to Sections 16 and 32 of the SGPC Act. Dealing with Section 32, the Court held that admittedly the Gurdwara was not a notified Gurdwara and, therefore, Section 32 would not apply. Referring to Section 29 of the Act that deals with exclusion of jurisdiction of the Courts, the Court held that exclusion is not of adequate amplitude to effectively exclude the jurisdiction of a Civil Court but only prohibits its exercise "unless and until" a specified issue is decided u/s 16 of the Act. Section 29(2) was, therefore, not a bar to exclude the jurisdiction completely of a Civil Court but operated as a limited stay until a specific issue is determined by the Tribunal. The Court found that there was no clear bar for entertaining the suit. The issue was never concluded by the judgment that the Civil Court did not have jurisdiction to declare the plaintiff's alleged entitlement to the property.

3. I would only take a limited scope as having been concluded from the judgment of the Hon''ble Supreme Court and the reference of the Court that the expression "Bunga" means a hostel where pilgrims could stay was in the passing and it had not held anywhere that an institution could not be used as Gurdwara. In this case, however, on an issue of fact the trial Judge himself undertook a personal visit and had brought about the notes of inspection. It cannot be at all times the nomenclature which could dictate the nature of property. What the property originally was could have been a mere resting house for pilgrims, but what it actually was over a period is brought out through the inspection notes of the trial Judge. The trial Judge has observed that upper storey of the building had a place reserved for guru granth sahib where at the time of his visit, a Sikh gentleman was actually reciting patti. He has also observed that there were at least about 20 persons, who had assembled around the granth sahib and after the recitation, parsad was also being distributed. The topography of the building itself was in such a way that Bunga was situate within a common boundary and Gurdwara Mata Sahib Sunder Kaur was also located in the same place. In another portion of the building, there was langar and there was chobara where guru granth sahib had been installed. There was evidence from several witnesses on the plaintiff's side describing the location of the property and as to how the property was being used as a place of worship.

4. At a temporal level, it must be understood that all places revered as divine come only through human interventions. At a metaphysical and religious level, it could be stated that all human actions are driven by divine forces and it is perfectly possible that a mere place for resting of pilgrims is also treated as a place of worship over a period of time. There have been a line of granthis, who were

residing in the same place and offered spiritual solace to several devotees. Both the trial Court and the appellate Court have concurrently held on the basis of oral evidence that Bunga was literally a place where worship was offered and it was revered as such. If guru granth sahib had been installed at the property, there is no need to create a dichotomy treating Bunga Madrassa as distinct from a place of worship to deny a juristic status. The Hon''ble Supreme Court had an occasion to deal with the status of guru granth sahib in Shriomani Gurudwara Prabandhak Committee, Amritsar Vs. Shri Som Nath Dass and Others, , where it was held that "Guru Granth Sahib" was a "juristic person" capable of holding property and its title in its name. The Hon''ble Supreme Court held the juristic person itself connotes recognition of an entity to be in law a person which otherwise it is not. It is not an individual natural person but an artificially created person to be recognized in law as such. It is a creation of law necessitated for the human development. The installation and adoration of an idol or image through which the faith is redeemed, therefore, the idol itself has come to be treated as a juristic person. Guru Granth Sahib for the Sikhs as well as to many others epitomize such reverential identity that the place where Guru Granth Sahib is installed ought to, therefore, treated as a juristic person.

5. The learned counsel for the appellant would contend that SGPC itself a corporate body under the SGPC Act and it cannot act without appropriate resolution to institute the suit. The learned counsel would rely on the judgment of the Hon''ble Supreme Court in State Bank of Travancore Vs. Kingston Computers (I) P. Ltd., to hold that a suit by a corporate entity without producing the resolution of the Board of Directors cannot be maintained. If the suit had been instituted in the name of SGPC on a stand alone basis, one might require the resolution of the Board. In this case, the suit is in the name of Bunga Madrassa which is described as under the control of the management of SGPC. The suit could have been maintained even merely in the name of Bunga Madrassa itself. The human agency is introduced only for the purpose of verification and I will not find that the decision in the State Bank of Travancore's case (supra) is of any relevance to this case. I will, therefore, affirm the findings of the Courts below that the suit at the instance of Bunga Madrassa was competent and it was a legal entity to prosecute the claim on its own behalf.

6. The most crucial issue is whether the property is the property of the plaintiff to sustain its claim for ejectment. There has been fairly a substantial consideration of this issue in previous proceedings brought at the instance of the contesting defendants themselves. In the Civil Appeal 3 and 4 of 1975 which arose out of the suits between Surjit Singh and Harbans Singh on the one hand, against SGPC the finding has been that the contesting defendants now were in possession of the property and entitled to the relief of injunction and they could be evicted only by a lawful person in accordance with law. The SGPC itself was staking a claim of the property as an owner and it was in that context that the defendants herein, were able to secure a decree for injunction at the appellate Court. Bunga Madrassa was not a party but there are significant observations

which trace title to the property. The judgment which obtained finality as far as the defendants were concerned in its context against SGPC brings out the fact that for the jamabandi for the year 1960-61 (samvat) equivalent to 1903-04, the suit property had been entered as in the ownership of patti Jai Singh and under the possessory column, one Prem Singh Chela Sher Singh was described as an occupancy tenant. For the jamabandi 1980-81 (samvat) equivalent to 1923-24, Bunga Madrassa situate at Talwandi Sabo under the management of Bhagat Singh, chela Prem Singh, figures as an occupancy tenant in the possessory column, and against the column ownership, the same name as found in the previous jamabandi has been mentioned. On the coming into of the Occupancy Tenant (Vesting of Proprietary Rights) Act No. III of 1953, Bunga Madrassa which hereto before had been recorded as occupancy tenant in the possessory column has come to be recorded as absolute owner under the mohtminship of Narain Singh, chela Bhagat Singh. The names of the landlords have been expunged from the proprietary column vide mutation No. 7920 sanctioned on 30.11.1953. In the jamabandi for the year 1967-68 AD, Bunga Madrassa has been recorded as the owner again under the management of Narain Singh, chela Bhagat Singh as mohtmin. It has come in evidence that Narayan Singh died in the year 1967 and as per the mutation sanctioned in the year 1971, Bunga Madrassa under the mohtminship of SGPC has been recorded. With such clear and specific recitals from the revenue entries, it is impossible for the defendant to deny and to contend that Bunga Madrassa is not the owner of the property. The earlier decree in favour of the contesting defendant for injunction was not against Bunga Madrassa itself. It was only against SGPC. The present suit itself has been filed only subsequent to the disposal of the appeal in Civil Appeal 3 and 4 and the findings recorded by the appellate Court have a significant value for assessing the ownership of the property. It may be that there is no written document of transfer in favour of Bunga Madrassa. The law does not require any such instrument for vesting a religious charity or a trust with ownership. It has been held by the Hon"ble Supreme Court in Sainath Mandir Trust Vs. Vijaya and Others, , that even oral trust is possible and there is no registration necessary to invest in or endow a property in favour of a religious institution. The revenue entries from the beginning of the previous century making reference to Bunga Madrassa originally as an occupancy tenant and later entered as an absolute owner shall be sufficient ground to maintain the suit for ejectment. The issue is, therefore, answered in favour of the plaintiff and although the trial Court has made reference to the suit instituted by the defendants and the findings that the property belonged to the defendant under the suit, the appellate Court has correctly considered the effect of the appellate Court judgment. I anchor the finding of the plaintiff's entitlement on the entries found in the revenue records and brought through the adjudication in earlier proceedings where the defendants were parties.

7. Admittedly, the plaintiff Bunga Madrassa is not a notified Gurdwara. The Takhat Damdama Sahib is a notified Gurdwara but the suit is not at the instance

of Takhat Damda Sahib. The reference to Takhat Damda Sahib is made only on the basis of the location of the Bunga Madrassa itself and, therefore, there is no bar against the institution of a civil suit for ejectment. The Sikh Gurdwara Act makes provisions for ejectment suits filed at the instance of notified Gurdwaras. The provisions of the Punjab Tenancy Act cannot also apply, for, it is not conceded anywhere by the defendants that they are tenants though the principal contention of the plaintiff was that the defendants are tenants but they had not been paying the rent. A tenant, who denies the status and sets up title anterior to suit forfeits the right to continue as such tenant and cannot plead the provisions of the Punjab Tenancy Act in defence against ejectment. The protection shall be available only for a tenant, who admits his status as such. The tenant, who denies such status and pleads for adverse possession is not a person, who could claim that the provisions of the Tenancy Act will bar the institution of suit. The plea as regards the want of jurisdiction of Civil Court under the provisions of Sikh Gurdwara Act and the Punjab Tenancy Act is, therefore, clearly misplaced. The suit has been instituted on 11.03.1976 and the denial of title has come for the first time only through the suit instituted by the defendants earlier asserting title to the property in the civil suit instituted on 01.08.1973. There is no assertion of hostile title before the institution of their own suit and the suit filed within a period of 12 years from the date when adverse assertion is made is well within time and the defendants' possession cannot avail to a plea of adverse possession. The plaintiff is entitled to succeed and the decisions of the courts below providing for such a relief is upheld. RSA No. 1902 of 1983 is, consequently, dismissed with costs as taxable on the valuation in suit. CWP Nos. 791, 888 and 914 of 2000 shall follow the decision of the Civil Court declaring the plaintiff as entitled to obtain an order of ejectment. The writ petitions challenging the award of mense profit in CWP Nos. 865, 869 and 1525 of 2008 are consequently dismissed with costs collectively assessed at Rs. 25,000/- in favour of Boonga Madrassa affirming the assessment of mense profit. CWP Nos. 791, 888 and 914 of 2000 filed by Bunga Madrassa are allowed with costs assessed collectively at Rs. 25,000/- holding that the plaintiff is entitled to recover the decretal amounts awarded by the Assistant Collector in the respective cases.