

Purari Singh and others v. Ajaib Singh and others (G. R. Majithia, J.)

6802, 7265, 7524 of 1988 and CWP 2708 of 1989 and dismiss CWPs No. 3449, 3480, 3580, 3631, 3644, 3681, 3756, 3921, 3924, 3925, 4146, 4213, 4375, 4987, 5216, 5285, 10125, 10335 of 1988 and CWP 1784 of 1989 relating to Khadi Udyog. No costs.

R.N.R.

Before : G. R. Majithia, J.

PURAN SINGH AND OTHERS,—Appellants.

versus

AJAIB SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 1799 of 1978

18th September, 1990

Code of Civil Procedure, 1908—O. 1, R. 8—Suit by worshippers—Property belonging to idol—Locus standi of worshippers to file the suit.

Held, that it is open to the idol to bring a suit to defend its own interest. However, it does not exclude the rights of others, including the worshippers, interested in the maintenance of the religious institution and preservation of the property attached to it, to bring a suit in their own right relating to the matter. The rights of the plaintiff as a worshipper is not a right through the idol. It is, no doubt, a right which is inseparably bound to an idol and appertains to it the right of the worshipper to maintain a suit against the person who commits an injury to property which belonged to the idol.

(Para 7)

Regular Second Appeal from the decree of the Court of Sh. D. B. Gupta, Addl. District Judge, Ludhiana, dated the 28th day of February, 1978 reversing that of Sh. N. D. Bhatara, Sub-Judge 1st Class, Jagraon dated the 30th October, 1976 and dismissing the suit of the plaintiffs, leaving the parties to bear their own costs.

CLAIM:—Suit under Order 1, rule 8 C.P.C. for a decree for declaration that there is no validly elected Managing Committee of Gurdwara Sahib, Ghalib Kalan, Tehsil Jagraon and the entries in the column of ownership in the Jamabandi of village Ghalib Kalan, Tehsil Jagraon for the year 1956-57 or in the previous or subsequent Jamabandis appearing after the words "Gurdwara Sahib Waqya Deh Haza" and

reading "Ba-Ehtman Intzamia Committee Ghalib Kalan" in respect of land measuring 1 Kanal 5 Marlas comprising Khata No. 564/722 Khasra No. 1251, situated in said village Ghalib Kalan are fictitious, illegal, void, against facts, and were made without any order of any revenue officer of competent jurisdiction and have no binding effect as against the Gurdwara aforementioned or against its worshippers, including the plaintiffs and that the sale of land measuring 1 Kanal 5 Marlas described in detail above by defendants Nos. 1 and 2 in favour of Shri Ajaib Singh defendant No. 3 or for that matter on behalf of the Gurdwara above mentioned through defendants Nos. 1 and 2 under the sale deed dated 10th July, 1972 registered on 26th July, 1972 is illegal, void, ineffectual, inoperative, without jurisdiction as against the Gurdwara aforementioned on account of its being not a juristic person and its worshippers including the plaintiffs and ignoring and setting aside the same, the Gurdwara Sahib of village Ghalib Kalan continues to be the owner in possession of the land in dispute and defendant No. 3 Shri Ajaib Singh has no right, title or interest therein and for a decree of consequential relief of permanent injunction, restraining defendant No. 1 from alienating the land in dispute or any part thereof in any manner whatsoever and from making any construction upon it or upon any part thereof and from interfering with the ownership and possession of said Gurdwara in any manner whatsoever, on the basis of oral and documentary evidence.

CLAIM IN APPEAL :—For reversal of the order of lower Appellate Court.

T. S. Grewal, Advocate, for the Appellants.

D. S. Chahal, Advocate, for the Respondents.

JUDGMENT

G. R. Majithia, J.

(1) The plaintiffs have come up in second appeal against the judgment and decree of the first appellate Court reversing on appeal those of the trial Court whereby the latter had held that the sale deed dated July 10, 1972 executed by defendants/respondents No. 2 and 3 in favour of defendant/respondent No. 1 was null and void.

The facts :—

(2) The property in dispute was gifted to the Gurdwara Sahib situated at village Ghalib Kalan, Tehsil Jagraon, District Ludhiana. Defendants/respondents No. 2 and 3 as authorised nominees by the managing committee of the Gurdwara Sahib sold the land in dispute

Puran Singh and others v. Ajaib Singh and others (G. R. Majithia, J.)

to defendant/respondent No. 1,—*vide* sale deed dated July 10, 1972. The plaintiffs claiming themselves to be worshippers filed a suit for declaration to the effect that the sale was null and void and was not binding on the Gurdwara Sahib. They also challenged the existence of any managing committee for managing the affairs of the Gurdwara or that defendants/respondents No. 2 and 3 were authorised by such a managing committee to sell the property to defendant/respondent No. 1.

(3) The suit was contested by defendant/respondents No. 2 and 3, who had executed the sale deed in favour of Ajaib Singh defendant/respondent No. 1. They took a preliminary objection that the suit was not in proper form and was bad for non-impleading of necessary parties and that the plaintiffs had no *locus standi* to challenge the management of the Gurdwara and the sale in dispute. However, it was admitted that the Gurdwara Sahib was the owner of the property in dispute and it was not a scheduled Gurdwara under the Sikh Gurdwaras Act. A duly elected managing committee was managing the affairs of the Gurdwara. They were authorised by the regularly elected managing committee to sell the land in dispute and that respondent/defendant No. 3 was a *bona fide* purchaser for consideration. It was further pleaded that the land in dispute was originally owned by Bhan Singh son of Natha Singh, who had gifted the same to the Gurdwara about 30 years back. The donee did not take possession of the gifted land. The donor and his sons remained in actual possession of the gifted property till 1971 and they were asserting that they had become owners by adverse possession and it was under these circumstances that it was decided by the managing committee of the Gurdwara to sell the land to respondent/defendant No. 1.

(4) From the pleadings of the parties, the following issues were framed:—

1. Whether the suit has not been filed in a proper form ?
OPD
2. Whether the suit is bad for non-joinder of necessary parties ? OPD
3. Whether the plaintiffs have got *locus standi* to sue and are competent to challenge the impugned sale ? OPP
4. Whether the suit is within time ? OPP

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5. Whether the alleged managing committee was competent to authorise Gurdial Singh and Santokh Singh defendants to sell the suit property to Ajaib Singh defendant and whether the impugned sale is valid, legal and binding on all worshippers of the Gurdwara ? OPD.
 6. Whether the managing committee is a duly constituted committee and is competent to manage the Gurdwara and its property ? OPD (objected to)
 7. Whether the impugned sale by defendants No. 1 and 2 is and act of good management ? If so, its effect ? OPD
 8. Whether the defendant No. 3 is a *bona fide* purchaser for consideration without notice ? If so, its effect ? OPD
 9. Whether the defendant No. 3 has acquired title in suit property by adverse possession ? OPD
 10. Whether the plaintiffs are estopped by his act and conduct to file this suit ? OPD
 11. Whether the plaintiffs are guilty of laches; if so, its effect ? OPD
 12. Whether the impugned sale was made for the benefit of Gurdwara and was supported by legal necessity ? OPD
 13. Relief.

(5) Issue No. 1 was decided against the defendants and it was held that the suit had been properly filed; issue No. 2 was decided against the defendants holding that the suit was not bad for non-joinder of necessary parties; issue No. 3 was decided in favour of the plaintiffs holding that they had the *locus standi* to file the suit to challenge the alienations; issue No. 4 was partly decided in favour of the plaintiffs holding that their suit challenging alienation was within limitation but the claim for declaration to challenge the Jamabandi entries of 1956-57 was barred by limitation; issue No. 5 was decided against the defendants holding that the managing committee of the Gurdwara was not competent to authorise Gurdial Singh and Santokh Singh defendant to sell the suit land and the sale was not binding on the worshippers of the Gurdwara; issue No. 6 was decided in favour of the defendants holding that there was

Puran Singh and others v. Ajaib Singh and others (G. R. Majithia, J.)

a duly constituted committee of the Gurdwara and it was entitled to manage the affairs of the Gurdwara; issue No. 7 was answered against the defendants and it was held that the sale was not an act of good management; the Gurdwara had sufficient funds for meeting expenses for the repairs; issue No. 8 was decided against the defendants holding that defendant No. 3 was not a *bona fide* purchaser for consideration; issue No. 9 was decided against defendant No. 3 holding that he had not become owner by adverse possession; issues No. 10 and 11 were decided against the defendants since these were not pressed at the trial and issue No. 12 was decided against the defendants holding that the sale was not for legal necessity and for the benefit of the Gurdwara. As a result of these findings, the trial Judge declared the sale as void and held that the Gurdwara was entitled to restoration of possession of the land in suit from defendant No. 3.

(6) Defendant No. 3 Ajaib Singh challenged the judgment and decree of the trial Judge in the first appellate Court. The first appellate Court held that the Gurdwara of village Ghalib Kalan was a juristic person and could bring a suit in its own name; the worshippers had no right to file a suit in their own names and that the plaintiffs could not maintain the suit since they had not pleaded or proved that the land was used by the worshippers for worship; the managing committee of the Gurdwara passed a valid resolution authorising defendants No. 1 and 2 to sell the land to defendant No. 3; the land was not yielding any profit; the sale proceeds were to be utilised for improving the condition of the Gurdwara and the sale was an act of good management. It also took note of the fact that the sale was made in favour of the son of the donor.

(7) The entire approach of the first Appellate Court is erroneous. The appellate Judge for reasons not apparent did not think it proper to meet with the reasoning of the trial Judge while reversing the judgment of the latter on various issues. He did not understand the scope of the claim made in the suit. The plaintiffs had not come to the Court for enforcing some personal right. Gurdwara is a juristic person as held by this Court in *Piara Singh v. Gurugranth Sahib Madhipur* (1). It is open to the idol to bring a suit to defend its own interest. However, it does not exclude the rights of others who are interested in the property of the idol in their own right to bring

(1) A.I.R. 1973 Punjab and Haryana 470.

a suit relating to the matter. The rights of the plaintiff as a worshipper is not a right through the idol. It is, no doubt, a right which is inseparably bound to an idol and appertains to it the right of the worshipper to maintain a suit against the person who commits an injury to property which belonged to the idol. Reference may usefully be made to *Muhammad Umar v. Ram Chand* (2), wherein it was held thus :—

“The suit would lie. Every Muhammadan who has a right to use a mosque is competent to maintain a suit against any one who interferes with the exercise of his such right to use; and by the same analogy every Muhammadan has a right to maintain a suit against persons who commit an injury upon property which has been devoted to the support of a mosque.”

In *Ramchand (dead) by his legal representatives v. Thakur Janki Ballabhji Maharaj and another* (3), the apex Court held thus:—

“A person, who has made large donations for the maintenance of the temple, has clearly a substantial interest to maintain a suit for possession of the temple and its properties against the pujari or manager, on behalf of the deity to protect the property from mismanagement and misappropriation.”

All persons, including the worshippers, interested in the maintenance of the religious institution and preservation of the property attached to it, have *locus standi* to challenge improper alienation. The finding to the contrary recorded by the first Appellate Court cannot be sustained. Undisputably, the property in suit belonged to Gurdwara Ghalib Kalan. The property belonging to a religious institution can be alienated only for necessary purposes. In the resolution dated June 14, 1972, Ex. D.5, it was mentioned that a wall of the Gurdwara had fallen and a gate of the Gurdwara building had to be erected and the property had to be sold for raising funds for repairs of the Gurdwara. The trial Court, on the basis of the evidence produced before it, came to the conclusion that a sum of Rs. 1068 was lying in deposit with the Bank in the name of the

(2) Punjab Record No. 87 of 1892.

(3) A.I.R. 1970 S.C. 532.

The Punjab Agricultural University, Ludhiana and others v.
Dr. P. N. Verman (R. S. Mongia, J.)

Gurdwara and the managing committee could utilise that amount for effecting necessary repairs to the Gurdwara building and it found that the alienation of the suit property in favour of Ajaib Singh defendant was not for legal necessity or otherwise justified as an act of good management. The first appellate Court did not advert to this evidence and hastened to hold that the Gurdwara building was in a dilapidated condition; the land in suit was not yielding any profit to the Gurdwara and the sale was effected for necessary purpose and was otherwise justified as an act of good management. The property attached to a religious institution can only be sold for an "inevitable necessity" and its alienation is for the benefit of the deity or idol and if there is no such necessity, the sale is not binding on the religious institution. The managing committee of a religious institution cannot exercise larger power of alienation than that of a shebait. The sale of the property in suit was effected neither for necessary purpose nor was it justified as an act of good management.

(8) For the reasons aforementioned, the appeal is allowed, the judgment and decree of the first appellate Court are set aside and those of the trial Court are restored. However, the parties are left to bear their own costs.

S.C.K.

Before : J. V. Gupta, C.J. & R. S. Mongia, J.

THE PUNJAB AGRICULTURAL UNIVERSITY, LUDHIANA AND

OTHERS,—Appellants.

versus

DR. P. N. VERMAN,—Respondent.

Letters Patent Appeal No. 563 of 1989

8th October, 1990

Punjab Agricultural University Act, 1961—Ss. 10(9), 12, 29 & 33—Punjab and Haryana Agricultural Universities Act, 1970 repealing the 1961 Act—Ss. 14(f), 16, 31(b) & (d) & 32, Statute 3, 4—Order of removal from service—Vice-Chancellor the appointing authority—No