

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Regular Second Appeal No. 3201 of 2008
Date of Decision: October 31, 2008**

Mandir Thakur Ji Maharaj, Nangal Katha, Narnaul

.....Appellant

VS.

Smt. Barfi Devi and others

.....Respondents

Coram:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

**Present: Mr. P.R.Yadav, Advocate,
for the appellant**

RAKESH KUMAR JAIN J.

This is an appeal by the plaintiff against the judgment and decree dated 27.2.2008 passed by the District Judge, Narnaul, whereby the decree dated 16.3.2007 of the Additional Civil Judge (Senior Division), Narnaul has been set aside. The plaintiff filed a suit for possession in respect of land measuring 7 Kanals 11 Marlas comprised in Khewat No. 120 Khatauni no. 169 Khasra No. 46//3 situated in the area of village Nangal Katha District Mohindergarh, on the basis of mutation sanctioned on 2.3.1991. It was alleged that this land belongs to Mandir and is under the management of a trust namely Shri Krishan Mandir Trust (for short 'the

Trust')but the defendants who have no concern with the property had encroached upon a part of the suit land to the extent of area of 2 Marlas. During the pendency of the suit, defendant Rajender died and his widow Barfi Devi and daughter Smt. Balbir @ Lalita and two sons namely Leelu and Manoj were brought on record vide order dated 19.12.1996.

In the joint written statement filed on behalf of defendants No. 1, 3 and 4, it was alleged that deceased Rajender had taken land measuring 1 Kanal 5 Marlas comprised in Khasra No. 46//4/1 on lease from Sukh Ram Dass Chela Bhom Dass Chela Ramnarain Dass Mohatmim of Mandir Thakur Ji vide registered lease deed dated 3.4.1980 and raised construction of a house in the year 1980. The defendant is residing in the house with his family to which the Trust has never raised any objection to the possession of defendants and now they are estopped from filing the present suit. In the pleadings by the parties, following five issues were framed:-

1. Whether the plaintiff is the owner of the suit land and is entitled to its possession ? OPP
2. Whether the plaintiff has no locus-standi to file the present suit and it is also not maintainable in the present form? OPD
3. Whether the suit, of the plaintiff is bad on account of non-joinder of necessary parties? OPD
4. Whether the defendants are entitled for special costs under Section 35A CPC? OPD
5. Relief

After considering the evidence on record, the trial court decreed the suit of the plaintiff which led to the filing of the first appeal before the First Appellate Court, which was allowed inter alia on the ground that the

plaintiff had no jurisdiction to file the suit as the resolution to file the suit has been passed on 20.6.1999 i.e. after five years of its institution.

Mr. P.R.Yadav, learned counsel for the appellant has submitted that the suit has been instituted through the President of the Trust after resolution was duly passed by all the trustees whereas, according to the finding of the First Appellate Court, the suit has been filed in June, 1994 and the resolution was passed on 20.6.1999. Thus, at the time when the suit was filed no power was entrusted by the Trust to its President to file the present suit. Therefore, it has been found by the First Appellate Court that there is nothing on record to show that the President of the Trust could have been authorised to file such a suit independently on the basis of trust deed. Moreover, it was found that the resolution relied upon by the learned counsel for the plaintiff was simply with regard to the appointment of Nand Ram as President which does not authorise him to institute such a suit against the defendant. The First Appellate Court had held that the suit filed by the plaintiff was not maintainable, firstly, because of the lack of power/authority which emanates from the resolution of the Trust and secondly, all the trustees were not made party. Learned counsel for the appellant could not find fault with the reasoning adopted by the court below.

No question of law much less substantial has been raised by the counsel for the appellant nor any question has even been framed in respect of the findings which have been recorded against the plaintiff by the First Appellate Court while dismissing the suit.

In view of the above, I do not find any merit in the present appeal and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

October 31
, 2008
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