

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CMPMO No. 124 of 2015.**

**Reserved on : 21<sup>st</sup> May, 2018.**

**Date of Decision: 31<sup>st</sup> May, 2018.**

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Vikas Sharma

**.....Petitioner/Plaintiff.**

**Versus**

Varun Sharma & Ors.

**.....Respondents/Defendants**

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**Coram**

**The Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

Whether approved for reporting? Yes.

**For the Petitioner:      Mr. Bimal Gupta, Senior Advocate  
   with Ms. Rubeena Bhat, Advocate.**

**For the Respondents : Mr. Neeraj Gupta, Advocate.**

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**Sureshwar Thakur, Judge.**

The plaintiff, claims succession, to the Guru Gaddi Baba Jhalla Ji. He has prayed, for rendition of a declaratory decree, qua his being entitled to inherit, the Guru Gaddi Baba Jhalla Ji, besides has sought a declaration, qua, defendant No.2, being disentitled to declare himself, as, the Mahant (Jhalla Ji). The substratum, of the claim reared, in the

plaint, by the plaintiff, is, squarely rested, upon, there existing customs and traditions, whereunder, succession, to, the Guru Gaddi Baba Jhalla Ji, is bestowable only upon the eldest surviving son, of the preceding Mahant, of, Guru Gaddi Baba Jhalla Ji. Furthermore, the plaintiff avers, of, one Gurdiyal Singh, erstwhile Mahant, of, Guru Gaddi Baba Jhalla Ji, executing a will, on 26.07.2008, in consonance, with, the apt customs and usages, whereunder, he appointed, the plaintiff, being his eldest grand son, to succeed vis-a-vis, the Guru Gaddi Baba Jhalla Ji, upon, occurrence, of, demise of one Virender Sharma. However, Virender Sharma, upon, occurrence of his demise, on, 22.09.2012, is, disclosed to be survived, by only female issues, and, his widow one Indra Sharma, rather collusively appointing, and, declaring defendant No.2, one Varun Sharma, the youngest grand son, of, one Gurdiyal Singh, to be the Mahant, of, Guru Gaddi Baba Jhalla Ji. In sequel, the plaintiff, avers qua hence derogation vis-a-vis the customs enjoined to be revered, qua succession, to the spiritual seat of Mahant of Guru Gaddi, Baba Jhalla Ji, hence, occurring, derogation whereof, is comprised in the plaintiff, despite, being the eldest grand son, of, Gurdiyal Singh, also, his being bequeathed, the Guru

Gaddi Baba Jhalla Ji by his grand father, one Gurdiyal Singh, who, during his life time held the spiritual seat, of, Guru Gaddi Baba Jhalla Ji, rather his youngest grand son, defendant No.2 Varun Sharma, declaring himself, to be the Mahant, of, Guru Gaddi Baba Jhalla Ji.

2. Written statement to the plaint, was, instituted by defendants No.2 to 5, wherein they denied the claim, of the plaintiff, especially, the one occurring, in, the apposite paragraph No.2, contains, a denial, of, their existing custom, tradition, and, usages, vis-a-vis, the succession to the spiritual seat, of Mahant to Guru Gaddi Baba Jhalla Ji, comprised, in the eldest male concerned, being alone entitled to occupy the seat of Mahant of Guru Gaddi Baba Jhalla Ji. It is also contended, in the apposite paragraph No.2, of, the written statement furnished, to, the corresponding paragraph thereof, qua the Guru Gaddi Baba Jhalla Ji, being a spiritual seat, and, succession thereto being only, on, spiritual merit. The learned trial Court, during, the pendency of the suit, on an application cast under the provisions of Order 40, Rule 1 of the CPC, provisions whereof stand extracted hereinafter:-

**“1. Appointment of receivers.-** (1) Where it appears to the court to be just and convenient, the court may by order—

- (a) appoint a receiver of any property, whether before or after decree;
  - (b) remove any person from the possession or custody of the property;
  - (C) commit the same to the possession, custody or management of the receiver; and
  - (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the court thinks fit.
- (2) Nothing in this rule shall authorise the court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.”

by the plaintiff/petitioner herein, for hence appointing, a receiver for managing the funds of the apposite Guru Gaddi Baba Jhalla Ji, allowed the apposite application, whereas, the learned Appellate Court, upon the defendant instituting, an appeal therefrom before it, allowed, the latter's appeal. The plaintiff/petitioner herein is aggrieved therefrom, hence, has instituted the instant petition before this Court.

3. The respective Wills propounded by the plaintiff, and, by defendant No.2, Varun Sharma, respectively, of Gurdiyal Singh, and, of one Virender Sharma, the apposite preceding Mahants, of, Guru Gaddi Baba Jhalla Ji, yet remain to be pronounced, to be validly executed. Moreover, the

customs, traditions and usages, espoused by the plaintiff, governing, the inheritance, to, the spiritual seat of Mahant, of , Guru Gaddi Baba Jhalla Ji, AND, as comprised in the eldest son, being solitarily entitled to succeed thereto, are, also under contest. However, the contention raised by defendant No.2, one Varun Sharma, in respect of the aforesaid claim nor the propagation made by the plaintiff in respect thereof, is availed, upon, any prima facie material, in support(s) thereof, yet existing on record. However, the apt paragraph 2, of the plaint, makes a graphic/uncontroverted disclosure qua hence succession, to the spiritual seat of Mahant of Guru Gaddi Baba Jhalla Ji, being bestowed, upon, the eldest son, of, the preceding Mahant, of, Guru Gaddi Baba Jhalla Ji, (I) thereupon, it is prima facie hence inferable qua the relevant customs, usages, and, traditions, rather hence enjoining succession to the apt spiritual seat, of, Mahant of Guru Gaddi Baba Jhalla Ji, by the eldest son, of, the preceding Mahant, of Guru Gaddi Baba Jhalla Ji, prima facie, may be, acquiring some tenacity, dehors, no documentary material in respect thereof yet existing, on record. If so, defendant No.2, Varun Sharma, who, is the youngest grand son, of, one Gurdiyal Singh, the latter whereof, in his life

time, held, the apt spiritual seat, of, Mahant of Guru Gaddi Baba Jhalla Ji, and, who bestowed in prima facie conformity, with, the afore referred customs AND, also, bequeathed the spiritual seat of Mahant of Guru Gaddi Baba Jhalla Ji, upon the plaintiff, given the preceding Mahant, one Virender Sharma, being survived by only female issue(s), (ii) does apparently confer vis-a-vis the plaintiff, de hors the apposite wills, being yet not proven, to be validly executed, a right superior to the claim, foisted, by defendant No.2, Varun Sharma, to hence succeed to the spiritual seat, of Mahant, of, Guru Gaddi Baba Jhalla Ji.

4. The aforesaid trite factum, does override, and, benumb, all the conclusions, made by, the learned Appellate Court, contrarily, hence the mandate, of, the Hon'ble High Court Madras, in a case titled as ***T. Krishanaswamy Chetty v. C. Thanguvelu Chetty and others***, reported in ***AIR 1955 Madras 430***, the relevant portion whereof, is, extracted hereinafter, qua upon existence, of, imminent proof, of the plaintiff prima facie, holding an excellent chance of succeeding, the Court hence appointing a receiver for the relevant purpose, does obviously, hereat, attain satisfaction.

“(1) The appointment of a receiver pending a suit is a matter relating, resting in the discretion of the Court.

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has a very excellent chance of succeeding in the suit.

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration.

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. It would be different where the property is shown to be 'in medio', in the enjoyment of no one. And

(5) The Court, on the application made for appointment of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame.”

Sequel thereof, is, that with the spiritual seat of Mahant, of Guru Gaddi Baba Jhalla Ji, being blessed, with offerings, by its, followers, and, also its possessing immense assets, and,

funds, thereupon, for ensuring the proper management, of all, the apt assets, appertaining, to the Guru Gaddi Baba Jhalla Ji, and, for appropriate management, of the all the offerings, made to the Guru Gaddi Baba Jhalla Ji, thereupon, the appointment of a receiver, as made by the learned trial court, is required to be validated.

5. For the foregoing reasons, the instant petition is allowed and the order render by the learned District Judge concerned in Civil Misc. Appeal No. 04-CMA/14 of 2014 is set aside, whereas, the order rendered by the learned trial Court on 28.12.2013 is affirmed and maintained. The parties are directed to appear, before, the learned trial Court, on 11<sup>th</sup> June, 2018. However, it is made clear that the observations made hereinabove shall have no bearings on the merits of the case. No order as to costs. All pending applications also stand disposed of . Records, if received, be sent back forthwith.

**31<sup>st</sup> May, 2018**  
(jai)

**(Sureshwar Thakur)**  
**Judge.**