

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.8277 OF 2009

BUDHWANT SINGH (DEAD) THR. LRS. & ORS.

APPELLANT(S)

VERSUS

GURUDWARA DERA SANT KILLEY WALA & ORS.

RESPONDENT(S)

O R D E R

The appellants/defendants impugn the judgment of the High Court rendered in second appeal. By the impugned judgment, the High Court has partly accepted the second appeal filed by the respondents, and the operative portion of the impugned judgment reads as follow:-

“In view of the above, the appeal is partly accepted and Respondents No.1 to 3 are restrained from interfering with the management and day-to-day affairs of the Gurdwara Sahib. However, they would be at liberty to pay obeisance and offer prayers in the Gurdwara Sahib. They would also be entitled to use the passage falling in Khasra

No.607 and to dig a bore outside the boundary of the Gurdwara Sahib.

The judgments and decrees passed by the courts below stand modified accordingly."

Briefly, the case which was set up by the plaintiffs was as follows. The plaintiff No.2 is a Society registered under the Societies Registration Act. A Gurudwara Dera Sahib has been constructed which is located at Khasra No. 607 measuring 5 Bighas 9 Biswas. It was claimed that the plaintiff No.1 (Gurudwara Sahib) was in possession of the land in question. There is reference to certain committees. It was further set up as follow:-

"5. That the Plaintiffs are in possession of the suit land for the last more than 40 years. Gurudwara Sahib was constructed in the year 1957. Part of the Dera was constructed in the year 1957. After work construction of the new building in the complex of Gurudwara Sahib was stated in the year 1994. Two storeys of the building are complete. Only the finishing work is being completed Ground area of the new building is 11000 sq.feet, construction of the first floor of building is also almost of the same area. Second phase of the building of 4000 sq. feet of ground floor is under construction. The plan of the Plaintiff committee is to construct other buildings also in the Gurudwara Dera Complex."

It was further contended by the plaintiffs that the possession of the plaintiffs in Khasra No.607 in dispute is for the last more than 12 years as of right. They claimed title by

adverse possession. The relief sought was to restrain the defendants/appellants before this Court from dispossessing the plaintiffs or in any manner interfering with the possession of the plaintiffs by digging a bore in the suit land in any manner or digging any bore in the suit land within the region of 400 square feet of the boundary of the Gurudwara Sahib.

The Trial Court dismissed the suit and the First Appellate Court concurred with the said decision. It is thereafter in the second appeal by the plaintiffs that the High Court granted relief as we have already noticed.

We heard Mr. Manoj Swarup, learned senior counsel for the appellants and Mr. Yashraj Singh Deora, learned counsel for the respondents.

Mr. Manoj Swarup, learned senior counsel for the appellants would highlight that the relief claimed by the plaintiffs and contrasted them with the relief which was granted by the High Court in the second appeal filed by the plaintiffs.

In fact, the learned senior counsel would point that what was granted by the High Court was not even prayed for by the plaintiffs themselves as it is evident from the following order:-

Gurdwara Dera Sant Killely Wala

Appellant

Versus

Budhwani Singh and Ors.

Respondents

Present: Shri Sanjiv Bansal, Advocate for the appellants

Counsel for the appellants contends that in their plaint, prayer was for issuance of injunction restraining the Respondents (Defendants) not to dig up any bore in Khasra No.607. By referring to findings given in paragraph No.17 of appellate court judgment, Counsel contends that prayer has been misconstrued by the appellant court below. Counsel further states that the appellants never sought any injunction against the Respondents to deprive them to pay obeisance and also to use passage existing in the suit land.

Notice of motion for 30.08.2005.

Parties are directed to maintain status quo, subject to aforesaid statement, made by counsel for the appellants.

Sd/-
Jasbir Singh, Judge

May 12, 2005

In other words, it is submitted that the High court has clearly erred in proceeding to interdict the appellants from

having anything to do with the management of the Gurudwara. This is particularly so after the High Court found the appellants to be owners of the suit property.

Learned counsel for the respondents, no doubt, pointed out that no case was made out for interference, particularly in an appeal generated by special leave granted under Article 136 of the Constitution. This is for the reason that there is a society and committee which is in actual management as has been found by the High Court. There is no equity in the case of the appellants. The appellants themselves admitted that there is a committee and, therefore, the appellants cannot be said to be aggrieved by the relief granted by the High Court.

In other words, it is contended that the plaintiff No.2 is in management of the Gurudwara, and all that the High Court has done is to restrain the appellants who are not having anything to do with the management of the Gurudwara from interfering with its affairs.

The jurisdiction of the High Court, as far as the Punjab and Haryana High Court is concerned in the matter of a Second Appeal has been described and set out in the judgment of this Court in Pankajakshi (Dead) Through L.Rs. vs Chandrika & Ors., 2016 SCC (6) 157. Therefore, the jurisdiction which the High Court of Punjab and Haryana has in a

second appeal is what the High Court would have in a second appeal under Section 100 of the Code of Civil Procedure (for short "CPC") prior to its substitution by the amendment in 1977. The ambit of its jurisdiction has been further described in the later judgment by this Court in *Avtar Singh & Ors. Vs. Bimla Devi & Ors., 2021 (11) SCALE 520.*

We may notice that the High Court in the course of its judgment has proceeded to pose the issue for consideration as whether the Courts have misconstrued and misinterpreted the evidence on record. The scope of the jurisdiction of the High Court has been delineated herein before.

We would think without probing the matter further and also noticing that both the parties have also virtually no objection to the matter being reconsidered by the High Court, a remand is necessitated.

Accordingly, we allow the appeal set aside the impugned judgment and we would request the High Court to dispose of the appeal as early as possible. We make it clear that we have not pronounced on the merits of the

matter and all the contentions available in law are left open.

Pending application(s), if any, stand disposed of.

.....J.
[K.M. JOSEPH]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi
9th November, 2021

ITEM NO.101

COURT NO.10

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8277/2009

BUDHWANT SINGH (Dead) THR. LRS. & ORS.

Appellant(s)

VERSUS

GURUDWARA DERA SANT KILLEY WALA & ORS.

Respondent(s)

([RETAIN ITS POSITION])

Date : 09-11-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Mr. Manoj Swarup, Sr. Adv.

Mr. Kamal Kumar Pandey, Adv.

Mr. M. S. D. Gill, Adv.

Mr. Deepak Goel, AOR

For Respondent(s)

Mr. Yashraj Singh Deora, Adv.

Ms. Prakriti Roy, Adv.

Ms. Sonal Mashankar, Adv.

For M/S. Mitter & Mitter Co., AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stand disposed of.

(JAGDISH KUMAR)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

(Signed order is placed on the file)