

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

R.S.A. No. 1572 of 2009 (O&M)
Date of decision: 22.04.2009

Smt. Martha Willian Nand and others

....appellants

versus

U.C.N.I.T.A.

....respondent

CORAM: HON'BLE MR. JUSTICE VINOD K. SHARMA

Present: - Mr. K.S. Dadwal, Advocate,
for the appellants.

VINOD K. SHARMA, J.

This is defendant's regular second appeal against the judgment and decree dated 25.2.2009 passed by the learned Courts below.

The suit filed by the plaintiff/respondent for possession of Paster House shown in red colour in the site plan attached with the plaint, forming part of bigger property, and for recovery of Rs.72,000/-, stands decreed.

The plaintiff/respondent brought a suit on the pleadings that the property in dispute was under the ownership of UCNITA (United Church of North India Trust Association). The suit was filed through its general attorney. It was claimed that the father of the defendant/appellant Rev. Yousaf Nand Masih was Paster of Mona Memorial Church, and in that capacity was allowed occupation of the

property in dispute, known as Paster House. Father of the defendant/appellant died in November, 1992, and after his death, the possession of defendant/appellant was said to be that of trespasser. Besides seeking possession, decree for Rs.72,000/- was also claimed as compensation for use and occupation from July, 1995 to July, 1998, as the claim prior to July, 1995 was time barred.

The defendant/appellant contested the suit by claiming the property to be not the Paster House belonging to plaintiff/respondent. It was claimed that the Paster House was, in fact, adjoining the building in dispute. It was claimed that the building in dispute belongs to CNI as owner, as the United Church of North India merged into Church of North India in the year 1970, and since then after the merger of UCNI Church in CNI Church, the existence of UCNI has finished. It was claimed that UCNITA is not authorised to file the suit. The plea was also raised that no notice was received prior to filing of suit, and the claim of use and occupation was unfounded. It was also pleaded that there was no contractual obligation to make the payment. The defendant/appellant claimed that he was not a trespasser, but residing in the house which was in possession of his father Yousaf Nand Masih, who was Paster of Mona Memorial Church, and remained as such till November, 1992 i.e. till his death. It was further claimed that after his death, the defendant/appellant never received any notice. He claimed that he was enjoying the status of licensee as in lieu of the services rendered by his father to the Church, he was staying there free of rent. The plea was also raised that the service benefits of his father had not so far been paid to him being only legal heir. It was claimed that his request for payment of dues of his father

was not met with on the absence that the same would be paid in due course. The claim, thus, put up was that he was staying in the house in lieu of the payment due to his father. It was further claimed that the house was not in fit condition, which required immediate repair.

On merits, it was admitted that house in dispute belongs to Church of North India, and that he was son of Paster Yousaf Nand Masih, who remained in service till November, 1992, and after his death, Paster House was shifted to the building in occupation of Rev Sardar Masih, who succeeded him as Paster of Mona Memorial Church, now merged in CNI. He claimed that he could not be treated to be trespasser, but a licensee without payment of rent, which could only be terminated by notice. The claim of compensation for use and occupation was also denied.

On the pleadings of the parties, the learned trial Court was pleased to frame the following issues: -

- "1. Whether the plaintiff is owner of the suit property? OPP.*
- 2. Whether the father of defendant Rev. Yousaf Nand Masih was allowed possession of the disputed house in his capacity of holding the partnership of Mona Memorial Church? OPP.*
- 3. Whether the plaintiff is entitled to possession of the disputed property? OPP.*
- 4. Whether the plaintiff is entitled to claim compensation for the use and occupation of the Kothi at the rate of Rs.2000/- per month as claimed and is entitled to recover Rs.72,000/- in this regard? OPP.*
- 5. Whether the suit has not been filed by a*

authorised person? OPD.

6. *Whether any notice was required for terminating the licence of defendant? OPD.*

7. *Relief."*

On appreciation of evidence, the learned Courts below have recorded a concurrent finding, while deciding issue No. 1 holding the plaintiff/respondent to be owner of the suit property. On issue No. 2, it was held that father of the plaintiff/respondent Rev Yousaf Nand Masih was allowed possession of disputed house in his capacity as Paster of Mona Memorial Church. On issue No. 3, it was held that being owner, the plaintiff was entitled to compensation for use and occupation of the disputed property. On issue No. 4, it was held that the plaintiff/respondent being owner, was entitled to claim compensation for use and occupation of kothi @ Rs.2000/- per month. It was further held that the plaintiff was entitled to recover a sum of Rs.72,000/-. On issue No. 5, it was held that the onus to prove this issue was on the defendant. However, in view of the power of attorney Ex. P-1 having been placed on record, it was held that the suit was filed by the competent person. On issue No. 6, finding was recorded that as the plaintiff/respondent was trespasser, therefore, no notice was required before filing the suit. The suit was decreed, in view of findings referred to above.

The learned lower appellate Court affirmed the findings recorded by the learned trial Court. The learned lower appellate Court held that there was no evidence to support the plea of the defendant/appellant that he was allowed to reside in the house due to non-settlement of dues payable to his father. The finding, that the defendant/appellant was trespasser was affirmed. The compensation

claimed was held to be payable.

It may be noticed that the finding on issue No. 5 was not challenged in appeal by the defendant/appellant.

Mr. K.S. Dadwal, learned counsel appearing on behalf of the appellants, contended that this appeal raises the following substantial questions of law: -

- "1. Whether as per the provisions of Sections 54 and 60 of the Transfer of Property Act, the defendant could be termed as licensee and the licence to be irrevocable?*
- 2. Whether the learned Courts below mis-read the judgment and decree Ex. D-1 passed in the previous suit?*
- 3. Whether plaintiff had locus standi to maintain the present suit?"*

In support of the substantial questions of law, referred to above, the learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in ***Church of North India Vs. Lavajibhai Ratanjibhai and others, AIR 2005 Supreme Court 2544***, wherein the Hon'ble Supreme Court has been pleased to lay down as under: -

"Unless a suit is filed in terms of Section 13 of the Act, the Society is not dissolved. Even assuming that the society stands dissolved in terms of its Memorandum of Association and Articles of Association, the same would not ipso facto mean that the properties could be adjusted amongst the members of the society in terms of the provisions of the said Act. Concededly, the properties of the trust being properties of the religious trust had vested in such trust. Such a provision, we have noticed hereinbefore also exists in the BPT Act. Thus, only

because the society has been dissolved, ipso facto the properties belonging to the trust cannot be said to have been adjusted. The Appellants, thus, we have noticed hereinbefore, have averred in the plaint that the suit relates to the property of the trust and their administration. If the properties of the churches did not belong to the society, the Appellant herein cannot claim the same as their successor. The plaint has to be read meaningfully. So done, it leads to the only conclusion that the dispute was in relation to the management of the churches as religious trust and not as a society. Even if it is contended that the administration of the property would mean the properties of the Brethren Church both as a trust and as a society, still then having regard to the legal position, as discussed supra, the property belonging exclusively to the trust, the suit will not be maintainable."

However, it is not understood as to how this judgment is relevant to the point raised. The decision of the Hon'ble Supreme Court was on the facts of said case. It is nowhere decided that UCNITA has no jurisdiction to maintain the suit.

The other substantial questions of law deserves to be rejected on two counts. Firstly that the finding of the learned trial Court on issue No. 5 was not challenged before the learned lower appellate Court, and secondly for the reason, that absolutely no ground or material was placed on record to show as to how the plaintiff/respondent was not competent to maintain the suit, specially when the father of the appellant/defendant was given property by the plaintiff/respondent as a licensee, and it was not open to the father of the defendant/appellant to challenge right of plaintiff/respondent .

The learned counsel for the appellants also contends that prior to filing of the present suit, the plaintiff/respondent had filed a suit against the father of the appellant/defendant. However, the said suit was dismissed and, therefore, the second suit was not competent.

This plea of the learned counsel for the appellants is mis-conceived. The reading of the judgment passed against the plaintiff/respondent would show that the suit filed by plaintiff/respondent against the father of the appellant/defendant was dismissed as premature, as he was admittedly a licensee, whose licence was not revoked. He was held entitled to continue his possession as Paster of the Church. The said judgment can be of no use to the appellant/defendant, as claimed.

The contention of the learned counsel for the appellants that as per Sections 54 and 60 of the Transfer of Property Act, the appellant/defendant was to be treated as licensee, is also mis-conceived. The appellant/defendant nowhere was permitted to continue in possession, his unauthorised possession could not give him right of a licensee, that too irrevocable as contended.

The substantial questions of law raised are answered against the appellant/defendant.

Finding no merit in this appeal, the same is ordered to be dismissed in limine.

(Vinod K. Sharma)
Judge

April 22, 2009
R.S.