



RSA-2082-2013 (O&M) and RSA-3241-2013 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**Date of decision : 12.5.2025****I.****RSA-2082-2013 (O&M)**

Garib Dass Chela

... Appellant

VERSUS

Kesho Ram and another

... Respondents

II.**RSA-3241-2013 (O&M)**

Dera Baba Dhian Dass

... Appellant

VERSUS

Kesho Ram and another

... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. A.G.S.Dhillon, Advocate,
for the appellant in RSA-2082-2013.

Mr. Rajan Bansal, Advocate,
for the appellant in RSA-3241-2013.

Mr. Amit Jain, Sr. Advocate with
Mr. Anupam Mathur, Advocate,
for respondent No.1 in both the appeals.

PANKAJ JAIN, J. (Oral)

These two appeals are directed against the judgment and decree
passed by the Courts below. Parties are fighting for succession of Mahant
Sohan Dass @ Sohan Muni Chela Baba Jeon Dass Mohtmim of Dera Baba



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Dhian Dass. As per the plaintiff, Mahant Sohan Dass @ Sohan Muni died on 29.5.1988 but *Satari* ceremony of Mahant Sohan Dass @ Sohan Muni was carried out on 15.6.1988. The plaintiff claimed that during *satari* ceremony which was attended by various Mahants of Udasi Sect. The plaintiff was appointed as successor to Mahant Sohan Dass @ Sohan Muni in *Bhekh* ceremony as per the custom prevalent in Udasi sect. Thus, the plaintiff is entitled to be declared as Mohtnim of Dera Baba Dhian Dass. The mutations sanctioned in favour of the defendant being successor of Janki Dass are illegal, null and void. The plaintiff further claimed a decree of possession. The plaintiff further claimed that the defendant himself participated in the *Bhekh* ceremony. He is thus, estopped from claiming himself to be Mohtnim of the dera and from disputing appointment of the plaintiff

2. The suit was contested by the defendant. The defendant claimed that it was Mohtnim Janki Dass who was appointed as successor of Mahant Sohan Dass @ Sohan Muni. Janki Dass was succeeded by Parma Nand, from whom the management of the dera was succeeded by the defendant. The suit filed by the plaintiff was put to trial and the following issues were framed : -

- “1. Whether Mahant Parma Nand is Mohtnim of the plaintiff Dera? OPP
2. If issue No.1 is proved, whether plaintiff is entitled to possession of the suit land, which belongs to the Dera Baba Dhian Das? OPP
3. Whether the plaintiff is entitled to declaration, as prayed for? OPP
4. Whether suit is within limitation? OPP



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5. *Whether Parmanand has no locus-standi to file the present suit? OPD*
6. *Whether the present suit is barred under section 10 CPC, as alleged? OPD*
7. *Relief.*

Additional Issue

- 6-A *Whether the suit of the plaintiff is barred under Order 23 Rule 1(4) (b) CPC? OPD”*

3. Both the Courts below have non-suited the plaintiff on issue No.6-A. It has come on record that earlier in time, the plaintiff filed suit for declaration with same prayer i.e. Civil Suit No.1275 of 1992. It was withdrawn by the plaintiff suffering statement on 15.4.1994 without seeking any permission to file fresh one. Thus, the present suit was barred under the provisions of Order XXIII Rule 1(4) Code of Civil Procedure, 1908.

4. Learned senior counsel appearing for the appellant and Mr. Bansal appearing for the appellant in RSA-3241-2013 have drawn attention of this Court to the findings recorded by the Courts below regarding *Bhekh* on the *satari* ceremony of Mahant Sohan Dass @ Sohan Muni. They contend that the plaintiff successfully proved that it was he who was appointed by *Bhekh* as successor of Mahant Sohan Dass @ Sohan Muni, yet the plaintiff has been non-suited merely on the technical ground.

5. Per contra, Mr. Jain learned senior counsel for respondent No.1 submits that reading of plaint filed in Civil Suit No.70 of 1998 and that of civil suit No.1275 of 1992, i.e. the earlier suit would make it clear that prayer for declaration made in both the suits is verbatim. He submits that once the plaintiff had already abandoned his claim seeking declaration to the effect that he was validly appointed Mohtmim of the dera, he is precluded



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under law from bringing fresh suit with same prayer. He thus submits that both the Courts below have rightly non-suited the plaintiff invoking Order XXIII Rule 1(4) of CPC.

6. Having heard learned counsel for the parties and after carefully perusing the records of the case, this Court finds that the issue involved in the present two appeals is quite narrow. The question that falls for consideration for this Court is :-

Whether the subsequent suit filed by the plaintiff i.e. the present suit is barred under Order XXIII Rule 1 CPC in view of withdrawal of earlier suit i.e. Civil Suit No.1275 of 1992.

7. In order to appreciate the rival contentions, it will be apt for peruse bare provisions of Order XXIII Rule 1 CPC which reads as under : -

"1. Withdrawal of suit or abandonment of part of claim.

*(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: **Provided** that where the plaintiff is a minor or other person to whom the provisions contained in [rules 1 to 14 of Order XXXII](#) extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.*

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.



(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect,
or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1),
or

(b) withdraws from a suit or part of a claim without the
permission referred to in sub-rule (3),
he shall be liable for such costs as the Court may award
and shall be preclude from instituting any fresh suit in
respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.”

8. The provision is based upon the basic *vexari pro una et nemo debet bis eadem causa* maxim that no person should be vexed twice for the same cause of action. Supreme Court while commenting upon the provisions in **Sarguja Transport Service v. S.T.A.T. (1987) 1 SCC 5** held as under : -

“6. It may be noted that while in sub-rule (1) of the former rule 1 of Order XXIII of the Code the words 'withdraw his suit'



had been used, in sub-rule (1) of the new rule 1 of Order XXIII of the Code, the words 'abandon his suit' are used. The new sub-rule (1) is applicable to a case where the Court does not accord permission to withdraw from a suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. In the new sub-rule (3) which corresponds to the former sub-rule (2) practically no change is made and under that sub-rule the Court is empowered to grant subject to the conditions mentioned therein permission to withdraw from a suit with liberty to institute a fresh suit in respect of the subject-matter of such suit. Sub-rule (4) of the new rule 1 of Order XXIII of the Code provides that where the plaintiff abandons any suit or part of claim under sub-rule (1) or withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he would be liable for such costs as the Court might award and would also be precluded from instituting any fresh suit in respect of such subjectmatter or such part of the claim.

7. The Code as it now stands thus makes a distinction between 'abandonment' of a suit and 'withdrawal' from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in subrule (3) of rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.



The principle underlying rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit. Invito beneficium non datur. The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in [section 11](#) of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the



suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudication of a suit. or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the Court.”

In the present case, the plaintiff admittedly filed earlier suit i.e. Civil Suit No.1275 of 1992. Prayer clause thereof reads as under : -

“It is, therefore, prayed that suit for declaration to the effect that Parma Nand, through whom the suit has been filed by the Dera-plaintiff is the validly appointed Mohtim/Mahant of the Dera plaintiff in accordance with the custom and practice followed by the said Dera and is managing the affairs of Dera-plaintiff and in the capacity of Mohtim/Mahant is entitled to do so regarding all the properties including lands measuring 895 kanals 7 marlas detailed at (a) to (d) in the title of the plaint, situated in the areas of village Kotshamir and Kailey Bander along with buildings constructed thereon and order dated 17.7.92 passed by Collector (ADC) Bhatinda sanctioning the mutation No.1278 in favour of Janki Dass (now deceased) and mutation No.2000 dated 30.10.92 sanctioned by A.C.IInd Grade on the basis of alleged will dated 24.7.92 being against the law and facts are null & void, and thus ineffective against the rights of the plaintiff; AND suit for permanent injunction to the effect that defendant should restrain from interfering with the regular discharge of his (Parma Nand) duties as Mohtim/Mahant of Dera plaintiff and all its properties mentioned above and the control and regular management of



the same – be decreed with costs in favour of the plaintiff and against the defendants. From the facts proved if the plaintiff is found entitled to any other relief that may also be granted in favour of the plaintiff.”

9. The suit was withdrawn on 15.4.1995 on the statement made by the plaintiff himself which reads as under : -

“Stated that I do not want to pursue the civil suit. I want to withdraw the same.”

10. Subsequently, the present suit was filed on 2.4.1998. Prayer clause thereof reads as under : -

“It is, therefore, respectfully prayed that : -

- a) A decree for possession of land measuring 376 kanals, fully described in the headnote of the plaint, situated within the revenue limits of village Kotshamir as entered in the jamabandi for the year 1991-92 which belongs to the plaintiff-Dera and the defendant is illegally and forcibly occupying the same without any right, title or interest therein, be passed in favour of the plaintiff and against the defendant;*
- b) a declaration to the effect that Mahant Parma Nand through whom the suit has been filed by the plaintiff-Dera is validly appointed Mohtmim/Mahant of plaintiff-Dera in accordance with the custom, practice, rituals, ceremonies followed by the said Dera and he is managing the affairs of Dera Dhian Dass and is entitled to do so by taking into possession all the properties owned and possessed by the plaintiff-Dera be also given in favour of the plaintiff and against the defendant by passed a decree to that effect :*
- c) A decree for declaration that the mutation of inheritance No.1278 having been sanctioned vide order dated 17.7.1992 passed by Collector (ADC) Bathinda in favour of Janki Dass (deceased) & Mutation No.2000 dated 30.10.1992 regarding*



inheritance of Janki Dass (deceased) and having been sanctioned by A.C.IInd grade, Bathinda on the basis of alleged Will dated 24.7.1992 in favour of Prema Nand which was confirmed in appeal by Collector, Bathinda vide his order dated 17.5.1992, confirmed by Commissioner Faridkot vide his order dated 22.3.1996 and ultimately affirmed by learned Financial Commissioner Appeals-II Punjab, Chandigarh vide his order dated 2.12.1997 and the subsequent mutation No.2169 regarding inheritance of Prema Nand in favour of Kesho Ram defendant are illegal, null and void and the same are not binding on the rights of the plaintiff be also passed in favour of the plaintiff and against the defendant;

- d) The costs of the suit be also awarded in favour of the plaintiff and against the defendant;*
- e) If from the facts proved on the file, the plaintiff be found entitled to any other additional and/or alternative relief(s), the same may also be granted in favour of the plaintiff and against the defendant.”*

11. Though Mr. Sidhu has tried to build a case claiming that earlier suit was withdrawn suffering statement on 15.4.1994 for the reason Parma Nand died on 16.2.1994. However, he is not in a position to dispute that the same is not evident from the statement made by the plaintiff while withdrawing the suit that the suit was withdrawn on account of death of Parma Nand.

12. In view of above, this Court finds that the plaintiff having already abandoned his prayer with respect to declaratory relief to the extent that he is validly appointed Mohtmim being successor of Mahant Sohan Dass @ Sohan Muni, he could not have maintained the present suit seeking



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the same relief without seeking permission to file fresh one at the time of withdrawal of the earlier suit abandoning his claim.

13. So far as the prayer made for possession is concerned, the same stems out from the relief of declaration only. Having abandoned the main claim, he cannot maintain suit for consequential relief.

14. In view of above, this Court finds that the Courts below rightly non-suited the plaintiff invoking the provisions of Order XXIII Rule 1 (4) CPC. The plaintiff having abandoned his claim with respect to declaration of being validly appointed Mahant was not entitled to maintain the present suit. Having found no merits in the present appeals, the same are ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

May 12, 2025
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No