

DALIP SINGH AND ORS.

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v.

SIKH GURDWARA PRABHANDAK COMMITTEE AND ORS.

OCTOBER 15, 2003

[K.G. BALAKRISHNAN AND P. VENKATARAMA REDDI, JJ.]

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Sikh Gurdwara Act, 1925—Section 2(3), 9(1), 10(3) and 142—Dedication of property to Sikh Gurdwara—Appellants purchased suit property from other two respondents, who acquired their rights from B—B had acquired rights from J, the occupant tenant—Appellants filed suit for declaration of title against respondent-SGPC—SGPC relied on a judgment in an earlier suit, holding SGPC owner of suit property—Suit decreed in favour of SGPC—First Appeal dismissed—High Court dismissed Second Appeal—Held, failure to produce notification under Section 10(3) does not lead to the logical or necessary conclusion that suit property being claimed by appellants were not properties of Gurdwara but private properties of J and B—Appellants failed to prove that B acquired right, title or interest in suit property either under general law of succession or tenancy law—Sale deed in favour of appellants did not confer any title on them—Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952—Transfer of Property Act, 1882—Section 41.

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The appellants filed a suit for declaration of title praying that respondent – SGPC be restrained from taking possession of suit property. The appellants had purchased suit property from the other two respondents. B, the father and husband of the other two respondents had allegedly become absolute owner of the suit property under provisions of the Punjab Occupancy Tenancy (Vesting of Proprietary Rights) Act, 1952. These rights had devolved upon B from J, who was the occupant tenant of the suit property. The title of J over the suit property was disputed on the basis of an earlier litigation, which held SGPC to be the owner of the land. Therefore, B also did not acquire any right from J and consequently the other two respondents acquired no rights in the suit property. The suit was decreed in favour of SGPC. First Appeal and thereafter Second Appeal in the High Court was also dismissed. Hence this appeal.

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A Appellants contended that the suit property never belonged to SGPC; that no Sikh Gurdwara was formed by dedicating the suit property; that no notification under Section 10 (3) of the Sikh Gurdwara Act, 1925 was published after notification under Section 7 (3) was published including the suit property and thus there is no conclusive proof of no claim over the suit property; that in these

B circumstances the suit property can never be considered as property of the Sikh Gurdwara; that SGPC ought to have filed a suit to settle disputes in respect of any property notified as property of the Sikh Gurdwara; that B had transferred the suit property to the other two

C respondents but when a decree had been passed against him, he had no rights, therefore, transfer was not binding upon the other two respondents and consequently the appellants are also not bound by the decree; and that there are series of revenue records to show that suit property was being cultivated by B and all relevant entries show that SGPC had no right to possession of the suit property.

D Respondent – SGPC contended that notification under Section 7 (3) of the Act was published on 19.2.1932, mentioning the suit property, followed by a notification under Section 9 (1) of the Act showing that the suit property belonged to Gurdwara Jeeta Singh

E Wala, Lohara, although a notification under Section 10(3) of the Act could not be produced.

Dismissing the appeal, the Court

F HELD : 1. There are documents to show that the suit property was included in the list of properties in the notification under Section 7 (3) of the Sikh Gurdwara Act, 1925 dated 19.2.1932. If anybody had filed any claim in respect of these properties, there would have been an adjudication and only after the adjudication, the notification under

G Section 10 (3) would have to be issued. It is not the case of the appellant that J the alleged predecessor-in-interest of B made any claim over any of the properties included in the list forming part of the notification under Section 7 (3). Undoubtedly, the notification issued under Section 10 (3) serves as a conclusive proof of the fact that no claim was made

H in respect of any right, title or interest in any properties specified in the notification. However, the failure to produce the notification issued

under Section 10(3) by itself does not lead to the logical or necessary A
conclusion that the landed properties which are being claimed by the
appellants were not the properties of Gurdwara, but they were the
private properties of J and B. Appellants had filed a suit for the
declaration of the title and it was for them to prove that B acquired
right, title or interest over the suit properties either under the general B
law of succession or tenancy law. They utterly failed to prove the same
and this flaw cannot be got over by relying on the fact that the
notification under Section 10(3) was not produced. They could not
produce any document to prove that the suit properties had been later
divested from the ownership and management of the Gurdwara Jeeta
Singh Wala, Lohara. [782-B-G] C

2.1. The suit properties as alleged by appellants originally belonged
to J as occupancy tenant and were inherited by B. J was the Mahant
of the Gurdwara and B was not his son or legal heir and there is
nothing in the evidence to, indicate that he had inherited the property D
from J. The oral evidence adduced in this case also completely
negatives the case set out by the appellants. Appellant was also not
aware of the nature of the rights enjoyed by B over the property. The
witnesses examined on the side of the appellants admitted that B was
the Mahant of the Gurdwara and his Guru was J and that the suit E
property belonged to Gurdwara. Evidence shows that the case set up
by the appellants was not true. SGPC had initiated the proceedings
before the Tribunal against B, which was compromised. Some of the
records were destroyed and SGPC could not produce the certified
copies of such records. However, the statement in the compromise F
petition to which B was admittedly a party, cannot be eschewed from
consideration. [782-B-H, 783-A-D]

2.2. SGPC filed an application under Section 142 of the Act
calling upon B to surrender the possession of the properties.
The Commission rendered its Judgment on 20.12.1958 and in that G
proceeding, it was mentioned that SGPC had entered into a compromise
on 5.4.1943. [783-E-F]

2.3. There is no document to show that B acquired any title over
the suit property. The proceedings before the Judicial Commission also
would only show that he was an office-holder of the Gurdwara and H

A he was removed from office in 1951 and consequently, he was directed to vacate the office and hand over the properties including the suit lands. [783-G-H, 784-A]

B 3. Some of the documents produced show **B** as the cultivator of the properties. This is not sufficient to prove that the occupancy right or the title of the suit property vested in **B**. These revenue records are quite consistent with the fact that **B** must have been in possession of this property as an employee or manager of the Gurdwara. The entries in the revenue records by itself cannot prove the title to the property unless it is supported by other evidence. [784-B-C]

C 4. It is proved by satisfactory evidence that the suit property belonged to the Sikh Gurdwara and the appellants failed to prove that their predecessors-in-interest, namely, the other two respondents acquired any title from **B**. Consequently, the sale deed in favour of the **D** appellants did not confer any title on them in respect of the suit properties. [784-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7418 of 1993.

E From the Judgment and Order dated 23.7.92 of the Punjab and Haryana High Court in R.S.A. No. 2245 of 1978.

P.K. Palli, Rajiv K. Garg and A.D.N. Rao for the Appellants.

F Hardev Singh and Ms. Madhu Moolchandani for the Respondents.

The Judgment of the Court was delivered by

G **K.G. BALAKRISHNAN, J.** : This appeal is against the Judgment of High Court of Punjab and Haryana in Regular Second Appeal No. 2245 of 1978. The appellants were Plaintiffs in a suit filed for declaration of the title in respect of 64 canals and 8 marlas comprising Khatauni Nos. 1361 to 1364 and 11 canals and 9 marlas comprising Khatauni No. 1746 in village Dheleke, Tehsil Moga in Punjab. The appellants contended that they had purchased this land by a registered sale deed from respondent nos. **H** 2 & 3th June 1957. The first respondent is Shiromani Gurdwara Prabhandak

Committee (hereinafter being referred to as "SGPC"). The appellants alleged that SGPC had no title or right over the suit property. The appellants prayed that the first respondent be restrained from taking possession of their property. They alleged that the suit property originally belonged to one Jeeta Singh and he was an occupancy tenant whose rights devolved on Bhola Singh who was father of the second respondent and husband of the third respondent. According to the appellants, Bhola Singh became the absolute owner of this land by virtue of the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.

The case was contested by the first respondent SGPC. First respondent raised the following contentions : Jeeta Singh did not have any title over this property and consequently Bhola Singh also did not acquire any right from him. There was an earlier litigation as suit no. 859 before the Sub-Judge, Moga and Jeeta Singh was party to that suit and by Judgment dated 15.6.1943, it was held that the first respondent was the owner of the land. Bhola Singh was an office holder under the managing committee of Gurdwara Jeeta Singh Wala, Lohara, and he was managing the land in that capacity. As he began to misuse his powers, an application was filed against him under Section 142 of Sikh Gurdwara Act before the Judicial Commission and the same was allowed. As Bhola Singh had no right, title or interest on the land; the gift, if any, executed in favour of the respondent nos. 2 & 3 was invalid and void.

On these allegations, several issues were framed. The suit was ultimately decreed on 20.12.1958 and the learned Sub-Judge held that Jeeta Singh was not the original owner of the property and the title of suit property vested with the first respondent – SGPC. It was held that the title in respect of the suit property never passed on to Bhola Singh.

Aggrieved by the same, the appellants herein filed the First Appeal before the Lower Appellate Court. The Lower Appellate Court framed two issues and these issues related to the question as to whether Bhola Singh was the owner of the suit property and whether the gift deed executed by him in favour of the respondent nos. 2 & 3 was valid or not and remitted the matter to the trial court for decision on those issues. In view of the issues framed by First Appellate Court, the Trial Court again examined the question and gave a finding that Bhola Singh was not the owner of the suit

A land and the gift deed executed by him in favour of his son and wife had no effect so far as the rights of the first respondent herein are concerned. The Lower Appellate Court on receipt of the decision on the two issues framed by it, reconsidered the appeal on merits and held that the suit was liable to be dismissed. The Lower Appellate Court also held that the appellants herein were not bonafide purchasers for value and they were not entitled to get the benefit of Section 41 of the Transfer of the Property Act. Against this decision, the appellants again filed appeal before the High Court and their appeal was dismissed by the High Court. Aggrieved by the same, the present appeal is filed.

C We heard the learned Senior Counsel Mr. P.K. Palli who appeared on behalf of the appellants and learned Senior Counsel Shri Hardev Singh, who appeared on behalf of the first respondent.

D One of the main contentions urged by the appellants' Counsel is that the suit property never belonged to first respondent SGPC and no Sikh Gurdwara was formed by dedicating the suit property. According to the appellants, in the absence of notification under Section 10(3) of the Sikh Gurdwara Act, 1925, the suit property can never be considered as property of the Sikh Gurdwara.

E In order to appreciate this contention, it is necessary to refer to some of the provisions of Sikh Gurdwara Act, 1925, to find out as to how a Sikh Gurdwara is formed and the properties are dedicated to such Sikh Gurdwara. The procedure can be briefly summarised as follows. Section 7 of the Act says that any fifty or more Sikh worshippers of a Gurdwara each of whom is more than twenty-one years of age, may forward an application to the appropriate Secretary to Government praying to have a Gurdwara to be declared as a Sikh Gurdwara. This petition shall be accompanied by a list of properties claimed for the Gurdwara. The list shall contain all the details regarding the title and interest in respect of those properties. The list shall be in such form and shall contain all particulars of the properties prescribed under the Act and rules and on receiving the petition along with the list of properties, the Government shall publish it in the prescribed manner. The State Government may also publish such notice as may be prescribed under the Act. The petition filed may be withdrawn, by notice, at any time before the publication. In case any person

claims a right on any of the properties included in the list, he can file his objections as per the provisions of the Act. When a notification is published under sub-Section (3) of Section 7 in respect of any Gurdwara, a resident in the police station area in which the Gurdwara is situated, may forward to the Government within ninety days a petition verified and signed by him, or petitioners as the case may be, claiming that any hereditary office holder or any person could have succeeded to such office holder. If no petition or objection is filed under Section 9 claiming any right over the Gurdwara, and if no petition has been presented in accordance with Section 8 pursuant to the notification published under the provisions of sub-Section (3) of Section 7, the Government shall after expiration of ninety days from the date of such notification publish a notification, declaring the Gurdwara to be a Sikh Gurdwara. As regards the properties dedicated to the said Sikh Gurdwara, any person may forward to the State Government within ninety days from the date of publication of notification under the provisions of sub-Section (3) of Section 7 a petition claiming the right, title or interest in any property included in the lists so published. Sub-Section (3) of Section 10 which is the relevant section for the purpose of this appeal, states that after the expiry of the ninety days for making a claim regarding any right, title or interest in respect of any property included in the list published under Section 7(3) Notification, the State Government shall publish a notification. If any claim is made, such claim will be dealt with in accordance with the provisions contained in the Act. Even if there is no claim in respect of any property included in the list, there shall be a further notification under sub-Section (3) of Section 10 and this notification shall be conclusive proof of the fact that there is no such claim in respect of any right, title or interest in the properties specified in the Notification under sub-Section (3) of Section 7.

The contention of the first respondent was that the suit property was one of the items of property included in the list published under sub-Section (3) of Section 7 Notification on 19.2.1932 and exh. D-5 notification showed that it was a Sikh Gurdwara and the properties contained in the list attached to the Exhibit Notification were the properties of the Gurdwara, namely, Gurdwara Jeeta Singh Wala Lohara. The details of the properties in notification show that Khasra No. 484, 490 and 493 are included. There was another notification, also under Section 9(1) of the Act issued on March 13, 1936. It is true that the first respondent could not produce any

- A** document to show that there was a notification under Section 10(3) of the Sikh Gurdwara Act, 1925. The contention of the appellants' Counsel is that a notification under sub-Section (3) of Section 10 is the only conclusive proof to show that the suit properties belonged to Gurdwara Jeeta Singh Wala, Lohara and in the absence of such notification, the claim of the first respondent is to be negated.
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- We do not find much force in the contention urged by the Counsel for the appellants. There are documents to show that the suit property was included in the list of properties in the notification dated 19.2.1932. If anybody had filed any claim in respect of these properties, there would have been an adjudication and only after the adjudication, the notification under Section 10(3) would have to be issued. It is not the case of the appellant that Jeeta Singh, the alleged predecessor-in-interest of Bhola Singh made any claim over any of the properties included in the list forming part of the notification under sub-Section (3) of Section 7. True, the notification issued under sub-Section (3) of Section 10 serves as a conclusive proof of the fact that no claim was made in respect of any right, title or interest in any properties specified in the notification. But, the failure to produce the notification issued under Section 10(3) by itself does not lead to the logical or necessary conclusion that the landed properties which are being claimed by the appellants were not the properties of Gurdwara, but they were the private properties of Jeeta Singh and Bhola Singh. It is for the appellants who had filed a suit for the declaration of the title to prove that Bhola Singh acquired right, title or interest over the suit properties either under the general law of succession or tenancy law. The appellants utterly failed to prove the same and this flaw cannot be got over by relying on the fact that the notification under Section 10(3) was not produced. The appellants who had filed a suit for declaration of their title could not produce any document to prove that the suit properties had been later divested from the ownership and management of the Gurdwara Jeeta Singh Wala, Lohara.

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- According to the appellants, the suit properties originally belonged to Jeeta Singh as occupancy tenant and were inherited by Bhola Singh. Jeeta Singh was the Mahant of the Gurdwara. Bhola Singh was not his son or legal heir and there is nothing in the evidence to indicate that he had inherited the property from Jeeta Singh. The oral evidence adduced in this
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case also completely negatives the case set out by the appellants. Even the appellant who was examined as PW3 was not aware of the fact that this property belonged to the Gurdwara. He was also not aware of the nature of the rights enjoyed by Bhola Singh over this property. The witnesses examined on the side of the appellants admitted that Bhola Singh was the Mahant of the Gurdwara and his Guru was Jeeta Singh and that the suit property belonged to Gurdwara. The evidence of PW-5 shows that the case set up by the appellants was not true. The first respondent had initiated the proceedings before the Tribunal against Bhola Singh. The matter was compromised and Exh. CX/1 is the compromise statement. Learned Senior Counsel for the appellants strongly contended that there is nothing in evidence to show that this compromise was filed before the Tribunal and the same was accepted and a decree was passed. It seems that some of the records were destroyed and the first respondent could not produce the certified copies of such records. Be that as it may, the statement in the compromise petition to which Bhola Singh was admittedly a party, cannot be eschewed from consideration.

The learned Senior Counsel for the appellants further contended that under Section 28 of the Sikh Gurdwara Act, 1925, the first respondent could have filed a suit to settle the disputes if any, in respect of any property notified as the property of Sikh Gurdwara. It was argued that in the absence of such a suit, the claim of the first respondent is to be negated. The first respondent herein filed an application under Section 142 of the Act calling upon Bhola Singh to surrender the possession of the properties. The Commission rendered its Judgment on 20.12.1958 and in that proceeding, it was mentioned that the first respondent had entered into a compromise on 5.4.1943. According to the appellant's Counsel, Bhola Singh had transferred the property to his wife and son on 6.6.1957 but when a decree had been passed against Bhola Singh, he had no right over the property and, therefore, the transfer deed executed by him is not binding on respondent nos. 2 & 3 and consequently the appellants herein are also not bound by the said decree. It is important to note that there is no document to show that Bhola Singh acquired any title over this property. The proceedings before the Judicial Commission also would only show that he was an office-holder of the Gurdwara and he was removed from office in 1951 and consequently, he was directed to vacate the office and hand over

A the properties including the suit lands.

The appellants lastly contended that there are series of revenue records to show that the suit property was being cultivated by Bhola Singh and all the entries in these records show that the first respondent had no right to possession of property. Reference was made to series of documents produced by the appellants. It is true that in some of the documents produced by the appellants, Bhola Singh is shown as the cultivator of these properties. This is not sufficient to prove that the occupancy right or the title of the suit property vested in Bhola Singh. These revenue records are quite consistent with the fact that Bhola Singh must have been in possession of this property as an employee or manager of the Gurdwara. The entries in the revenue records by itself cannot prove the title to the property unless it is supported by other evidence.

In the instant case, it is proved by satisfactory evidence that the property belonged to the Sikh Gurdwara and the appellants failed to prove that their predecessors-in-interest, namely, respondent nos. 2 & 3 acquired any title from Bhola Singh. Consequently, the sale deed in favour of the appellants did not confer any title on them in respect of the suit properties. The appeal is without any merits and it is liable to be dismissed.

While leave was granted in favour of the appellants, this Court directed the appellants to deposit Rs. 25,000 annually before the Additional Senior Sub Judge, Moga, till the disposal of the appeal. If any such amount has been deposited by the appellants, pursuant to the Order passed by this Court on 13.12.1993, the first respondent would be entitled to get the refund of the same with interest if any accrued thereon. The appeal is dismissed, and parties to bear their costs.

A.Q.

Appeal dismissed.