

**Mohinder Singh and Another Vs. Pirthipal Singh and Others**

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**Court :** Punjab and Haryana

**Decided On :** Apr-17-1996

**Reported in :** AIR1997P& H13

**Judge :** R.L. Anand, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 34 and 38; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 35(A) - Order 1, Rule 8 - Order 22, Rules 1(3) and 2; Punjab Village Common Lands (Regulation) Act, 1961 - Sections 13

**Appeal No. :** Regular Second Appeal No. 864 of 1992

**Appellant :** Mohinder Singh and Another

**Respondent :** Pirthipal Singh and Others

**Advocate for Def. :** Sanjay Mahithia and; Shailendra Sharma, Advs.

**Advocate for Pet/Ap. :** M.S. Rakkar, Sr. Adv. and; J.S. Virk, Adv.

**Judgement :**

ORDER

1. Unsuccessful plaintiffs, namely Mohinder Singh and Bikram Singh, earlier filed the present regular second appeal and it was directed against the judgment and decree dated 16th March, 1992 passed by Shri T.N. Gupta, District Judge, Hoshiarpur, who accepted the appeal of some of the defendants appellants Nos. 1

to 14 mentioned in Civil Appeal No. 104 of 1989 itself and the learned District Judge set aside the judgment and decree of the trial Court dated 7-11-1989 by which the suit of the plaintiffs-appellants namely, Mohinder Singh and Bikram Singh for declaration was decreed.

2. It may be mentioned here at the first instance that during the pendency of the present appeal Bikram Singh plaintiff died. The cause of action survived to the co-plaintiff Mohinder Singh and vide order of this Court dated 8th March, 1996 passed in C.M. No. 1021-C of 1996 under Order 22, Rule 2, C.P.C., Mohinder Singh surviving plaintiff was allowed to continue with the appeal. Even otherwise, with the death of Bikram Singh the suit was not going to abate, as it would be evident from the facts of the suit itself.

3. Mohinder Singh and Bikram Singh filed a suit for declaration against defendants Nos. 1 to 24, including Gram Panchayat of village Saidpur (defendant No. 24) to the effect that land measuring 7 Kanals 9 Marlas comprised in Khewat No. 93, Khatauni No. 173 bearing Khasra No. 268, situated in village Said was a reserved piece of land for Gurudwara of village Saidpur, Tehsil Garhshanker, and the defendants be restrained from raising any kind of construction over the said plot. Alternatively it was prayed that defendants be directed by issuing mandatory injunction to remove all kinds of Malwa or any building raised by them or anyone of them on the land in suit. It was pleaded that both the plaintiffs are residents of village Saidpur and they believe in Sikh faith. During the Consolidation of Holdings of village Saidpur, which took place in the year 1951-52 or previous to these years land measuring 7 Kanals 9 Marlas was earmarked for constructing a Gurudwara by deducting lands from all the proprietors of the village. The defendants alleged that they got mutation attested in their names in connivance with the revenue staff and against the wishes of the plaintiffs and on their back the defendants have started threatening that they would construct their houses on the suit land. If this threat of the defendants materialised, the plaintiffs would suffer as their religious sentiment would be hurt. The plaintiffs prayed that if the defendants raised any construction, then decree for mandatory injunction be passed in the alternative, directing the defendants to demolish the construction. The defendants were called several times not to raise any construction on the land, earmarked for the

Gurudwara during the consolidation of holdings but they are adamant. Hence the suit.

4. The record of the trial Court shows that three written statements were filed by the defendants. However, defendant No. 24, i.e. the Gram Panchayat was proceeded against ex parte. Defendants Nos. 1 to 23 in their written statements have denied all the averments of the plaintiffs and it was alleged that consolidation of holdings took place in the village about 20-32 years back and the suit land or any part thereof was never reserved for the construction of Gurudwara. In fact, the Gram Panchayat is the owner of the land for the last more than 50 years and had been auctioning it to the different persons to the knowledge of the plaintiffs. Moreover, the consolidation authorities had no right to reserve any land or part thereof for this purpose. The Gram Panchayat (defendant No. 24) had allotted this land to defendants Nos. 1 to 23, being landless workers and for constructing abadies as per rules and scheme of the Government and now defendants Nos. 1 to 23 are the owners of this land and they are in possession thereof. The plaintiffs or anybody else had no right in the said land. The mutation in the name of defendants Nos. 1 to 23 has been rightly sanctioned and no religious sentiments of the plaintiffs would be suffered or would they suffer any irreparable loss. There was no necessity to construct the Gurudwara in the village on this land. It was also pleaded by defendants No. 1 to 3 in the joint written statement that the suit of the plaintiffs is not within time; that the Civil Court has no jurisdiction to try the suit; that it is not properly valued for the purpose of Court-fee and jurisdiction; that it is not maintainable in the present form; that the plaintiffs are not in possession of any part of the suit land; that they have no cause of action and locus standi to file the suit. Moreover the suit is bad under Order 1, Rule 8, C.P.C. as the plaintiffs have failed to comply with the provisions of law. Also it was pleaded that the plaintiffs have not filed any site plan with the plaint, which was mandatory, and that they are estopped from filing this suit by their act and conduct and that the suit is also bad for non-joinder and mis-joinder of parties.

5. Later on Parkash Ram defendant No. 23 filed a separate written statement in which he has stated that he has no objection if the suit of the plaintiffs is decreed but at the same time it has been averred by him that he is entitled to the land in

lieu of the land which was allotted to him by the Gram Panchayat.

6. Third written statement was filed by defendants Nos. 3,7, 10, 12, 14 and 19 and 22 through their counsel Shri H.L. Azad, who later on withdrew his power of attorney on behalf of defendant No. 3 after filing the previous written statement on 4-2-1987. In this written statement the defendants took the plea that the suit of the plaintiffs may be decreed but without costs.

7. In this manner contest was given to the suit by some of the defendants.

8. The plaintiffs filed replication to the written statement of the contesting defendants, in which they reiterated their allegations made in the plaint by denying those of the written statement.

9. The record of the trial Court further shows that the suit of the plaintiffs as against defendant No. 2 was decreed on 15-6-1987.

10. On the pleadings of the parties, the trial Court framed the following issues:--

1. Whether the suit land is reserved for Gurudwara? OPP.

2. Whether the suit is not maintainable in the present form? OPD.

3. Whether the plaintiffs have no cause of action to file this suit? OPD.

4. Whether the plaintiffs have the locus standi to file the suit? OPD.

5. Whether the plaintiffs were required to file the suit after complying with the provisions of Order 1, Rule 8 of the C.P.C.?

6. Whether the plaintiffs were required to file a site plan? If so, what is the effect of not filing the site plan? OPD.

7. Whether the suit is not within time? OPD.

8. Whether the plaintiffs are estopped by their act and conduct from filing the present suit? OPD.

9. Whether the defendants are entitled for special costs under Section 35A of the C.P.C? OPD.
  10. Whether the suit is not properly valued for purposes of Court-fee and jurisdiction? OPD.
  11. Whether the Court has no jurisdiction to entertain and try this suit? OPD.
  12. Whether the plaintiffs are entitled to the injunction prayed for? OPP.
  13. Whether the suit is bad for mis-joinder and non-joinder of parties? OPD.
  14. Whether the Gram Panchyat were the owners of the suit land? OPD.
  15. Whether the Gram Panchayat has allotted this land to defendants Nos. 1 to 23? If so, what effect? OPD 1 to 22.
  - 15-A. Whether the plaintiffs have violated the order dated 15-6-1987? OPD
  - 15-B. Whether the written statement has not been filed by defendants Nos. 1 to 3? If so, to what effect? OPD.
  16. Relief.
11. The parties led evidence in support of their case and on the conclusion of the trial the suit of the plaintiffs was decreed holding that they had locus standi to file the suit; the land in question was reserved for the Gur-dawara; the provisions of Order 1, Rule 8, C.P.C., were not applicable and that there was no legal defect in the framing of the suit. Also it was held that the property had never vested in the Gram Panchayat, and, therefore, the suit was also not bad under the provisions of the Punjab Village Common Lands (Regulation) Act. The trial Court also held that the Gram Panchayat was not competent to allot the land in favour of defendants Nos. 1 to 23. Resultantly, the suit was decreed, as prayed for, against all the defendants ultimately.
12. Aggrieved by the judgment and decree of the trial Court, the contesting defendants, who remained only 14, filed Civil Appeal No. 104 of 1989 against the

impugned judgment and decree in the Court of District Judge, Hoshiarpur, who set aside the judgment and decree of the trial Court and dismissed the suit of the plaintiffs by holding that they had no locus standi to sue. In para 6 of the judgment the first appellate Court held:

'The plaintiffs have not come to the Court in assertion of a title but in assertion of a right of worship. Does such a right vest in a worshipper when the shrine itself has not come into existence? This is the most material point which the learned Subordinate Judge completely overlooked. It is one thing to say that a particular piece of land was reserved for the construction of a shrine. It is quite an other to say that a shrine had come into existence. There is legally no right to worship a shrine available to a devotee unless the shrine itself has been brought into existence.....'

The first appellate Court further held that the suit has been filed by the plaintiffs for the benefit of the Jat community as well as for the sake of Sikh Religion and, therefore, the provisions of Order 1, Rule 8, C.P.C. were mandatory to be performed and since these provisions have not been performed, the suit of the plaintiffs was bad. Also it was held in para No. 8 of the judgment that 'the land in dispute is a Shamlat Deh and it vests in the Gram Panchayat and this is what the entries in the revenue record clearly say, and that the Gram Panchayat had rightly allotted the land in question in favour of defendants Nos. 1 to 23. Finally it was held by the first appellate Court that the plaintiffs had no cause of action nor the locus standi to file the suit. Resultantly, the appeal was allowed by setting aside the judgment and decree of the trial Court. Aggrieved by the judgment and decree of the first appellate Court appeal was filed by the plaintiffs Mohinder Singh and Bikram Singh and with the death of Bikram Singh now it is being pressed by Mohinder Singh appellant.

13. I have heard Shri M. S. Rakkar, Senior Advocate with Shri J. S. Virk, Advocate, on behalf of the appellant and Shri Sanjay Majithia, Advocate, on behalf of the respondents, and with their assistance have gone through the record of the case and I am of the considered opinion that the learned first appellate Court rather overlooked the real controversy between the parties and erred in dismissing

the suit. I am inclined to restore the judgment and decree of the trial Court for the reasons set forth below. In the suit it has been specifically alleged by the plaintiffs that the land in dispute comprised in Khasra No. 268 was earmarked during the consolidation proceedings for the purpose of Gurda-wara. In these circumstances it was only the Director of Consolidation, who was competent to change the scheme. This fact is evident from the certified copy of the Scheme (Ex. P-6) and Khatauni Pamaish (Ex. P-7). Also it is proved from Exhibit P-16 that during the consolidation of holdings the land measuring 7 Kanals and 9 Marias was reserved for Gurdawara. Also it has come in the evidence of the trial Court that there was Nishan Sahib, which has been installed on the short distance and the sign board of the Gurdawara had also been fixed. It is not necessary that the Gurdawara made of bricks and mortar should come on the land in dispute. The installation of the Holy Guru Granth Sahib can even be in a Shamiana. The question for determination in this case is if the land in dispute was reserved for the Gurdawara or not and if it is so, the plaintiffs, admittedly, who were Sikhs and had faith in Sikh Religion, had the locus standi to protect the property of the Gurdawara, they being the worshippers of the Sikh Religion. In these circumstances, the Gram Panchayat was not competent to allot the land in favour of defendants Nos. 1 to 23 nor the land could legally vest in the Gram Panchayat. Ram Singh, one of the defendants, admitted during the course of trial that on the land in question Nishan Sahib had been installed and the board of the Gurdawara had also been fixed. The plaintiffs belonged to village Saidpur admittedly. Their case was specific that being the worshippers of the Gurdawara, their Religious sentiments would be hurt in case the defendants are allowed to construct the house on the land in question. It is an admitted fact that the Gram Panchayat has never given challenge to the suit and was proceeded against ex parte in the trial Court. In other words, the allegations of the plaintiffs have been admitted by the Gram Panchayat itself.

14. Learned counsel for the respondents submitted that the plaintiffs had no locus standi to file the suit. There was no legal or vested right in their favour Mere being the residents of the village, they could not file the suit and as such they had no locus standi. I am not in a position to subscribe to this view. As per the allegations of the plaintiffs, they are the worshippers of the Gurdawara Sahib and in that capacity they were filing the suit. A worshipper has also a right to protect the

property of the Gurdawara Sahib. The plaintiffs were definitely the beneficiaries of the land, which was reversed for the Gurdawara.

15. Then it was submitted by the learned counsel for the respondents that the suit of the plaintiffs was bad as the plaintiffs did not comply with the provisions of Order 1, Rule 8, C.P.C. The suit has been filed for the benefit of the entire community, as admitted by Bikram Singh plaintiff when he said that he brought the suit for the benefit of the Jat Community as well as for the sake of his religion. This argument is also devoid of any merit. Order 1, Rule 8, C.P.C. lays down as follows:--

'One person may sue or defend on behalf of all in same interest.-

(1) Where there are numerous persons having the same interest in one suit,--

(a) one or more of such persons may, with the permission of the Court, sue or be sued or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiffs expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of Rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule 3 of the Order, unless the Court has given, at the plaintiff's expenses notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation:-- For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such -persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.'

16. The above provision of law will come into force only where there are numerous persons having the same interest in one suit. But here Bikram Singh and Mohinder Singh being the worshippers, and had the locus standi, they would be the ultimate beneficiaries of the land reserved for Gurdawara on the installation of Holy Guru Granth Sahib. The trial Court has rightly observed in para 16 of its judgment as under:--

'.....A person who believes in Sikhism can be said a beneficiary in the land reserved for Gurdawara. Any of the beneficiary has the right to sue without having recourse to the provisions contained in Order 1, Rule 8 of the C.P.C. and without suing in a representative capacity on behalf of other beneficiaries.'

17. Learned counsel for the respondents Shri Sanjay Majithia relied on The Assistant Commissioner, Hindu Religious and Charitable Endowment, Salem v. Nattamai K.S. Eltappa Mudaliar, AIR 1987 Mad 187, in support of his contention when he urged for the dismissal of the suit due to non-compliance of the provisions of Order 1, Rule 8, C.P.C. This authority is not applicable to the facts in hand because in this very Authority it was laid down that a distinction has to be maintained between the cases where the individual put forward a right which he has acquired as a member of a community and cases where the right of the community is put forward in the suit. I have to see the frame of the suit and the

allegations contained therein. Both the plaintiffs alleged their right of worship and they made specific prayer that the land was earmarked for the Gurdawara and it never vested in the Gram Panchayat nor it was competent to allot the same in favour of defendants Nos. 1 to 23.

18. It was then argued by the learned counsel for the respondents that the suit of the plaintiffs is barred under Section 13 of the Punjab Village Common Lands (Regulation) Act because the property vests in the Gram Panchayat. In support of his contention he has relied upon various Jamabandies i.e. D2, D3, D4 and D5, wherein the column of 'ownership' the name of the Gram Panchayat has been mentioned. He submitted that the Civil Court has no jurisdiction to decide the point where the property has been vested in the Gram Panchayat in a rightful manner or not. These Jamabandies would not come in the rescue of the appellant in the light of Jamabandi Exhibit D5, where the name of Gurdawara Sahib in the column of 'ownership and possession' has been entered. This Jamabandi (Ex. D5) is for a subsequent year 1982-83. Moreover the Gram Panchayat has never claimed that the property vested in it. Rather no contest was given to the suit by the Gram Panchayat. Ex. P15 is the resolution passed by the Gram Panchayat itself on 13th Dec. 1986 wherein it was unanimously resolved by the Gram Panchayat that the colony, which has been sanctioned by the Government, should not come up in Khasra No. 268 because this Khasra number has been earmarked for the Gurdawara Sahib and that the colony may be constructed on some other land of the Panchayat. When the Panchayat itself does not dispute the title with respect to Khasra No. 268, it will not be open for the contesting respondents to say that the jurisdiction of the Civil Court is barred. Moreover, it is an admitted case of the parties that during the consolidation proceedings the plot in question was earmarked for the Gurdawara and there is no documentary evidence to prove that the ownership of the plot in question was transferred or changed under any order of the State Government or the Director (Consolidation). In these circumstances I do not subscribe to this argument of the learned counsel for the respondents. I have already held above that the property could not vest in the Gram Panchayat. In these circumstances the entries of the Jamabandies for the years 1971-72 and 1961-62 (Exhibits D3 and D2) are liable to be corrected. Further it is held that the document (Ex. D1) is a paper transaction by which the possession was

allegedly given to defendants Nos. 1 to 23. No possession was ever delivered to the allottees on the spot. Rather the possession of the plot in question has been recorded in the name of Gurdawara Sahib as per Jamabandi for the year 1982-83 and also there is an admission on the part of contesting defendant Ram Singh to the effect that Nishan Sahib had been installed on the land and the Sign Board of the Gurdawara has also been fixed. Moreover when the land in question did not vest in the Gram Panchayat in a legal manner, how it could further allot in favour of defendants Nos. 1 to 23 and any alleged allotment will not affect adversely the rights of the plaintiffs. The learned first appellate Court held while dismissing the suit that since Nishan Sahib was not an object of worship according to Sikh tenets and until and unless the Gurdawara has been constructed and the Holy Guru Granth Sahib is displayed, no individual right of worship of the plaintiffs has been violated. I am not in a position to subscribe to the view of the learned first appellate Court because the controversy is otherwise. The plaintiffs are basing their claim in the suit in the capacity of worshippers and by further alleging that the land in question was earmarked for the Gurdawara Sahib and it could not be used for any other purpose. Gurdawara in the shape of mortar and bricks could come at any time on the land in question and when the identity of the property is going to be changed, how the plaintiffs would be able to exercise their right of worship in the Gurdawara, which would ultimately be constructed. In such like cases the suit of 'a beneficiary, who is to enjoy certain rights from the property, is maintainable irrespective of the fact that where he actually exercised the rights presently or not. It cannot be disputed in this case that the plaintiffs are Sikhs. They belong to Jat Community and in the event of a Gurdawara, they could visit the same in order to pay obeisance before the Holy Guru Granth Sahib.

19. In view of the above, I accept the appeal, set aside the judgment and decree of the first appellate Court by restoring the judgment and decree of the trial Court and the suit of the plaintiff-appellant Shri Mohinder Singh is hereby decreed. No order as to costs.

20. Appeal allowed.