



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

**RSA No.1950 of 1992 (O&M)
Reserved on : 08.10.2025.
Pronounced on : 29.12.2025.
Uploaded on: 29.12.2025.**

Nikka Ram and others

...Appellants

Vs

Birbal Sood and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Avnish Mittal, Advocate &
Ms. Aparna Singhal, Advocate
for the appellants.

Mr. Sumeet Jain, Advocate
for the respondents.

VIKRAM AGGARWAL, J

This is defendants' appeal against the judgment and decree dated 31.07.1992, passed by the Court of Additional District Judge, Ropar, allowing the appeal filed by the plaintiffs against the judgment and decree dated 27.01.1988 passed by the Court of Sub-Judge Ist Class, Kharar, vide which the suit for possession filed by the plaintiffs had been dismissed, thereby decreeing the suit.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiffs (Birbal Sood and others) instituted a suit for possession of land (fully described in the plaint) measuring 14 marlas situated in Village Chadiala, Tehsil Kharar, District Ropar (hereinafter referred to as the 'suit land') in which temple (Shivala) was situated.

3.1. It was claimed that Charanji Lal, father of plaintiffs No.1 and 2 and grand-father of plaintiffs No.3, 4 & 5 was the previous owner and Mohtamim of temple (Shivala) which had been constructed by the ancestors of the plaintiffs on the suit land as also on land measuring 23 Kanals 05 Marlas at Village Gidarpur. It was claimed that after the death of Charanji Lal, the plaintiffs had succeeded him and had become owners and Mohtamim of the temple. The case of the plaintiffs was that on 09.12.1985, defendants took illegal possession of the suit property and refused to vacate the same. As a result, the suit was instituted.

4. The defendants denied the case of the plaintiffs. It was pleaded that from the very beginning, the suit land had been used for religious purposes and plaintiffs or their predecessors-in-interest were never in its possession. It was claimed that Sood Community as a whole use to manage the affairs of the temple along with other respectable members of the Village and as such, defendant No.1 (Shri Dhar Gir) had been appointed as Mohtamim of the temple and he had been managing the same for the last 20 years.

4.1. It was claimed that plaintiff No.1 (Birbal Sood) had managed to get wrong entries made in the revenue record in the name of his father Charanji Lal as he (Birbal Sood) was a Patwari. It was claimed that the possession of the defendants was legal and valid.

5. From the pleadings of the parties, following issues were framed:-

- 1. *Whether the plaintiffs are owners and Mohtamim of temple and suit land situated in suit land as alleged in para No.1 of the plaint? OPP***
- 2. *Whether Charanji Lal father and grand father of the plaintiffs were owner and was Mohtamim or the temple previously as alleged in para No.2 of the plaint? OPP***

3. *Whether after the death of Charanji Lal the plaintiff have succeeded him and have become owners and Mohtmim as alleged? OPP*
4. *Whether the defendants are in illegal possession of the suit property? OPP*
5. *Whether the plaintiffs are entitled to possession as prayed for? OPP*
6. *Whether the suit is not maintainable in present form? OPD*
7. *Whether the suit is within limitation? OPD*
8. *Whether the suit is bad for want of necessary parties? OPD*
9. *Whether the suit is against public policy as alleged? OPD*
- 10. *Relief.***

6. Parties led their respective evidence.
7. The trial Court dismissed the suit vide judgment and decree dated 27.01.1988. The plaintiffs preferred an appeal which was allowed by the Court of Additional District Judge, Ropar vide judgment and decree dated 31.07.1992, leading to the filing of the instant appeal.
8. Learned counsel for the parties were heard.
9. It was strenuously urged by learned counsel for the appellants that the well reasoned decision of the trial Court had been erroneously set aside by the First Appellate Court. It was submitted that the First Appellate Court did not examine the matter from the correct perspective and did not comply with the provisions of Order 41 Rule 31 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') while deciding the appeal.

9.1. It was submitted that no evidence had been led by the plaintiff that Charanji Lal had been the Mohtamim of the temple. It was also submitted that no evidence had been led to prove that the Mohtamimship was hereditary and had been passed on to Charanji Lal from his ancestors. It was submitted that under the circumstances, merely on the basis of entries in the revenue record, the suit for possession could not have been decreed.

9.2. It was contended that the Shivala which is a legal entity was not made a party, and, therefore, the suit itself was defective. Learned counsel also submitted that it was a simpliciter suit for possession with no claim on the temple and was, therefore, not maintainable.

9.3. It was also submitted that there was no proof that the temple in question was a private temple and once no evidence had been led to this effect, the suit could not have been decreed. It was submitted that on the contrary, there was ample evidence that it was a public temple.

9.4. It was also argued that at best the plaintiffs had been able to prove the ownership of the land but had not been able to prove about the management of the temple.

9.5. Learned counsel also submitted that a Committee had been formed by the defendants for the management of the temple but the same was also not joined as a party.

9.6. Learned counsel referred to the entire oral documentary evidence and submitted that the decision of the First Appellate Court is not sustainable. In support of his contentions, learned counsel placed reliance upon judgments of the Hon'ble Supreme Court of India in ***Shri Ram Mandir***

Indore Vs State of Madhya Pradesh and others, 2019(2) RCR (Civil) 307,

Goswami Shri Mahalaxmi Vahuji Vs. Shah Ranchhoddas Kalidas (Dead)

and others, 1970 AIR (Supreme Court) 2025, Somakka (Dead) by Lrs Vs. K.P. Basavaraj (Dead) by LRs, 2022 (3) RCR (Civil) 179 and judgment of Calcutta High Court in ***Upendra Nath Chatterjee Vs. Nilmony Chatterjee, Law Finder Doc Id # 305065 1957 AIR(Calcutta) 342.***

10. *Per contra*, learned counsel for the respondents submitted that there is no illegality in the decision of the First Appellate Court and the suit had rightly been decreed. Learned counsel submitted that there was no need to join the deity as a party and it was only a suit for possession. It was submitted that the ownership of the suit land had duly been proved from the revenue record and, under the circumstances, the First Appellate Court did not commit any illegality in decreeing the suit.

10.1. It was submitted that the revenue record clearly proved that the suit land was owned by the predecessors of the plaintiffs and, therefore, under the circumstances, the First Appellate Court examined the matter from the correct perspective and rightly decreed the suit for possession.

10.2. It was submitted that the management Committee had illegally been formed by the defendants and that even otherwise, it had been formed after the institution of the suit and, therefore, it could not have been impleaded as a party.

10.3. Learned counsel further argued that it had duly been proved that the temple was a private temple and not the public temple.

11. I have considered the submissions made by learned counsel for the parties.

12. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and

not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the case of **Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317** and **Satender and others V/s Saroj and others, 2022(12) Scale 92**. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

13. Reverting to the case, the only evidence which the plaintiffs led in support of their case was the revenue record. No doubt, as per the revenue record, Charanji Lal was the owner in possession of the suit land and a temple also finds mention in the revenue record. However, the plaintiffs were not able to show as to how their predecessors had come in possession. No evidence was led to prove that it was a private temple. Apart from a solitary witness, no other witness was examined by the plaintiffs. Once a temple existed at the spot, it had to be proved that it was a private temple in case the plaintiffs wanted its exclusive possession.

13.1. Still further, absolutely no evidence was led to prove that Charanji Lal had been appointed as Mohtamim and further that the Mohtamimship was hereditary and Charanji Lal had been appointed Mohtamim by his ancestors.

13.2. Concededly, a Management Committee has been formed by the defendants. No doubt, it was formed after the institution of the suit but still it could have been impleaded even at a later stage. However, the same was not done. The trial Court examined the matter from the correct perspective. It was noticed that even the plaintiff-Birbal Sood who had appeared as PW-1 had expressed ignorance as to who had constructed the temple and had

simply stated that it had been constructed by his ancestors. It was rightly noticed that once a temple had been constructed, unless and until there was specific evidence to this effect, it could not be held that the same was restricted for members of the family and their decedents only and that under the circumstances endowment could be regarded as public only. On the contrary, the defendants examined four witnesses i.e., Mohan Lal, Parkash Chand, Som Dutt and Bant Ram who stated that Charanji Lal had never managed the affairs of the temple. Under the circumstances, the trial Court rightly rejected the self serving statement of the plaintiff. In-fact the plaintiff went to the extent of stating that his father Charanji Lal had not been made Mohtamim by anyone. If that was the case, there was no question of his having functioned as such or of the plaintiffs inheriting the rights of Mohtamimship.

13.3. The trial Court also discussed the judgments and decrees (Ex.P-22 and P-23). The trial Court rightly held that the said litigation pertained to the property at village Gidarpur and not Chadiala and that further parties to the *lis* are different and under the circumstances, the same could not be held to be *res judicata*.

13.4. Another fact which came on record was that except one of the plaintiffs Ashok Kumar, all other plaintiffs were residing out of village Chadiala. Ashok Kumar did not step into the witness box and Birbal Sood who stepped into the witness box was not living in Chadiala. Once he was not living in village Chadiala, it could not be accepted that he was managing the day to day affairs of the temple.

13.5. The trial Court rightly did not accept the version of the defendants also that Shridhar Gir had been appointed as Mohtamim by the

respectables of the villages and that Charanji Lal had been recognizing him as the Mohtamim. Notably Shridhar Gir had not appeared as a witness. No evidence was led to prove that he had been the Mohtamim. None of the sides produced any record to this effect though the defendants did claim that a Committee had been formed, though subsequently.

13.6. Once the plaintiffs had not been able to prove that Charanji Lal had been appointed as the Mohtamim and that after his death they had been appointed the Mohtamim and had been running the temple and further that the said right was inheritable, merely on the basis of revenue record, the suit could not have been decreed.

13.7. In-fact the First Appellate Court did not examine all issues arising in the matter and only confined itself to the revenue record. There would be no occasion for this Court to remit the matter to the Appellate Court for a fresh decision on account of this, especially once this Court is examining the matter.

14. The aforesaid discussion leads this Court to the conclusion that the First Appellate Court set aside the well reasoned decision of the trial Court without giving any cogent reasons. Concededly, the revenue entries had come in the name of the defendants after 1985. Another aspect of the matter is that no criminal action was initiated by the plaintiffs against the defendants on account of the alleged forcible dispossession. The record shows that the parties have been litigating for a long time over the management of the temple. Various judgments and decrees have been produced on record and another Regular Second Appeal i.e., RSA No. 4210 of 2018 is being decided by this Court today between the same parties with the same dispute but with regard to the land at Village Gidarpur.

15. If one examines the matter in its entirety, it does emerge that parties are at logger heads over the management of the temple. It is not unknown that such disputes occur and continue over years and decades which appears to be the case here as well.

16. Keeping in view the totality of the facts and circumstances of the case, the decision of the First Appellate Court is found to be unsustainable. Further, the decision of the trial Court is found to be in accordance with law.

17. Accordingly, the instant appeal is allowed. The judgment and decree dated 31.07.1992 passed by the Court of Additional District Judge, Ropar is set aside and the judgment and decree dated 27.01.1988 passed by the Court of Sub-Judge Ist Class, Kharar is upheld. Before parting with the matter, this Court would also not hesitate in holding that the office of the Advocate General Punjab/State of Punjab (as the case may be) may consider initiating proceedings in terms of the provisions of Section 92 CPC.

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

**(VIKRAM AGGARWAL)
JUDGE**

Pronounced on: 29.12.2025

Rekha

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