

PETITIONER:
SANTOKH SINGH AND ANR.

Vs.

RESPONDENT:
MAHANT IQBAL SINGH

DATE OF JUDGMENT: 12/09/2000

BENCH:
V. N. Khare J. & S. N. Variava J.

JUDGMENT:

J U D G M E N T

S. N. Variava, J.

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This Appeal is against the Judgment dated 29th December, 1989, by which Letters Patent Appeal No. 299 of 1984 filed by the Appellant herein has been dismissed. Briefly stated the facts are as follows :

The Appellant claims to be a lessee under a Lease Deed dated 3rd August, 1960, executed by one Mahant Mahal Singh in favour of the Appellant for a period of 99 years at an annual rent of Rs. 43/-. The Respondent claiming to be the Mahant filed a suit for recovery of possession on the basis that the property was a Trust property and that Mahant Mahal Singh had no authority to lease out the property. It was also claimed that the lease deed was executed without any consideration and/or legal necessity and therefore, the lease was void and not binding on the Trust. It was claimed that the Trust was entitled to possession of the property. On the basis of pleadings the Trial Court inter alia framed the following issues :

- "1. Whether the suit does not lie in the present form?
2. Whether the plaintiff has a locus-standi to file the present suit?
3. Whether the lease in question was made for legal necessity and for consideration and as an act of good management?
4. Whether the Mahant was competent to make the lease in question in favour of defendants Nos. 1 and 2?
5. Whether the defendants Nos. 1 and 2 have made any improvement in the suit property? If so, to what amount they are entitled?
6. Whether the property in suit belongs to Dharamsala Partap Singh?"

The Trial Court dismissed the suit on 10th of October, 1974. The Respondent filed a First Appeal. This was allowed on 19th of December, 1983. In this judgment it was held that the property was Trust property. It is held that the lease in question was without consideration and not made for legal necessity. It was

held that Mahant Mahal Singh was of old age and had become very weak and generally remained ill. It was held that Mahant Mahal Singh was not competent to make lease in favour of the Appellant. However, the Appellants were granted a sum of Rs.20,970/-, as cost of the improvements made by them. Against this judgment the Appellants filed the above mentioned L.P.A., which as stated above, was dismissed by the impugned judgment dated 29th December, 1989. We have heard both sides. We have read the relevant papers and all the judgments. On the questions whether the property belonged to a Trust of which the Respondent was the Mahant, on a correct appreciation of evidence both the Courts below have given concurrent finding of fact that this property was Trust property and that the Respondent was a Mahant of the Trust. Similarly, on the question whether the lease was for consideration and for legal necessity, on a correct appreciation of evidence, both these courts have given concurrent finding of fact that the lease was not for consideration or for legal necessity. These being the concurrent findings of fact could not be seriously assailed before us. However, it has been seriously contended that the Lease Deed of 3rd of August, 1960, was a registered document and that the Appellant had been put in possession under that document. It was submitted that the suit was a mere suit for possession. It is pointed out that there was no prayer for a declaration that the Lease Deed was invalid and/or void and/or not binding. It is submitted that in the absence of such a prayer the suit was not maintainable. It is submitted that both the Courts below erred in holding that the suit was maintainable in the present form. It is correct that such a declaration should have been sought. Normally in the absence of such a declaration such a suit would not be maintainable. However, in this case we find that even though there was no prayer to the effect that the Lease Deed was not valid and/or void and/or are not binding, the necessary averments are there in the plaint. The Appellants thus knew that the lease deed was being challenged. They met the challenge in their written statement. Thereafter Issues namely, Issues Nos. 4 & 5 had been framed. Evidence was led by the parties on those Issues. Arguments were advanced on those Issues. Therefore, this question has been agitated by the parties in all the Courts. Thus even though there was no formal prayer was asked for, no prejudice has been caused to the Appellants inasmuch as he has not been prevented from leading evidence on this aspect and has not been precluded from raising contentions in this behalf. In our view, all that was necessary to cure the defect was an amendment by incorporating one prayer. This could have been done at any stage. In this view of the matter and particularly in view of the fact that we are in agreement with the findings that the property is a Trust property and that the lease in question was not for consideration or for legal necessity, we see no reason to interfere. Accordingly the Appeal stands dismissed. There will, however, be no order as to costs.