

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

Civil Revision No.1639 of 2006

Date of decision: 18.03.2015

Punjab Wakf Board

... Petitioner

versus

Jaspal Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Jai Bhagwan, Advocate,
for the petitioner.

Mr. Anmol Rattan Sidhu, Senior Advocate,
with Mr. R.K. Chugh, Advocate,
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The Wakf Board is interested in securing the declaration that the property in Khasra No.2468/2 belongs to Wakf having been notified as such under Section 5 of the Wakf Act, the copy of which notification is Ex.A7. The jamabandi also enters the property in Khasra No.2468/2 of an extent of 96 kanals 14 marlas as the property of the Wakf. The petition was filed for a declaration that the municipal records have wrongly entered the respondent's name and the municipal entry must be therefore declared to be null and

void. There is also a prayer for possession of the plot measuring 1098 square yards within the specific boundaries and a permanent injunction for putting up any further construction.

2. The petitioner relies on a letter written by the second respondent admitting the property to belong to the Wakf and that she must be granted the property by way of lease. The contention is that having admitted the Walk's entitlement to the property, she could not have sold the property to the first respondent.

3. The court has held that the sale effected to be bad. The court has still not granted the recovery of possession since the property in possession of the first respondent is not shown to be connected to the property claimed by the petitioner as falling within the Khasra No.2468/2 min. The petition had been dismissed, however finding that the petition is not properly represented through the Estate Officer and the authority granted by the Administrator to the Estate Officer was not competent.

4. I have no problem in accepting that the institution could be protected by any person having no adverse interest and who is a Wakf Tribunal. I will not therefore find anything legally wrong about the institution of the petition by the Estate Officer. Having regard to the letter of acceptance of the petitioner as an owner for Khasra No.2468/2, I have not a problem even holding that there could not have been a lawful sale by the second respondent to the

first respondent. The Wakf Tribunal has already held that the sale to be bad and there is no revision or appeal against the said judgment.

5. The only point for consideration is whether the Tribunal was justified in rejecting the petitioner's prayer against recording the first respondent as the owner of House No.2907/46/1 in the revenue record. The petitioner has relied on the evidence of an official from the Municipal Council who has stated that the entry has been wrongly made. There is also a witness examined on the side of the respondent to say that the house situate in the property that bears House No.2907/46/1 is not situate in the property claimed by the petitioner.

6. The most crucial issue in an action for ejectment seeking possession is the duty of the person seeking possession to establish his right to the property. Section 110 enacts a rule of procedure for establishing the burden of proof as to ownership and states that the issue as whether any person is owner of anything of which is shown to be in possession, the burden of proof that he is not the owner is on the person who affirms that he is not the owner. It is a statutory recognition of a Roman law principle that the possession is nine points in law. If the first respondent's possession is an admitted fact and his possession is sought to be ejected, the petitioner is bound to prove that the property over which the building in that particular door number is constructed, as entered in the municipal records,

does not belong to the first respondent but belongs to the petitioner-Wakf. Since the building itself is not claimed by the Wakf but seeks to contend that the building put up in khasra No.2468 should be removed, it is imperative that the petitioner proves that the construction is on Khasra No.2468/2. That has not been proved to be so and there is no document that connects the construction to the particular khasra number. I am afraid I cannot make any modification with reference to the relief that was declined to the Wakf Board before the court below. The order is sustained after having modified some of the findings regarding the maintainability of the petition but the relief of recovery of possession cannot be modified. The revision petition is dismissed on the above terms.

(K.KANNAN)
JUDGE

18.03.2015
sanjeev