

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.327 of 2015

Date of Decision:-February 2nd, 2015

Punjab Wakf Board.

.....Petitioner.

Versus

Sarup Singh & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Ms. Neelofer Abida Perveen, Advocate for the Petitioner.

JASWANT SINGH, J.

Punjab Wakf Board-defendant is in revision aggrieved against the order dated 22.05.2014 whereby the suit of the respondents/plaintiffs for declaration that they are joint owners in possession of the suit property has been decreed.

In brief facts of the case are that plaintiffs had alleged that the predecessor in interest of the plaintiffs, namely, Tarun Kumar and Ashwani Kumar were owners in possession of the suit property as co-sharers and after their death their family members became owners. Subsequently, the properties were purchased by the plaintiffs from the family members and consequently they have become the owners. The plaintiff further pleaded that the defendants i.e. Punjab Wakf Board has issued notification dated 29.04.2000 whereby they are claiming themselves to be the owner in possession of the property in question. The said notification has been

challenged by stating that it is illegal, null and void and thus the present suit.

Upon notice defendants appeared and filed joint written statement whereby it was pleaded that the plaintiffs are neither the owners nor in possession of the suit property. It was further alleged that the sale deeds claimed by the plaintiffs are illegal and fabricated documents and do not agree any title in favour of the plaintiffs. It was alleged that the notification is perfectly valid and the nature of the suit property is religious in nature and thus, it cannot be held that the property in question is not Wakf. Finally, a plea of limitation was also taken to say that the suit is beyond limitation because the notification is issued on 29.04.2000 whereas the suit has been filed in 2005.

Replication was filed. Issues were framed. Parties lead their respective evidence and after consideration entire evidence the learned Wakf Tribunal vide its impugned judgment and decree dated 22.05.2014 (P-1) decreed the suit of the plaintiffs and aggrieved against the same Wakf Board is in revision.

Learned Counsel for the petitioner has argued that a perusal of the revenue record reveals that the suit property was used for religious purpose by Muslim community known as “*Taqia*” as well as graveyard and thus, the suit property has been rightly declared as the Wakf Property. It was further argued that the present suit is barred by limitation because the notification is dated 29.04.2000 whereas the present suit has been filed in 2005 and thus, the suit challenging the notification was required to be filed within one year and due to the above said fact the suit is barred by limitation as well.

After hearing learned Counsel for the petitioner and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and the same deserves to be dismissed.

A perusal of the impugned judgment and decree would reveal that the learned Wakf Tribunal in its para 20 has perused oral as well as documentary evidence adduced by the parties. The learned Wakf Tribunal has gone through the jamabandi for the year 2002-03 which showed that Tarun Kumar, plaintiff along with his brothers is shown in possession of Khasra No.509/1(1-18). Although the nature of the land is shown as *Gair Mumkin Taqia* but the said entry is in contradiction with the written statement filed by the defendants wherein they have mentioned the existence of shops and veterinary hospital constructed by the government of Punjab. Similarly the other plaintiffs have also been recorded in possession of different Khasra Numbers belonging to the suit property and only one Biswa out of the entire Khasra No.1498 has been recorded as *Kabristan*. To the same effect are the other jamabandies wherein the predecessors in interest of the plaintiffs have been shown to be owners in possession of the suit property. It is further evident from the record that the mutation qua succession of the predecessor in interest of the plaintiffs have been sanctioned at relevant point of time and the plaintiffs have been able to link the entire chain to show that the property has devolved upon them through succession as well as sale deeds. Not only this, this Court in RSA No.243 of 1977 decided on 4.9.1990 (Ex.PX/5) has already held that suit property which was claimed by Punjab Wakf Board was not Wakf in nature because there was no evidence. The said judgment and decree is still binding upon the parties and the Wakf Board cannot claim the same on the basis of said

notification issued on 29.04.2000 because it is an admitted fact that the plaintiffs were not joined in the inquiry which was conducted by the officials at the time of survey and thus, it is of no value in the eyes of law.

As far as the argument of the learned Counsel for the petitioner that suit is barred by limitation, this Court is of the opinion that the same is also devoid of any merit because admittedly no notice under Section 89 of the Wakf Board 1995 was issued to the defendants prior to the issuance of the notification. Since the respondents/plaintiffs were never joined in the inquiry conducted by the officials the said notification is not binding upon the plaintiffs and, therefore, the suit cannot be held to be barred by limitation.

In view of the above, finding no merit in the present revision petition the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

2nd February, 2015
Vinay