

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

CR No. 4313 of 2014 (O&M)

Date of decision: October 15, 2015

Gurdarshan Singh and another

...Petitioners

Versus

Punjab Wakf Board and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

- 1. Whether Reporters of local papers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Ravish Bansal, Advocate,
for the petitioners.

Mr. Jai Bhagwan, Advocate,
for respondent No.1.

K. KANNAN, J. (Oral)

1. The point taken in revision by the judgment-debtors is that the decree is incompetent as one passed without jurisdiction. Though normally the executing court cannot go beyond the decree, this principle will not apply in cases where the decree is not in accordance with law and suffers from the fundamental vice of a judgment rendered by a court without jurisdiction.

2. The judgment-debtors pick up precisely the point that the suit for ejectment by the Wakf Board was incompetent before a civil court by virtue of specific provision being available under the Punjab Tenancy Act under Section 77 (3) (e). Section 77 reads as under:-

“The following suit shall be instituted in, and heard and determined by the revenue court and no other court shall take cognizance of any dispute or matter in respect to which such suit might be instituted”.

3. Clause (e) includes suits by landlord to eject a tenant. The decision of the Supreme Court in Ramesh Gobindram (dead) through Lrs versus Sugra Humayun Mirza Wakf 2010 AIR (SC) 2897 ruled that the Wakf Tribunal will not have the jurisdiction if the adjudication did not require whether the property belongs to the Wakf or not and that only a civil suit was maintainable. This shall normally be so, if there was no other forum available through a State legislation or the Central legislation. The revenue court alone is the only competent to eject a tenant in respect of agricultural land and the decision in Ramesh Gobindram (supra) cannot be said to apply in a situation where the State enactment makes provision for a particular forum where the action must be taken. This issue has been considered by this Court in Surjit Singh and others Versus Punjab Wakf Board and another 2012 (2) PLR 293 and this Court has held that proceedings for eviction could be filed only in competent revenue court under the Tenancy Act as prevails in the concerned State.

4. The counsel for the respondent refers to a decision of the Full Bench in Shiv Charan Versus Financial Commissioner, Haryana and others 2004 (4) R.C.R. (Civil) 543 as laying down that the civil court will have jurisdiction, if only a tenant claims occupancy tenancy status with vesting of ownership under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1953. Here, no statutory vesting ownership is claimed by the

tenant. The said decision will have no applicability.

5. The order is set aside and the revision is allowed.

October 15, 2015
prem

(K.KANNAN)
JUDGE