

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

**Civil Revision No.634 of 2013 (O&M)
Date of Decision: August 21, 2015**

Jagdish Singh and another

.... Petitioners

vs.

Punjab Wakf Board

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Sham Lal Bhalla, Advocate for the petitioners.

Mr. G.N. Malik, Advocate for the respondent.

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

The present revision petition has been filed against the judgment dated 13.01.2009 passed by the Tribunal Wakf Act, Ludhiana (in short 'the Tribunal') vide which the suit of the Punjab Wakf Board was decreed for possession of house measuring 300 sq. yards shown as red in the attached site plan and also recovery of ₹80,640/- including interest @ 12% per annum as mesne profit for three years @ ₹2,000/- per month.

Brief facts of the case are that according to the plaintiff, house measuring 300 sr. yards fully detailed in the head note of the plaint is a part of land measuring 40 kanals 6 marlas owned by Punjab Wakf Board. The suit land is in nature of muslim graveyard

and the same has been leased out to the different persons from time to time. It was alleged that the plaintiff-respondent herein was in the possession of the said house but three years back, the defendant forcibly took the possession of the said house and started raising construction. They had constructed 17 rooms on the ground floor and 17 rooms on the first floor without getting any site plan sanctioned from the Municipal Corporation. It was further claimed by the plaintiff that the said property could be leased out on the monthly rent of ₹2,000/-, which is the scheduled rent of Punjab Wakf Board. Therefore, the plaintiff claimed to be entitled for the mesne profit from 01.07.2003 to 30.06.2006 which comes to ₹72,000/-. The plaintiff also claimed interest @ 12% per annum amounting to ₹8,640/- and total recovery of mesne profit comes to ₹80,640/-.

In the written statement, the stand of the defendants is that the suit property is the land of Panchayat deh and the mutation has been wrongly sanctioned in favour of the plaintiff. Defendants are bonafide purchaser and are in possession of suit property on the basis of the agreement dated 21.03.2001.

From the pleadings, the following issues were framed:

“1. Whether the present suit is not maintainable?

OPD

2. Whether the plaintiff is entitled for possession of suit property ? OPP

3. Whether the plaintiff is entitled for recovery of mesne profits, if so, at what amount ? OPP

4. Relief.”

Issues Nos.1 to 3 were taken up together and decided in favour of the plaintiff and consequently, the impugned judgment was passed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It is to be noted at the very outset that before the Tribunal under the Wakf Act, the defendants did not lead any evidence. Therefore, virtually it is ex parte evidence of plaintiff, which has been believed by the Tribunal.

The case of the plaintiff is that it is Wakf Board property and defendants forcibly possessed the same about three years back and constructed 17 rooms on the ground floor and 17 rooms on the first floor without getting the site plan sanctioned.

The stand of the defendants is that the suit property belonging to Panchayat deh has been wrongly mutated in favour of the plaintiff.

The defendants further claim that they are bonafide purchaser of the suit property and are in possession of the same on the basis of the agreement dated 21.03.2001.

It is to be noted here that the defendants do not claim that they had purchased the suit property through sale deed from the person, who was competent to sell the same. The defendants claim the possession merely on the basis of an agreement, which was not produced by the defendants during evidence. Nor the defendant appeared in the witness box to show as to how he came in

possession of the disputed property. They also did not claim that somebody else is the owner of the property. Therefore, the Tribunal believed the entry of jamabandi (Ex.P2) as well as Gazettee Notification (EX.P3) and held that it is a Wakf Board property. The averment of the plaintiff that defendants had illegally constructed 17 rooms on the ground floor and 17 rooms on the first floor on the disputed property without getting the site plan sanctioned from the Municipal Committee was also not controverted. The Tribunal assessed that such property could have easily fetch ₹2,000/- per month. Accordingly, the same was allowed.

Before this Court, learned counsel for the appellant has contended that proper opportunity was not given to the defendants to conclude their evidence.

However, in grounds of appeal, no prayer has been made that defendants should be granted opportunity to lead their evidence.

Learned counsel for the appellants-defendants has relied upon Sections 5 and 6 of Wakf Act to press that it is the duty of the Wakf Board to prove its title over the disputed land within five years from the date of the publication of notification.

Learned counsel for the appellants-defendants has also relied upon the authority of Hon'ble the Supreme Court in case of **“karnataka Board of Wakf vs Anjuman-E-Ismail Madris-Un-Niswan” 1999(3) R.C.R. (Civil) 639** and judgment of this Court in **“Punjab Wakf Board, Jalandhar vs. Nagar Panchayat Shahkot, District Jalandhar”, 2012(2) R.C.R. (Civil) 243** and has pressed

that the civil suit can be filed within one year.

I am of the view that in the present case, defendants did not claim the title of the property and only claimed that the suit property is the the property of Panchayat deh. If it is so, then the Panchayat concerned should come forward to claim the dispute property. Therefore, the defendants are the third party, who are claiming the possession on the basis of agreement. Therefore, it is not a suit, where the title of the suit property is disputed. Even the defendants did not claim the title. They merely claimed possession on the basis of the agreement, which was never proved by them.

Therefore, the Wakf Board could file the suit for possession and mesne profit. The exparte evidence of the plaintiff remains unrebutted. There is nothing on the file to show that suit property is not owned by the Wakf Board.

In the suit property, 34 rooms are constructed. Therefore, there is no error in the findings recorded by the Tribunal that such property would fetch ₹2,000/- per month.

It being so, I do not find any illegality or infirmity in the impugned order.

Accordingly, the present appeal stands dismissed.

August 21, 2015
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(KULDIP SINGH)
JUDGE