

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

(224)

CR No.7562 of 2013 (O&M)

Decided on: July 14, 2015.

Rattan Singh

.... Petitioner

Versus

Punjab Wakf Board

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. K.S. Rekhi, Advocate,
for the petitioner.

M.M.S. BEDI, J (ORAL)

The petitioner has been ordered to be ejected by Wakf Tribunal, Amritsar in a suit for possession and recovery of mesne profits. The Wakf Board had taken up the plea that the defendants-petitioner had entered into possession of the property illegally without any authorization with effect from the year 2002. The decree for possession and recovery of mesne profits has been passed ex parte against the petitioner.

Counsel for the petitioner has inter alia argued that the defendants-petitioner had not been served and was wrongly proceeded against ex parte. It has also been argued that the Tribunal has no jurisdiction to pass an order of ejectment.

Counsel for the petitioner places reliance on **Ramesh Gobindram (dead) through LRs Vs. Sugra Humayun Mirza Wakf, 2010(8) S.C.C. 726** laying down that eviction of a tenant occupying the Wakf property cannot be ordered by the Tribunal.

I have seen the pleadings of the respondent Punjab Wakf Board and I am of the opinion that the case of the respondent in the present case is that the petitioner was not a tenant but he was unauthorized occupant. In these circumstances whether judgment of *Ramgobind Ram Vs. Sugra Humayun Mirza Wakf (supra)* would be applicable will be a debatable issue.

Without entering into the controversy of maintainability of the eviction proceedings at this stage, I am of the considered opinion that the ex parte decree passed against the petitioner can be set aside by availing the remedy under Order 9 Rule 13 CPC.

The revision petition is disposed of as not maintainable with liberty to the petitioner to file an application under Order 9 Rule 13 CPC for setting aside the ex parte decree of ejectment passed against the petitioner, taking up all the pleas of jurisdiction before the said Court. Since no appeal is maintainable against the order of eviction passed by the Tribunal, it is ordered that in case application under Order 9 Rule 13 CPC is filed within a period of one month after the receipt of certified copy of this order, the said application will be taken up for consideration and would be disposed of by the Wakf Tribunal, Amritsar in accordance with law.

(M.M.S. BEDI)
JUDGE

July 14, 2015
harsha