

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.3574 of 1987

Date of Decision: 14.01.2015

Punjab Wakf Board

..... APPELLANT

VERSUS

Santokh Singh

..... RESPONDENT

PRESENT: - Mr. Prateek Mahajan, Advocate
for the appellant.

Mr. Ravish Bansal, Advocate
for the respondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

SHEKHER DHAWAN, J.

This Regular Second Appeal is directed against judgment and decree dated 01.08.1987 passed by the Court of learned Additional District Judge, Faridkot whereby appeal filed against the judgment and decree dated 16.07.1985 passed by the learned Senior Sub Judge, Ist Class, Faridkot was dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in civil suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that plaintiff i.e. Punjab Wakf Board, Ambala Cantt. filed a suit for possession of the shop of mosque bearing Serial No.568 comprising 650

square feet area situated in Chowk Patel Main Bazar, Faridkot. As per plaintiff, the disputed shop vests in Punjab Wakf Board and respondent-defendant is in illegal possession. A request was made to the defendant to restore the possession but to no effect. The suit was filed through the Aukaf Officer of the Board.

The respondent-defendant contested the suit inter alia taking preliminary objections that the suit is barred by principles of resjudicata; that the suit is barred because a similar suit previously filed by the plaintiff was dismissed under Order 9 Rule 8 CPC. The defendant also took the plea that the disputed shop is not part of the mosque and the same does not vest in the Punjab Wakf Board; Aukaf Officer is not competent to file the suit. More so, the defendant has become owner of the suit property by way of adverse possession for more than 12 years; Suit is not properly valued for the purpose of Court fee and jurisdiction.

Learned trial Court settled the following issues and the parties were put to trial:

- “1. Whether the suit is barred by resjudicata? OPD
2. Whether an earlier suit filed by the plaintiff was dismissed under Order 9 Rule 8 CPC, as alleged? If so, its effect? OPD
3. Whether the defendant has become owner by adverse possession for more than the statutory period, as alleged? OPD
4. Whether the suit has been filed by a competent and duly authorised person? OPP
5. Whether the suit property is a part of mosque and as such vests in the Punjab Wakf Board, as alleged? OPP
6. Whether the suit is properly valued for the purpose of Court fees and jurisdiction? OPP

7. Relief.”

The learned Sub Judge after appreciating the facts, evidence available on file and law points involved in the case decided issues No.1 and 2 in favour of the plaintiff. Issues No.3 and 6 were also decided in favour of the plaintiff. However, issues No.4 and 5 were decided against the plaintiff-Board. Consequently, the suit of the plaintiff was dismissed.

The plaintiff-Board preferred an appeal and the learned Court of First Appeal did not find any merit in the appeal and the same was dismissed. Cross-objections filed by Santokh Singh-defendant were also dismissed.

Being aggrieved of passing of said judgment and decree by the Court of First Instance as well as of First Appeal, the plaintiff-appellant has preferred the present Regular Second Appeal.

When the appeal was admitted, no substantial question of law was framed. Even no substantial question of law has been placed on record during the pendency of appeal. Learned counsel for the appellant took the plea that the substantial question of law can be settled even at the stage of Regular Second Appeal if the Court comes to the conclusion that there are some substantial questions of law which require determination and decision by the Court.

I have heard learned counsel for the parties and perused the record.

There are substantial questions of law involved in this case as the real dispute is regarding vesting or non-vesting of property in dispute in the appellant-Board or in the alternative with custodian department. The

substantial question of law also involved regarding appreciation of evidence on the point whether the property in question is part of mosque or is a private property because nature of the property itself determines the rights of the parties and shall be the basis whether the suit property vest in appellant-board or custodian department.

- (i) Whether suit property vest in Punjab Wakf Board or Custodian Department?
- (ii) Whether Courts below misread and mis-appreciated the evidence available on file resulting into miscarriage of justice?"

Learned counsel for the appellant has taken the objection that the respondent has not preferred any appeal against judgment and decree of learned First Appellate Court and, as such, barred from taking these pleas regarding nature of the suit property and vesting or non-vesting of the suit property with the Wakf Board or custodian department.

Learned counsel for the appellant has placed reliance upon judgment of this Court in case of **Dr. Sita Ram(dead) through his LRs Vs. Ashok Kumar (dead) through his LRs and others**, 2012(2) PLR 3 wherein this Court observed that the respondent would be entitled to challenge the findings of lower Appellate Court in the absence of any cross objection filed by the respondents in view of Order 41 Rule 33 of Civil Procedure Code. On the same point, reliance was placed upon another judgment of this Court in case of **Subedar(Minor) Vs. Usman and others**, 2005(3) RCR(Civil) 120 wherein identical law was laid down.

In the light of above law laid down by this Court as well as provisions of law laid down under Order 41 Rule 33 of the Code of Civil

Procedure and the facts of the case, this Court proceed to decide the appeal while taking into consideration the objections raised by the respondent as well.

Mr. Prateek Mahajan, learned counsel for the appellant mainly took the plea that the suit filed by the appellant was dismissed by the learned Court of first instance and appeal was dismissed by learned First Appellate Court mainly on the ground that the suit property does not vest in the Punjab Wakf Board rather the same vests in the custodian department. Otherwise, there are concurrent findings of the Courts below regarding nature of the suit property to be mosque, which was owned by the Punjab Wakf Board. Per contra, learned counsel for the appellant, as per provisions of Section 66H and 15 and 11 of Punjab Wakf Board Act, 1954, which was incorporated as per amendment Act, 1984, the wakf property which was declared evacuee property on account of migration of trustees of Wakf to area now forming part of Pakistan must be treated as having vested in Wakf Board with effect from the date on which entrusted to Wakf Board by custodian under Administration of Evacuee Property Act. The Wakf Board can maintain action for possession by virtue of authority conferred under Section 15(1) read with Section 15(2)(i).

For ready reference, Section 66H of the Wakf Act, 1954 as amended is being reproduced and the same reads as under:

“66-H. Special provision as to evacuee wakf properties-The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of Section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950) which immediately

before it became such evacuee property within the said meaning was property comprised in any wakf and, in particular, any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purposes) of any such property to a Board made before the commencement of the Wakf (Amendment) Act, 1984 in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to-

- (a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of the Act 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950) with effect from the date of such entrustment, and
- (b) authorise such Board to assume direct management of the wakf concerned for so long as it might deem necessary.”

The above amended provision of Wakf Act makes it ample clear that the amendment act has been given retrospective effect from the date of the enforcement of the Act. The same provisions shall be deemed always to have been on the statute book notwithstanding anything contained in any other provisions of the Act.

Learned Courts below have mainly decided this point regarding vesting of the property or non-vesting of the property with the Wakf Board only on the basis of unamended provision. Having regard to the aforesaid newly added provision, a wakf property would vest in the wakf Board in the same effect as in a trustee of such property for the purposes of sub section (1) of Section 11 of the Administration of Evacuee Property Act, 1950 with

effect from the date of such entrustment.

Similar matter had gone before Hon'ble Apex Court in case of **Punjab Wakf Board Vs. Bachan Chand**, 1988(2) RRR 477 wherein amended provisions of Section 66-H of Wakf Act and Sections 11 and 15 of the Act were before Hon'ble the Supreme Court and Hon'ble the Supreme Court laid down the law that in view of the abovementioned amended provision, the property must be treated as having vested in Wakf Board with effect from the date on which entrusted to Wakf Board by Custodian under Administration of Evacuee Property Act. Even impediment that former trustees had become evacuees and new trustees are not appointed lost its relevance. A Wakf Board can maintain action for possession by virtue of authority conferred by Section 15(1) read with Section 15(2)(i).

The present controversy was also before Hon'ble Full Bench of this Court in case of **Shri Bachan Chand Vs. Punjab Wakf Board, Ambala**, 1984 PLR 386 and while discussing scope of Section 11 of Wakf Act, this Court observed that if it is once held that the property of “evacuee trust” had vested in the Custodian or the right to manage the same is so vested *a fortiori*, a right to file the suit would be a necessary consequential right flowing therefrom. Therefore, the Custodian, in the first instance or in the event of new trustees being appointed in place of the evacuee trustees, under Section 11 of the Evacuee Act, the latter would be entitled to institute and defend legal proceedings in a Court of law. That a lawfully entitled trustee would have an inherent right to make resort to the Court to defend all the trust property etc., is too elementary to call for elaboration.

Identical observations were made by this Court in case of

Punjab Wakf Board, Ambala Vs. Laique Ahmad, 2004(4) RCR(Civil)

580. It was also held that Wakf Board became trustee of property in question in view of Section 66-H of Wakf Act and Wakf Board was competent to maintain suit for possession of wakf property.

To sum up in the present case as per provisions of Section 66-H of the Wakf Act, even if trustees had not been appointed by the Board, the suit property would vest in Punjab Wakf Board and that too, retrospectively. Taking the case from different angle, that in the case in hand, Secretary of Wakf Board was ex. Officio trustee of the property vide Ex. P-2. That way, the findings recorded by the learned Court of first instance as well as learned First Appellate Court are liable to be set aside as the trustees were appointed in this case. Thereafter, by way of amended provisions having retrospective effect, the findings recorded by both the Courts below are liable to be reversed and the same are set aside in view of the amended provisions as well as law laid down by Hon'ble the Supreme Court in **Punjab Wakf Board Vs. Bachan Chand's case (supra)**.

Learned counsel for the respondent has also taken the plea that as in the case in hand there is challenge to the jurisdiction of the Civil Court and the suit property vested with the custodian department as per provisions of the Administration of Evacuee Property Act, 1950 and Sections 11 and 27 of Wakf Act and Section 69(2) of Evacuee Property. There is complete bar of jurisdiction of Civil Court. More so, once the evacuee property stood vested with the custodian, the jurisdiction of Civil Court becomes barred. On this point, reliance was placed upon judgments of this Court in cases of

Sukhbir Singh Vs. Gram Panchayat, Village Allarh Pind, 2009(2) RCR

(Civil) 534 and **Punjab Wakf Board, Ambala Cantt. Vs. Dilbagh Singh (Dead) through LRs.**, 2004(4) RCR(Civil) 667.

I have gone through the above referred judgments and of the view that the facts of the case in hand are entirely distinguishable because in the case in hand the suit property stood vested in appellant i.e. Punjab Wakf Board as Secretary of Wakf Board was appointed ex. officio trustee on the relevant date. Thereafter, by way of amended provisions of Section 66H of Wakf Act having retrospective effect decided the nature of the suit property and also decided that the suit property vested in Wakf Board.

Learned counsel for the respondent took the plea that the findings recorded by the learned Courts below are erroneous and the suit property is not mosque rather private property as there were no basis for the Courts below to record the said findings. Learned Courts below misappreciated the evidence and erroneously came to the conclusion that the suit property was mosque as the same is having Mehrab and access to the property from public street. Learned Courts below relied upon oral evidence by way of statement of witnesses, who were not residents of the same area and they had no occasion to visit the property in question.

I have given my thoughtful consideration to the arguments raised by learned counsel for the respondent on this point. Both the Courts below have rightly appreciated the oral evidence available on file and came to the conclusion that the suit property in fact is part of the mosque and, as such, the same vests in the Wakf Board. The said findings were recorded by the Courts below on the basis of law laid down by the Division Bench of this Court in case of **Khushi Ram and another Vs. Punjab Wakf Board,**

1981 PLJ 572. The said findings do not call for any interference at this stage by way of Regular Second Appeal.

In view of the above, the present appeal is hereby allowed and the judgment and decree dated 01.08.1987 passed by the learned Additional District Judge, Faridkot as well as judgment and decree dated 16.07.1985 passed by the learned Senior Sub Judge, Ist Class, Faridkot are set aside and suit of the plaintiff for a decree for possession of the shop of mosque gazettee serial No.568 comprising area 650 square feet as detailed in the head note of the suit, is decreed. Costs made easy.

(SHEKHER DHAWAN)
JUDGE

January 14, 2015
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