

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1506 of 1988

Date of Decision: 17.7.2015

Punjab Wakf Board

... Appellant(s)

Versus

Kaushal Kishore and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia.

Present: Mr. Deepak Sabharwal, Advocate
for the appellant(s).

None for the respondents.

G.S.Sandhawalia, J.(Oral)

The present appeal has been filed by the Punjab Wakf Board (hereinafter referred to as "the Board") against the judgment & decree dated 25.9.1982 whereby the suit for possession and permanent injunction of respondent No.1/plaintiff-Kaushal Kishore was dismissed by the Court of Sub Judge IInd Class, Rewari. The Additional District Judge, Narnaul vide judgment dated 5.12.1987, has also upheld the order of the lower Court, which is also a subject matter of challenge.

Learned counsel for the appellant has vehemently submitted that in view of the findings recorded pertaining to the ownership of the land in dispute, the Board is adversely affected as it has been held under issue No.1 that the land in question, which measures 1 bigha & 10 biswas falling in khasra No. 274, is not under the ownership of the appellant-Board and therefore, it is aggrieved against the said finding so recorded, and an opportunity should be given to the Board to project its case.

Thus, the solitary question, which arises for consideration, is

whether the trial Court was justified in proceeding against the appellant/defendant No.2 *ex parte* vide order dated 2.11.1979 and whether it was further justified in dismissing its application for setting aside the same on 21.9.1982.

A perusal of the facts would go on to show that the suit for permanent injunction was filed by plaintiff-Kaushal Kishore (respondent No.1 herein) on 9.10.1979. It is alleged that the tenancy had commenced from 1.4.1970 at the rate of ₹ 14/- per month in favour of the plaintiff. In the suit, the Board did not appear and was proceeded against *ex parte* on 2.11.1979 and the suit was contested *inter se* the plaintiff and defendant No.1 therein. It is interesting to note that the plaintiff had also examined PW.2 Shamsudeen, Rent Controller, Rewari who produced the record of the appellant-Board and on perusal of the record and in view of the notification etc., finding was recorded that the suit land was not wakf property as there was nothing on the file that there is permanent dedication by any person professing Islam to the suit property for religious or charitable purposes.

It was further held that Hindus are the inhabitants of the village and it was not being used as a graveyard and in the absence of any dedication, the land could not be vested to the Board solely on the basis of the notification. In such circumstance, a finding was recorded against the plaintiff that he could not be a tenant w.e.f. 1.4.1970 when the land was itself notified on 21.11.1970 as wakf property. It is important to note that an application was filed on 21.9.1982 for setting aside the *ex parte* proceedings on the strength of the fact that the absence was not

intentional and the Board wanted to lead evidence. The said application was contested by alleging that Sh.Yudhveer Singh, Advocate had been engaged by the Board and its official had also appeared as a witness on 5.12.1980. However, no steps had been taken for setting aside the *ex parte* proceedings and the application was filed only to delay the decision of the suit. On the strength of the said reasoning, the application was dismissed keeping in view the background that the case was fixed for rebuttal evidence and the application was filed after the lapse of two years from the date of passing of *ex parte* order and that there was no dispute that the period of limitation had also expired. Thereafter, as noticed, the suit was also dismissed on 25.9.1982 by recording that the land did not belong to the Board. It is to be further noticed that no appeal was filed separately by the Board against the said judgment & decree. However, only the plaintiff had filed an appeal before the lower Appellate Court. The appellant-Board had then itself accepted the reasoning given in the order dated 21.9.1982 passed by the trial Court. In the circumstances, the lower Appellate Court had decided the appeal of the plaintiff-respondent No.1 herein on 5.12.1987. Hence, the present appeal has been filed.

Thus, it has been found as a matter of fact that the appellant-Board had been served in the proceedings and had engaged a counsel, who has chosen not to appear and only at the fag end, four days prior to the conclusion of the suit, application for setting aside the *ex parte* proceedings had been filed after a period of two years. In such circumstances, no fault could be found in the order passed by the trial

Court in dismissing the application for setting aside the *ex parte* proceedings.

The orders passed by the Courts below, as noticed, do not suffer from any infirmity as per the evidence led by the plaintiff and as per settled principle of law that the notification is not a conclusive proof of the ownership of the Wakf Board and it has to be shown that the land has been dedicated by a person professing Islam for charitable purpose. In the absence of any proof that the land has been used as a grave yard, the Courts have recorded a finding of fact, which is not liable to be interfered with especially at the instance of the Board, who chose not to contest the suit though being aware of the proceedings. The necessary ingredients for holding that the land would be Wakf land were laid down by the Division Bench of this Court in ***Punjab Wakf Board v. Joint Development Commissioner 2008(4) PLR 777***. Similar view was taken in ***Punjab Wakf Board, Jalandhar v. Nagar Panchayat, Shahkot, District Jalandhar 2011(1) PLR 405***.

In such circumstances, no substantial question of law arises which would warrant interference in the findings recorded by the Courts below regarding the nature of the land. In such circumstances, there can be no interference in the concurrent finding recorded by the Courts below, which would justify the case of the Board. Accordingly, the present appeal is dismissed.

(G.S.Sandhawalia)
Judge

July 17, 2015

“DK”