

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

RSA No. 1571 of 1988 (O&M)

Date of decision : 1.7.2015

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.... Appellant

versus

Punjab Wakf Board and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: None for the appellant.

Mr. S. K. Jain, Advocate, for respondent no. 1.

Mr. Gurnam Singh, Advocate, for respondent nos. 2 to 5.

Rajesh Bindal, J.

The plaintiff is before this Court against the concurrent findings of fact recorded by both the courts below whereby the suit filed by him for possession as owner by demolishing any constructions raised on the suit property, was dismissed.

Brief facts of the case are that the appellant/ plaintiff had purchased the suit land measuring 8 marlas from the Central Government on 11.3.1963 along with other land measuring 9 kanals 13 marlas comprised in khasra no. 57//13 min. Mutation no. 43 regarding transfer of ownership from the Central Government was also sanctioned in his favour on 1.10.1965. He, thus, became the owner in possession of the suit land. The Punjab Wakf Board- respondent no. 1 filed a suit against him in respect of the entire 10 kanals 3 marlas of land claiming itself to be the owner. The said suit was dismissed and the appeal against that judgment was also dismissed by the learned Additional District Judge, Patiala, at Ropar on 17.12.1971. It was claimed by the plaintiff that the said judgment operates as *res judicata* between the parties and as such the Punjab Wakf Board and the private respondents, to whom the land in dispute has been allegedly given on Patedari, are estopped from denying his title to this land. They in connivance with respondent no. 1 had allegedly raised constructions and are living there. They have no right to remain in possession. He requested them

many times to admit his right but nothing was done. Hence, the suit was filed.

In reply, the Punjab Wakf Board- respondent no. 1 denied the ownership of the Central Government. It was submitted that the suit land is *Takia Peer Galib* and Grave Yard and is owned by the Board. It was submitted that the mutation no. 43 has no effect on the rights of the Board and the District Rent Officer, Ambala, through whom the appellant had purchased the land in dispute, has no right to sell the same. Filing of the suit by the Board and dismissal thereof has not been denied. It was further submitted that judgment dated 17.12.1971, if any, has no effect on the rights of the Board as the notification vide which the property in dispute vests in the Board was never challenged. Respondent no. 1 admitted respondent nos. 2 to 5 as Patedars under it.

Respondent nos. 2 to 5 also contested the suit by filing reply. They admitted that the land in dispute was owned by the Central Government. However, they submitted that ownership of the land still vests with the Central Government. It was claimed that the land was taken from the custodian. It was submitted that earlier suit filed by the plaintiff was dismissed as withdrawn with liberty to file a fresh one on the same cause of action subject to payment of costs, which have not been paid by him and as such the suit is barred and is not maintainable.

After considering the evidence led by the parties, both the Courts below dismissed the suit filed by the appellant.

As none had been appearing for the appellant for quite some time, a notice was sent to him which has been received back with the report 'incomplete address', hence, the appeal cannot be kept pending.

After hearing learned counsel for the respondents and considering the evidence led on record, prima facie, I do not find any reason to interfere with the concurrent findings of fact recorded by both the Courts below.

The appellant has claimed himself to be owner of the land in dispute on the ground that he had purchased the same from the Central Government 11.3.1963. The dispute is regarding 8 marlas of land. It is admitted case of the parties that old khasra nos. 1668 and 1672 were changed to khasra no. 1303, which was further changed into khasra no.

57/13. The appellant claimed that he had purchased khasra no. 1672 from the Central Government vide conveyance deed, Ex. P-5. It was not brought on record as to what was the area of khasra no. 1668 which was included in khasra no. 1303 and how much land was taken from khasra nos. 1668 and 1672 to carve out khasra no. 1303. The learned Appellate Court has rightly observed that the conveyance deed pertains to khasra no. 1672, which means in new khasra no. 57//13 some land of khasra no. 1668 is included, which was in possession of respondent nos. 2 to 5.

The plea of *res judicata* taken by the appellant that vide judgment dated 17.12.1971, Ex.P1, the Punjab Wakf Board has not been held to be owner of khasra no. 57//13 has rightly been discarded by the learned Courts below. The appellant claimed that vide judgment Ex.P1, the Board has not been held to be owner, therefore, the title was decided in his favour. In the earlier suit decided vide judgment, Ex. P1, the appellant claimed himself to be owner of the suit land by way of adverse possession and now in the present suit he claimed himself to be owner of the property as purchaser, which are contrary to each other. The appellant has to show his ownership in respect of the land in dispute independently and not that Board has failed to prove its ownership, therefore, he is owner. Further the earlier suit filed by the appellant was dismissed as withdrawn with liberty to file a fresh one for the same cause of action subject to payment of costs, which he never paid while filing the fresh suit. Hence, the findings to that effect recorded by the Courts below cannot be said to be perverse.

Keeping in view the aforesaid facts, in my opinion, prima facie, the findings of fact recorded by both the Court below dismissing the claim of the appellant do not deserve to be set aside as he has failed to prove his title over the suit property and in the absence thereof cannot seek its possession. Prima facie no substantial question of law arises. Since no one has appeared for the appellant, the appeal is dismissed for non-prosecution.

1.7.2015
vs

(Rajesh Bindal)
Judge