

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

CR No. 4388 of 2003 (O&M)

Date of decision : 6.5.2015

The Punjab Wakf Board

.. Petitioner

versus

Sandeep Kumar and another

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Jai Bhagwan, Advocate, for the petitioner.

Mr. Sandeep Khunger, Advocate, for the respondents.

Rajesh Bindal, J.

Challenge in the present petition is to the judgment and decree dated 7.5.2003 passed by the Wakf Tribunal, Ferozepur (for short, 'the Tribunal') vide which the suit filed by the petitioner for possession and eviction of the respondents, was dismissed.

Briefly, the facts as noticed by the Tribunal in the impugned judgment are that the property in dispute is wakf property of which the Punjab Wakf Board is the owner, as notification to that effect has been issued by the Central Government. On an application filed by the respondents, the property was leased out to them at a monthly rent of ₹ 2,700/-. As the respondents failed to pay the rent, the tenancy was terminated and when the possession was not handed over to the petitioner, the suit was filed. The same was contested by the respondents disputing ownership of the petitioner over the property in dispute. It was claimed that they are in possession of the property for the last 30 years. The property in dispute was never leased out to them. The alleged agreement produced by the petitioner was termed as forged and fabricated document. Jurisdiction of the Tribunal was also questioned on the plea that the property being not wakf, it had no jurisdiction. The learned Tribunal dismissed the suit filed by the petitioner. Judgment and decree have been impugned in the present petition.

Learned counsel for the petitioner submitted that in the case in hand the Tribunal had gone wrong in recording the finding that the property did not belong to the wakf as the same was duly notified by the Central Government. Sufficient evidence was produced on record to establish that it was leased out to the respondents. It was further submitted that the respondents did not lead any evidence to show that they are owners of the property in question. In these circumstances, the finding recorded by the Tribunal being erroneous deserves to be set aside.

On the other hand, learned counsel for the respondents submitted that the petitioner had failed to prove on record that the property in dispute was notified as wakf property. In the absence of basic facts on record, no case was made out by the petitioner to claim that the property was wakf property and it was rented out to the respondents. No error was committed by the learned Tribunal in dismissing the suit filed by the petitioner.

Heard learned counsel for the parties and perused the paper book.

From the pleadings of the parties, the following issues were framed:-

- “1. Whether suit has been filed by a duly authorised person? OPP
2. Whether plaintiff board is owner of the property in dispute?OPP
3. Whether the suit property was leased out to the defendants at the rate of Rs. 2700/- per month on 1.2.1987? OPP
4. Whether defendants are in arrears of rent since January 1999. If so to what effect? OPP
5. Whether the tenancy of the defendants was duly terminated vide notice dated 19.9.2001? OPP
6. Relief.”

The learned Tribunal decided all the issues against the petitioner. While recording facts dealing with issue no. 1 as to whether the property in dispute is owned by the Board, the learned Tribunal referred to

the copy of the notification, Ex. P2, produced by the petitioner vide which it was claimed that the property was declared as wakf property. However, nothing could be pointed out from the same either that it was declared as wakf property or that the suit property was the part thereof. The notification placed on record could not be related to the suit property. In the absence of any documentary evidence that the suit property was the wakf property, in my opinion, no error has been committed by the learned Tribunal in deciding the issue against the petitioner and holding that it failed to prove the fact that the suit property was wakf property and hence, it was not the owner thereof. With the evidence produced on record by the petitioner even it could not be proved that the property in question was rented out to the respondents as the original lease deed was not produced. No permission was sought to lead secondary evidence. In the absence thereof, oral statement of the witness produced by the petitioner could not establish the fact that the property in question was ever rented out to the respondents.

In view of my aforesaid discussion, I do not find that any error has been committed by the learned Tribunal in dismissing the suit filed by the petitioner. No case for interference is made out.

The petition is, accordingly, dismissed.

6.5.2015
vs

(Rajesh Bindal)
Judge