

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

I.

Regular Second Appeal No.2275 of 2007 (O&M)

Date of decision: 21.5.2015

Roza Sharief Sirhind and others

... Appellants

Versus

Punjab Wakf Board and another

... Respondents

2.

Regular Second Appeal No.2276 of 2007 (O&M)

Roza Shrief Sirhind and others

... Appellants

Versus

Tejinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Rakesh Chopra, Advocate,
for the appellants.

Mr.Jai Bhagwan, Advocate,
for respondent No.1 in RSA No.2275 of 2007 and
for respondent No.2 in RSA No.2276 of 2007

Mr.S.S.Swaich, Advocate,
for respondent No.2 in RSA No.2275 of 2007 and
for respondent No.1 in RSA No.2276 of 2007

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. This order will dispose of two appeals, i.e., RSA # 2275 and # 2276 of 2007 as both the appeals arise out of the common judgment and decree dated 1.3.2006. The facts are taken from RSA # 2275 of 2007 and the parties would be referred by their status in this appeal.

2. Jamabandi for the year 1970-71 described the suit property bearing khasra # 41 measuring 65K-3M falling in village Bahadargarh, Tehsil and District Fatehgarh Sahib as Gair Mumkin Kabristan. Previously, the ownership was recorded in the name of Khanqah Hazrat Awal Amlin Sahib. The ownership of the suit property was transferred to the Punjab Wakf Board, Ambala vide notification issued on 29th May, 1971 declaring the property as Wakf property. The three plaintiffs namely Roza Sharif, Khanqah Hazrat Awal Muali Sahib, Sajjada Nashin and Khalifa Khanqah Hazrat Awal Muali Sahib filed Civil Suit # 691 of 18th December, 1989 in the court of the learned Additional Civil Judge (Senior Division), Fatehgarh Sahib for permanent injunction restraining the defendants Tejinder Singh and the Punjab Wakf Board, Ambala, their servants and agents from interfering in the peaceful possession of the plaintiffs over the land as above described and from interfering in the management of the suit property and further restraining them from cultivating and taking possession of the suit land forcibly and illegally. In the alternative, a prayer for possession was made.

3. On notice issued in the suit the parties filed their pleadings. Defendants contested the suit. They led both oral as well as documentary evidence in support of their respective versions on the issues framed.

4. On issue # 2 i.e. whether the suit property was owned by the Wakf Board, the court of first instance held the Punjab Wakf Board was not the owner of the suit property and no valid transfer had taken place in its favour. No notice was required to be served on the Board as no act was done in pursuance of the provisions of the Punjab Wakf Board Act, 1954 and the rules framed thereunder. The Punjab Wakf Board Act, 1995 was not applicable to the facts of the case as it was not in force at the time of institution of the suit. On issue # 3, defendant # 1-Tejinder Singh claimed 40K of land out of the land in dispute vide lease deed dated 30th September, 1989 between him and the Wakf Board was not proved as it was not executed as per the provisions of law. The alleged lease deed was for a limited period of one year and the plaintiffs were not privy to the said lease. Defendant # 1 failed to establish lease hold rights in the part of the suit land as claimed. Notification dated 29th May, 1971 has been discarded. The plaintiffs were not put to notice in the enquiry conducted under Section 4 of the Act preceding the notification under Section 5 declaring the suit property to be Wakf property. When this Act was not done properly, the civil court would have jurisdiction and could take cognizance of the suit even if it was filed beyond one year from the date of notification declaring property as wakf property.

5. In the appeals carried by Punjab Wakf Board and Tejinder Singh against the judgment and decree dated 30th November, 2000 to the court of learned Additional District Judge, Fatehgarh Sahib, the Board succeeded and the suit decree was reversed. The first appeal court took cognizance of the first point for determination, that is, whether the property

in dispute is wakf property and vested in the Punjab Wakf Board or it is non-wakf property vested in Roza Sharif, Sirhind and the plaintiffs.

6. The sheet anchor of the case of the plaintiff was a letter dated 8th June, 1982 Ex.P1 which was proved on record by PW1 Mohd. Sharif, Rent Controller, Punjab Wakf Board vide which the defendant Wakf Board admitted that the land was in Tauliat of Khalifa Sahab and Punjab Wakf Board was not entitled to manage the property. The plaintiffs deposed through PW3 appearing in the stand that Roza Sharif Khanqah Hazrat Awal Mawali is the owner of the suit property and is Sajjada Nashin of the same and the Board has got no concern with him or the property in dispute. It was urged by the plaintiffs that the notification issued by the Board was not served upon him nor has it any legal validity in the eyes of law.

7. On the other hand, the defendant Board examined DW1 Mohd. Arief, Rent Controller, Sirhind, who deposed that the property in dispute vests in Punjab Wakf Board. Part of it has been leased out to Tejinder Singh, defendant # 1. On his turn, Tejinder Singh appearing as DW2 deposed in the stand that the property in dispute has been leased out to him by the Board and he has been cultivating it since considerable time. There is no doubt that the determination of the case would be governed by the Punjab Wakf Act, 1954. The appeal court noticed the provisions of the Punjab Wakf Act, 1995 and Section 7(5) thereof which prescribes that the Tribunal shall not have any jurisdiction to determine any matter which is the subject matter of any suit commenced in civil court before the commencement of this Act. The court noticed Section 3(L) of the 1954 Act which defines a “Wakf” as “a permanent dedication by a person professing Islam of any moveable or

immovable property for any purpose recognized by the Muslim Law as pious, religious or charitable” and includes a Wakf user, grants etc.

8. The court of second instance carefully examined and weighed the evidence to see whether there is any dedication of the property in dispute for religious, charitable and pious purposes. He found from the statement of Khalifa Syed Mohd. Yahiya appearing as PW3 affirming there was a dedication of the property in dispute in the name of the Almighty by the Wakf. The income from the property was reserved for *Langar* and to run a public kitchen for benefit of visitors of Roza Sharif. DW1 deposed that there is a Khanqah and a Muslim graveyard in the property in dispute. That Urs is celebrated every year in the premises of the shrine/mosque and thereabout. Jamabandi Ex.P3 for the years 1970-71 was read which proved that the dispute comprised in Khasra # 41 measuring 65K 3M is a graveyard of Muslims. The inference was clear that the graveyard cannot exist on such a large property and as such, the same was not meant for Muslim community only. The Court noticed Ex.D14 being copy of the mutation # 1536 vide which the property was mutated in the name of the Punjab Wakf Board. He noticed Ex.D15 which is the copy of the Jamabandi for the years 1980-81 recording that 65K-3M land as Gair Mumkin graveyard managed by the Punjab Wakf Board. DW1 Mohd. Arief restricted his statement to the effect that the graveyard fell in 25Kanals of land out of the larger suit property.

9. DW2 Tejinder Singh corroborated the statement of Mohd. Arief and deposed that 40K of land had been given to him and on the rest of the land, there were graveyards to the extent of 25Kanals. The Court noticed the

legal position that after the Board took over the management of the property on 29th May, 1971, the plaintiff remained only the Mutawalli as defined in Section 3 (f) of the Wakf Act, 1954. “Mutawalli” includes Sajjada Nashin or any person or Committee for the time being managing or administering any Wakf property. The words, “Sajjada Nashin” indicates that the plaintiff is only Mutawalli of the property which is found to be wakf property. A Sajjada Nashin without wakf holds a courtesy title and this observation has been recorded by the Lahore High Court in **Ali Mohammad Khan v. Ali Akbar Khan and others**; AIR 1924 Lahore 58. The tying up of the property in the ownership and the devotion of the profits for the benefit of human beings are the points which constitute the Wakf. Even if there is no evidence of creation of the Wakf, the appeal court held that even this dedication of the property in dispute for religious, charitable and pious purposes cannot be presumed from long user as held in **Baqar Khan and another v. Raghvindra Pratap Sahi and others**; AIR 1934 Lahore 263. The appeal court held that the dedication of the property in the name of God was proved. This issue was decided accordingly.

10. After arriving at this conclusion, the appeal court thought, and I think rightly so, that the next point for consideration was whether the suit filed by the plaintiffs is maintainable under Section 6 of the Wakf Act, 1954. The plaintiffs being Sajjada Nashin are persons interested within the meaning of Section 3(h) of the Wakf Act, 1954. The appeal court distinguished the judgment relied upon by the plaintiffs in the court of first instance on the validity of the notification and held that once the plaintiffs have been found to be persons interested in the wakf under section 3(h) of

the Act, therefore, in view of the mandate of Section 6 of the Act, they could have filed the suit within one year from the date of notification of the list of wakfs. In no case, the plaintiffs could be allowed to file the suit beyond one year from the date of publication of list of the wakf dedications and the proviso of Section 6 admits of no exception. The appeal court distinguished the judgment of the Supreme Court in **Punjab Wakf Board v. Gram Panchayat @ Gram Sabha**; 2000 (1) RCR 283 for a very valid reason that in the cited authority the dispute was between a third person and the Punjab Wakf Board and not a person interested in the Wakf. No notice is required to be issued to persons other than the persons interested in the wakf. In the hands of third parties in actions brought by them, the Civil Court was not denuded of jurisdiction to determine the question of title even when the suit was filed beyond one year. The object of Section 6 is to narrow down the dispute between the Board of Wakfs, the Mutawalli and the person interested in the wakf as defined in s. 3 (h).

11. In **Ramesh Gobindram (Dead) Through Lrs vs Sugra Humayun Mirza Wakf**, (2010) 8 SCC 726 the Supreme Court had occasion to opine on the rights of third parties in a case involving eviction of a tenant from Wakf property. It was held:-

“13. We may at this stage usefully digress from the core issue only to highlight the fact that [Sections 6\(1\)](#) and the proviso thereto has fallen for interpretation of this Court on a few occasions. [In Board of Muslim Wakfs Rajasthan v. Radha Kishan and Ors.](#) (1979) 2 SCC 468 one of the questions that fell for determination was, who are the parties that could be taken to be concerned in a proceeding under sub-section(1) of [Section 6](#) of the Act. This Court held that under [Section 6\(1\)](#) the Board or the mutawalli of

the wakf or any person interested therein is entitled to file a suit but the word "therein" following the expression "any person interested" must necessarily refer to the word "wakf" which immediately precedes it. The object underlying the proviso observed, this Court was to confine the power to file a suit to the mutawalli and persons interested in the Wakf. It did not extend to persons who are not persons interested in the wakf. Consequently the right, title and interest of a stranger, (a non-Muslim), to the wakf in a property cannot be put in jeopardy merely because that property is included in the list of wakfs. The special rule of limitation prescribed by the proviso to [Section 6\(1\)](#) was itself held inapplicable to him and a suit for declaration of title to any property included in the list of wakfs held maintainable even after the expiry of the period of one year."

12. Similarly, the appeal court properly distinguished the ruling of this Court in **Punjab Wakf Board v. Natha Singh**, 1988 PLJ 10 where the Division Bench relied on the law laid down in **The Board of Muslim Wakf Rajasthan v. Radha Kishan and others**; (1979) 2 SCC 468 [cited in *Ramesh Gobindram* case supra] and held that when a stranger who is non-Muslim and is in possession of certain property, his right, title and interest therein cannot be threatened merely by the fact that the property is included in the list of the Wakf properties. The plaintiffs are not strangers with respect to the Wakf Board as property in dispute is a wakf property. The Court held that the suit was barred by 18 years from the date of publication of notification Ex.D13 on 29th May, 1971 and thus the action was barred by Section 6 of the Act. Once the plaintiffs are "any persons interested therein", that is, the Wakf property and are not strangers it follows sequitur that Section 6 of the Act would apply which provides a suit to be filed within

one year from the date of the notification. Therefore, the appeal court came to the view that the suit was not competent or maintainable. Still further, the appeal court went on its chain of reasoning and held that the mutation entry of the year 1980-81 was sufficient presumption that the plaintiffs had acquired knowledge of the same since mutation entries are notice to the public of the status of the property in dispute. The Court relied on Section 45 of the Punjab Land Revenue Act, 1887 to correctly hold that a statutory presumption of truth attaches to the entries in a Jamabandi. The plaintiffs are presumed to be in the knowledge of the same on the basis of the Jamabandi Ex.D15 for the years 1980-81 when the suit property came to be vested in Punjab Wakf Board for its management. The suit was not filed by the plaintiffs under Section 6 of the Act within the prescribed limitation and as such, the suit was not maintainable. There was a categorical pleading in the written statement filed by Punjab Wakf Board as defendants in para. 1 on merits that the suit property vested in Punjab Wakf Board and it has leased out the same to defendant # 1. Once the Board pleaded vesting of suit property in it, then it cannot be said that it had not raised any plea about it for evidence to be let in.

13. The appeal court went further to examine the next point arising for determination, that is, whether the suit of the plaintiff was competent in the absence of notice issued to the Board under Section 56 of the Wakf Act, 1954. PW3 Khalifa Syed Mohd. Yahiya admitted that he had not served any notice before filing the suit on the defendant Wakf Board. Section 56 of the Act is mandatory in nature and lays down that no suit shall be instituted against the Board in respect of any act purporting to be done by it in

pursuance of the Act or any rules framed thereunder until the expiration of 2 months after notice in writing has been delivered to it. This was another insuperable hurdle in the way of the plaintiffs. Thus, insofar as Section 6 is concerned, the suit filed under Section 6 without notice under Section 56 would also not be competent. The appeal court distinguished the decisions relied upon by the plaintiffs in **Sarfraz Ahmad Usmani v. The Punjab Wakf Board**; 1993 (2) All India Land Laws Reporter 537 and **Smt.Sawarni v. Smt.Inder Kaur and others**; 1997 (1) CCC 1. When the property was wakf property and the plaintiffs were persons interested, therefore, they were bound to act within the four corners of the Punjab Wakf Act, 1954. The appeal court examined the order of the Assistant Collector, 1st Grade, Bassi Pathana and the revisional order of the Commissioner, Patiala and held that they were not sufficient to hold that the property is non-Wakf in nature. He read the judgment Ex.D5 of the Court of Sub-Judge, 1st Class, Fatehgarh Sahib and its decree Ex.D6 which further proved that Punjab Wakf Board took over the management and leased out the property in dispute to Tejinder Singh. The findings of the trial Court were accordingly reversed and I think for good and sufficient reasons.

14. Be that as it may, one last fact may be noticed which is that the defendant Board filed an application for amendment of the written statement to the effect that it is the owner of the suit property. This amendment was opposed by the plaintiffs on the ground of being belated. The Court relied upon the amended provisions of Order 6 Rule 17 CPC which envisioned that such an amendment can be allowed after the trial of the suit has started but only in exceptional cases. The court rightly disallowed the application

for amendment of the written statement and dismissed the same. I see no cogent reason to differ with the view expressed by the court of first appeal on this issue as well and the finding is affirmed.

15. To be fair to Mr. Rakesh Chopra, he has relied on a compendium of judgments cited which are noticed and taken on record of the appeal paper-book. I have gone through the rulings adverted to but find none from them on facts anywhere near the mark to be of any help to the cause he espouses for the plaintiffs. These are listed collectively for reference : **Punjab Wakf Board, Ambala Cantt v. Kulbir Inder Pal Singh and another**; 2014 (4) PLR 379, **Mahant Hari Gir Chela Baba Nihal Gir Chela v. Bankandhi Gir**; 2009 (3) RCR (Civil) 265, **Tamil Nadu Wakf Board v. Larabsha Darga Panruti**; 2008 (1) RCR (Civil) 807, **Dev Raj and others v. Teja Singh and others**; 2004 (2) PLR 709, **Punjab Wakf Board, Ambala Cantt. v. Capt. Mohar Singh and others**; AIR 1975 SC 1891, **Abdul Kareem (died) and five others v. The Special Officer for Wakfs, Madras and others**; 1971 MLJR 218, **K. Muneyya and Co. represented by the partner A.R.Subramanyam Iyyar v. K.Varadarajulu**; AIR 1964 AP 17, **Punjab Wakf Board v. Gram Panchayat @ Gram Sabha**; 2000 (1) RCR (Civil) 283, **Punjab Wakf Board v. Natha Singh**; 1988 PLJ 10, **Khagendra Lall Dutta & another v. Jacob Sole Jacob**; 1995 (2) CCC 403, **Sarfraz Ahmed Usmani v. The Punjab Wakf Board and others**; 1993 (2) AILLR 537, **Rajinder Pershad (Dead) by LRs v. Darshana Devi**; 2001 (2) ACJ 463, **UCO Bank v. M/s Mittal Bros.**; 1998 (2) CCC 654, **Smt.Sawarni v. Smt.Inder Kaur and others**; 1997 (1) CCC 1, **Gopal Krishanji Ketkar v. Mohamed Haji Latif**

and others; AIR 1968 SC 1413, Bhagat Ram v. Teja Singh; 1984 PLR 153, Mohinder Singh died and rep. by his LRs and another v. Kashmira Singh; 1985 PLJ 82, Ranjit Singh v. Kanwaljit Singh and others; 2004 (2) RCR (Civil) 525, Jeewa Singh v. Karnail Singh; 2003 (4) RCR (Civil) 381, Punjab Wakf Board v. Kishan Chand; 1988 PLJ 102 and Punjab Wakf Board through its Secretary Ambala Cantt. v. Durb Singh (deceased) through his LRs; 1988 PLJ 240.

16. The well reasoned and elaborate order passed by learned the Additional District Judge, Fatehgarh Sahib is not open to criticism from any angle and has been passed in accordance with law and after appreciating the facts of the case and the authorities cited by both the sides by culling out their true ratios on all the facets of the case. The view taken on facts and the provisions of the Punjab Wakf Act, 1954 is found perfectly sound in law and on the trot. No substantial question of law arises in this appeal for consideration in the second appeal side of this Court under Section 100 of the CPC. Interference in the appeals is not warranted even by a long shot.

17. Accordingly, both the appeals are dismissed with costs in all the courts.

(RAJIV NARAIN RAINA)
JUDGE

May 21, 2015
Paritosh Kumar