

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

Civil Revision No.1915 of 2012 (O&M)

Date of decision: **09**.03.2016

Nasib Kaur and others

... Petitioners

versus

Punjab Wakf Board, Opposite Old Courts, Ludhiana, through its
Estate Officer, Ludhiana.

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Bharat Bir Singh Sobti, Advocate,
for the petitioners.

Mr. Ghulam Nabi Malik, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether the judgment should be reported in the digest ?

K. Kannan, J.

1. The revision petition is at the instance of the defendants who were ordered to be evicted and dismissing the the defendants' counter claim that the property belonged to the defendants. The suit for recovery of possession had been filed by the Wakf Board claiming the property to be the property that was originally leased to the defendant's father Bakhtaur Singh and that the defendants had not been paying rent and would not also execute any rent deed

recognizing the Wakf Board as the owner. The Wakf Tribunal framed several issues including the maintainability of the petition and the competency of the person to file a verification to institute the suit. Before the Tribunal, voluminous documents had been filed that included the gazette notification entering the plaintiff's wakf as a notified wakf, jamabandis showing the property as the property originally entered in the ownership of the Central Government and later mutated to the mosque controlled by the Wakf Board and the properties as annexed to the mosque and for its upkeep since the year 1970-71. The Tribunal held the property to be wakf property, made reference about the suit instituted by the defendant's predecessor Bakhtaur Singh for injunction admitting his own status as a tenant under the Wakf Board and held that the Wakf Board is entitled to recover possession of the property. It, however, declined the prayer for determination of mesne profit.

2. The learned counsel for the revision petitioners would contend as a preliminary point that the proceeding before the Tribunal itself was not competent since the plaintiff was on an express statement that the defendant was a tenant and if the defendant had admitted to the plaintiff's status as a tenant in terms of the judgment of the Supreme Court in **Ramesh Gobindam (dead) through LRs Versus Sugra Humayun Mirza Wakf-(2010)(8) SCC 726**. It is also contended that if the defendants were to be treated as

encroachers, the procedure prescribed under Section 54 of the Wakf Act must have been followed and only if the proceeding under Section 54 did not result in removal of such encroachment, there was an adjudication necessary. According to him, the suit filed was not justified.

3. Learned counsel would also read to me from the evidence of PW1, who had said that he had no personal knowledge of the certified copies of the gazette notification, the jamabandi entries and several documents filed and he had also admitted that the suit was not filed recognizing the defendant as a representative of Bakhtaur Singh. If the defendants were treated as trespassers, the plaintiff cannot place reliance on the averments in the plaint contained in the suit filed by Bakhtaur Singh admitting to the Board as owner held by him as a tenant under the Wakf Board. The defendants cannot in any way be estopped from setting up title in themselves. In this case, the property was originally stated to be the property of Central Government and the plaintiff's witness had admitted that there was no proof of dedication of the property in Wakf and there was also no document of the title transferring the property in the name of the Wakf and the defendants could not be ejected. On the other hand, the court below ought to have found that the defendants had prescribed title to the property by adverse possession.

4. The proposition of law may be restated for the purpose of clarity. The suit before a Wakf Tribunal is possible only if an adjudication requires a finding of whether the particular property which is the subject matter of suit is constituted under Wakf or not. In this case, there has been an assertion made by the plaintiff that it belongs to the Wakf and a denial is made by the defendant that he has prescribed title to the property by adverse possession. An adjudication of the character of property surely became relevant. A suit by the plaintiff that the defendant was an unlawful encroacher does not necessarily compel the plaintiff to resort only to an action under Section 57. The proceedings under the said Section is facilitative where the defendant himself has no claims to title and the encroachment is found to be unauthorized. In a situation where the defendant set up a rival title the suit was perfectly competent.

5. In this case, the adjudication by the Wakf Tribunal shall be on consideration of whether the plaintiff-Wakf Board has proved that the property was dedicated in wakf. There are the following documents which assist the plaintiff: (i) an admission in a suit filed for injunction by the defendant's father that he had taken the property on lease from the Wakf Board. Although not binding on the defendant, it was relevant; (ii) the copy of jamabandi which shows an entry relating to mutation of the property standing in the name of the Central Government to the Wakf Board and (iii) the

government notification issued under the Wakf Act declaring the property to be wakf.

6. If only the property claimed by the defendant was through his father, estoppel under Section 116 of the Evidence Act would operate and enable the Wakf Board to claim recovery of possession by treating the legal representative of such tenant to be also bound. If the defendant set up independent title and not through his father, Section 116 of the Evidence Act is not applicable. The plaintiff cannot secure back possession of property by making reference to the admission of the defendant's father that the property belonged to the Wakf Board.

7. As regards the contention that the defendant has prescribed titled to the property by adverse possession, the Limitation Act itself is not applicable by virtue of Section 107 of the Wakf Act. It is essential that the vesting by adverse possession has taken place prior to the Wakf Act itself. The 1995 Act replaced the 1954 Act. There had been periodical periods of extension by notifications and amendments in the Limitation Act excluding the applicability of the Limitation Act to wakfs. In the State of Punjab commencing from 1937 till when the 1954 Act was passed. This court has had an occasion to refer to all the notifications in the judgment in **Civil Revision No.1901 of 2014, decided on 06.07.2015-Gurudwara Singh Sabha and others Versus Punjab**

Waqf Board. The plea of adverse possession cannot, therefore, survive.

8. The entry in the jamabandi in the year 1976-77 making reference to mutation in favour of Punjab Wakf Board as per the order on DLR dated 21.05.1972 and the gazette of government of India notification dated 09.09.1970 clearly show that the property belongs to the Wakf. If adverse possession cannot be claimed and the entry relating to the property as having been treated as property belonged to the Wakf Board through jamabandi entry and the Government of India notification has seen, it leaves no room for a doubt for the property belongs to the Wakf Board and the plaintiff is entitled to decree for recovery of possession. The order passed directing ejectment was under the circumstances perfectly justified. There is no scope for interference and the revision filed would require to be dismissed.

9. If the possession is ordered, the mesne profit is a matter of necessary corollary. The dismissal for claim to mesne profit is erroneous. If the claim were to be rejected only because the plaintiff had not paid the court fee for the same, the court could have collected the court fee before making it enforceable. I call upon the plaintiff-respondent to pay the court fee payable for ₹62,563 which works out at the rate of ₹700/- per kanal per year which I find to be reasonable for a period of 3 years prior to the suit. The amount

claimed also includes interest calculated at 12%. I modify the interest at 6% and allow for ₹55,860/- with interest at 6% from 01.03.2003 till the date of filing of the suit and future profits will also be determined at the same rate from the date of the decree till the date of delivery of possession.

(K.KANNAN)
JUDGE

09.03.2016
sanjeev