

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5400 of 2011 (O&M)
Date of decision:04.04.2016

Triveni Sharma

... Petitioner

Vs.

M/s Remarkable Estate and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Arvind Kashyap, Advocate
for the petitioner.

Mr. Hemant Saini, Advocate
for respondents No.1 to 6.

Mr. G.N.Malik, Advocate
for respondent No.7.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff sought the indulgence of the Wakf Tribunal by claiming the following relief:-

“That a decree may be passed in favour of plaintiff and proforma defendant No.7 and against the defendants No.1 to 6 to the affect that mutation No.3081 dated 25.1.1979 sanctioned on the basis of decree and judgment dated 20.9.1978 and the subsequent sale deed bearing documents No.7069 dated 9.10.1986 and on its basis mutation no.5212 dated 16.7.1993 and collusive

decree dated 24.11.2001 and on its basis mutation no.5798 dated 13.5.2003 and the sale deed bearing document No.8645 dated 15.9.2005 and on its basis mutation no.5940 dated 27.9.2005 are wrong, illegal, null and void and are not binding the right of the plaintiff and proforma defendant No.7.

A decree for permanent injunction may kindly be passed in favour of the plaintiff and against the defendants No.1 to 6. by restraining the defendants No.1 to 6 from taking wrong, illegal and forcible possession of the suit land in any manner whatsoever in the interest of justice.”

Mr. Arvind Kashyap, learned counsel appearing on behalf of the petitioner-plaintiff submits that the aforementioned relief and consequential relief was sought on the basis of the lease deed dated 13.02.2007. Defendant No.7- Wakf Board, being the true owner of the suit land, created a lease of the land in favour of the petitioner-plaintiff vide Patta Order dated 13.02.2007 which was registered on 21.03.2007. Though the possession of the suit land was not given. Accordingly, the aforementioned suit was filed challenging the various orders and decrees.

Mr. Hemant Saini, learned counsel appearing on behalf of respondent-defendants No.1 to 6 submits that the plaintiff did not have locus standi to challenge the aforementioned decrees as it was

only Wakf Board, which had any interest or locus to challenge the same by leading direct and cogent evidence, much less, by proving the case. In case, Wakf Board fails to deliver the possession, in pursuance to the terms of lease and receipt of lease money, if any, remedy is to claim damages. The trial Court, on the basis of the oral and documentary evidence, found that relief sought on behalf of the plaintiff, much less, defendant No.7 being proforma, i.e., Wakf Board, was not maintainable, in view of the evidence led on record.

I have heard learned counsel for the parties and appraised the paper book and of the view that in case, the petitioner-plaintiff, being lessee, was given any possession, he could not seek declaration challenging the sale deed or the decrees etc. as in view of the prayer clause, locus standi to challenge the same would be of Wakf and not of lessee. At the best, he can be compensated in terms of money and damages. The Wakf Board did not seek any declaration, though relief was sought to be espoused on behalf of the Wakf Board.

In my view, the manner and mode which have been adopted, was permissible in law. I have come across many cases where Wakf Board leases out the property without having possession, much less, there is cloud on the title. Until and unless the same is not rectified, the property should not be leased out to the party. The Wakf Board should lease out such land or property which is free from possession.

Keeping in view the aforementioned facts and circumstances, I am of the view that petitioner-plaintiff has no locus standi, therefore, rightly so, the Wakf Tribunal dismissed the suit. This order of mine will not preclude the Wakf to seek remedy in accordance with law, if so, permitted, in law. In case, such remedy is available, the trial Court shall decide the matter uninfluenced with judgment and decree under challenge.

With the aforementioned observations, the order under challenge is modified to the extent that suit at the instance of petitioner-plaintiff was not maintainable. Suit shall be dismissed on such ground.

Revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

April 04, 2016
savita