

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5881 of 2011(O&M)
Date of decision : February 24, 2016

Haryana Wakf Board

..... Petitioner

Versus

Khushi Ram (deceased) through L.Rs and another

..... Respondents

CR No. 927 of 2012(O&M)

Haryana Wakf Board

..... Petitioner

Versus

Promila

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gulam Nabi Malik, Advocate
for the petitioner.

Mr. M. L. Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate
for the respondents.

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?

Amit Rawal, J.

This order of mine shall dispose of two revision petitions bearing CR No.5881 of 2011 titled as Haryana Wakf Board Vs. Khushi Ram(deceased) through L.Rs and another and 927 of 2012 titled as Haryana Wakf Board Vs. Promila.

In C.R.No.5881 of 2011 the Wakf Board-petitioner-

plaintiff had instituted a Civil Suit bearing No.49 of 2004 (hereinafter called as 'suit No.1') for possession of a mosque situated on a land bearing khasra No.237/1, 237/3 and 238 measuring 831 sq.yards within the revenue estate of Garhi Brahmnan, Sonipat whereas in the other Civil Revision No. 927 of 2012 Promila instituted a Civil Suit NO.12 of 2006 (hereinafter referred to suit No.'2') for declaration with consequential relief of permanent injunction on the premise that she is owner in possession of a shop measuring 25 sq.yards with dimensions East 9'9", West 13', North 7' and thereafter 4'4" towards South, South 23'4", North 16' bearing No. 705-A situated within the abadi of Sonapat towards Sarang Road within the Municipal limit of Sonapat near Ganesh Handloom, Sonapat which was purchased for a sale consideration of ₹1,47,000/- vide registered sale deed dated 4.12.1997 which was under the ownership and possession of Khushi Ram son of Budh Ram @ Budhu.

For the sake of convenience, facts have been derived from CR No. 5881 of 2011.

The evacuee property No. B-VI/86C was allotted in favour of Khushi Ram-respondent No.1 by the Government of India, Ministry of Rehabilitation for a sale consideration of ₹1962/-. The building plan consisting of four shops on the ground floor and rooms on the first floor was got sanctioned by the Municipal Committee, Sonapat. Similarly Evacuee property No. B-VI/86-A was allotted by the Government of India, Ministry of Rehabilitation in favour of one Paramnand son of Jhangi Ram.

On 12.1.1965, a conveyance deed qua evacuee

property bearing No. B-VI/86-A was executed in favour of Parmanand son of Jhangi Ram, who sold the same to respondent No.2-Dewan Chand, brother of respondent No.1 vide registered sale deed dated 2.6.1965.

In a family settlement entered into between the parties four shops constructed on evacuee property No. B-VI/86-C were divided amongst the brothers. The aforementioned fact was acknowledged by the civil court decree dated 16.5.1974 passed in civil suit No. 189 of 1974 and as per the said decree, each of the four brothers got one shop each in evacuee property No. B-VI/86-C.

On 2.1.1976 the Punjab Wakf Board (as it was before it stood bifurcated) filed a civil suit No.50 for possession of an alleged public mosque situated in Mohalla Sarang Road, Sonapat. On 3.10.1977 evacuee property bearing No. B-VI/86B was allotted to respondent No.2 against a valuable consideration of ₹4590/- + ₹2295/- and conveyance deed in this regard was executed. In the year 1978 respondent No.2 approached the Municipal Committee, Sonapat for sanctioning the building plans of evacuee property No. B-VI/86-A and B-VI/86-B as respondent No.2 intended to construct shops on the ground floor and rooms on the first floor. On 12.5.1978 the Municipal Committee, Sonapat sanctioned the building plan.

On 23.8.1978 Ex.D-2 the civil suit of Wakf Board bearing CS No.50 was dismissed by the trial court. The lower appellate court vide judgment and decree dated 15.2.1980 Ex.D-3 reversed the judgment and decree of the trial court and passed a decree for possession of the property in favour of Wakf Board. The

aforementioned judgment was challenged in this Court vide RSA No. 714 of 1980 and the same was accepted and the suit of the Wakf Board was accordingly dismissed.

On 2.11.1992 Diwan Chand-respondent No.2 filed a civil suit No. 206 against his brothers and 2 out of 4 shops in evacuee property No. B-VI/86-C which had gone to the brothers of respondent No.2 in the family settlement of 1974 were declared to be owned by respondent No.2, thus of the 4 shops in evacuee property B-VI/86-C, respondent No.1 remained owner of one shop while respondent No.2 became owner of three shops. By a registered sale deed dated 4.12.1997 respondent No.1 sold his shop i.e. in evacuee property No. B-VI/86-C to Promila wife of Om Parkash. It is in these circumstances, the Wakf Board stake claim on the aforementioned khasra numbers.

The claim in the suit was contested by denying that there was mosque on the suit property, whereas, there were/are shops which have been alleged to be owned and purchased by the subsequent purchaser. Promila had filed a civil suit against the decree dated 6.5.2006 and stated that Haryana Wakf Board had threatened to take forcible possession of the suit property claiming itself to be owner of the same. The civil suit of Promila was decreed by observing that order dated 6.5.2006 has been passed in the absence and without the knowledge of the plaintiff, therefore, it is null and void and not binding upon her. The Wakf Board contested the suit. The Wakf Board had also filed a suit against Khushi Ram and went upto the High Court, thereafter the Board was not estopped

from filing a civil suit. The judgment in the second suit where the court formed an opinion that the judgment and decree dated 6.5.2006 reflected that the disputed suit property described in khasra Nos. 237/1, 237/3 and 238, the evacuee property No. B-VI/86-C was not included and covered in the decree. This Court held the plaintiff-Promila to be owner in possession of the suit property and judgment and decree dated 6.5.2006 was held not to be binding upon her whereas in civil suit No.1 the Court formed an opinion that the property was not identified. In essence, whether the suit property was Wakf property or not. The Court also do not rely upon the demarcation report dated 22.11.2010 and the list regarding possession is vague and non-descriptive.

Mr. Gulam Nabi Azad, learned counsel appearing on behalf of the petitioner submits that the decree dated 6.5.2006 was set aside by this Court on 24.7.2009 and the matter was remanded back to identify the property. However, as per the demarcation report Annexure P-2 the suit property has been identified, as the Local Commissioner was none else but a revenue officer and the statement annexed as Annexure P-3 clearly shows that there was a mosque on a particular khasra number, therefore the lower appellate court has gravely erred in dismissing the suit.

He further submits that the tribunal came to a conclusion that Board has been proved to be owner of the property and declined the relief in the absence of identification. It was categorically submitted that there is a mosque situated in khasra No. 238 and this fact has not been noticed by the lower court. The sale

deed produced by the other side did not reflect any khasra number neither any property number, therefore the same could not be relied upon. The finding that the Local Commissioner never demarcated the property is totally baseless, thus, prays that there is illegality and perversity in the impugned order.

Mr. M. L. Sarin, learned Senior counsel assisted by Mr. Nitin Sarin, Advocate submits that as per Ex. D-4 judgment and decree dated 10.11.2008 whereby civil suit filed by Promila was decreed and held that order dated 6.5.2006 is not binding upon her, the aforementioned decree wrongly referred the suit property to be Wakf Property instead of that of Promila wife of Om Parkash. The aforementioned judgment and decree was amended by the lower appellate court on 15.3.2010 vide Ex.D-5 and on 15.3.2010 the decree Ex.D-6 was passed. The report of the Local Commissioner does not mention about any mosque. It is only in the statement it was mentioned about the mosque, thus the statement is contrary to his report and prays for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the petition for the reason that report of the Local Commissioner Annexure P-2 is not only non-descriptive but the demarcation allegedly conducted by the Local Commissioner is completely vague. It does not lead to form an opinion whether the property has been identified or not. For the sake of brevity Annexure P-2 reads thus:-

“Today on 22.11.10 as per order of Hon'ble Court of Shri Kuldip Jain, ADJ, Sonipat in case H.W.B. Vs.

Khushi Ram for initiating proceedings of demarcation, I reached at Village Garhi Brahman. Shri Jagdish Patwari, Halka along with Revenue Record, Shri Khurshid Ahmed Estate Officer, Wakf Board, Sonipat and other respectable persons were present on the spot. The Hon'ble Court has ordered to submit report of measurement of Kila No. 237/1, 237/3 and 238. Before demarcation the proper points were searched. In the east and south side of Kila No. 237/1, 237/3 and 238 a permanent passage is going which was identified from the Revenue Record and was found correct and with the help of these points the West South corner of Kila No. 241 was established and increasing the same further, the North West Corner of Kila No. 235 was established which was found correct and all the present persons also deemed the same as true and correct. Making the base all these rectangles, the measurement of Kila No. 237/1, 237/3 and 238 was conducted by scale 100 feet. After measurement a list of those persons having possessions on the land and the map were prepared which are enclosed. Therefore the demarcation report after proceedings is forwarded for further necessary action."

The report of the Local Commissioner has enclosed a list regarding possession of the persons and as per S.No.9,11 and 12 it has been found that respondents-defendants namely Khushi Ram and Dewan Chand were not associated and the possession was of Promila w/o Om Parkash. Once the decree dated 10.11.2008 has been amended vide judgment

and decree dated 15.3.2010 and the Wakf Board has not challenged the amended judgment and decree dated 15.3.2010.

I am in agreement with the finding rendered in second suit where the parties have acquired ownership by way of allotment from the Wakf Board. The respondent in civil suit No.1 purchased the property for a valuable consideration and originally properties were allotted by the Rehabilitation Department. It is not the case of the Wakf Board that the plots allotted by the Rehabilitation department vest in the Wakf property. It is a settled law that the person has to prove the case by leading direct and cogent evidence. In my view, the Wakf Board has failed to lead any evidence to prove the identity of the property and stake claim of possession, rightly so, the possession has been declined and plaintiff in the second suit has been granted relief of declaration and injunction.

I do not intend to differ with the finding rendered by the tribunal which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgment and decree.

In view of what has been observed above, the revision petitions are devoid of merits, accordingly, the same are dismissed.

(AMIT RAWAL)
JUDGE

February 24 , 2016
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