

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

RSA No.1419 of 1988 (O&M)

Date of Decision: 18.11.2016

Saleem through LRs

... Appellants

Vs.

The Punjab Wakf Board and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. C.B. Goel, Advocate
for the appellant.

Mr. Deepak Sabharwal, Advocate
for the respondents.

Amol Rattan Singh, J (Oral)

1. This second appeal arises out of a suit filed by the appellant-plaintiff seeking a decree of permanent injunction against the respondents (the Punjab Wakf Board through its Secretary and its Inspector), restraining them from interfering in the peaceful possession of the plaintiff of the suit land, measuring 29 Kanals, situated in village Mehrola, Tehsil Nuh, (then District Gurgaon).

The Board filed its written statement before the learned Additional Senior Sub-Judge, Gurgaon, taking preliminary objections of non-maintainability of the suit as no notice had been issued under Section 56 of the Wakf Act, no cause of action lying and it being beyond limitation. It was further pleaded that the suit property is Wakf property that vested in the Wakf

Board, duly notified on 27.09.1970 and that the plaintiff had no right in it.

2. A replication having been filed by the plaintiff, the following issues were framed by the learned Addl. Senior Sub-Judge, Gurgaon:-

- “1. Whether plaintiff is owner in possession of the suit land, as alleged?OPP
2. Whether suit is bad for notice u/s 56 of the Punjab Wakf Board Act?OPD.
3. Whether suit is not properly framed as alleged in para no.2 of the preliminary objections?OPD.
4. Whether suit of the plaintiff is not maintainable in the present form?OPD
5. Whether plaintiff is estopped from filing the present suit by his own act and conduct?OPD
6. Whether suit is time barred?OPD
7. Relief.”

3. After considering the evidence led by the parties, pleadings and arguments, the learned Addl. Senior Sub-Judge, Gurgaon, recorded a finding that under Section 56 of the Wakf Act, 1954, no suit would be instituted against the Board in respect of any act purporting to be done by it in pursuance of the Act, or any rules made therein, until the expiration of a two month period next after the notice, in writing, had been delivered or left at the office of the Board.

The plaintiff having admitted that he had not served any notice on the Board, on that ground alone, the suit of the plaintiff was dismissed.

However, before dismissing the suit on that ground, the learned Senior Sub-Judge recorded that the plaintiff had tendered in evidence a photostat copy of a sale certificate as Ex.P1 and a photostat copy of a *Jamabandi* as Ex.P2, both of which were objected to by the defendants. It was

held that since neither the original sale certificate had been produced nor even had anybody from the office of the Tehsildar, Sales/Settlement Officer been examined as a witness, to depose in respect of the sale in favour of the plaintiff in the year 1963, it could not be read in evidence. Further, the photostat copy of the *jamabandi* was also held to be not admissible in evidence, in which the Panchayat Deh and the Central Government were, however, noticed to be recorded as owners, with the plaintiff shown to be in possession of the suit land.

Thus, though the suit was dismissed on account of a statutory notice not having been issued, however, it was also held that the plaintiff had not been able to prove that the suit property had been sold to him.

4. In the first appeal filed by the plaintiff, before the learned lower appellate Court, that Court after noticing the pleadings and appraising the evidence and considering the judgment of the lower Court, first dealt with an application filed under Order 41 Rule 27 CPC, by which the appellant-plaintiff had sought to produce evidence in the form of the original sale certificate in respect of the suit land, and a copy of a '*jamabandi*'.

The application was partly allowed and though the sale certificate sought to be led by way of additional evidence was not taken on record, however, the '*jamabandi*' for the year 1980-81, being part of the revenue record, was taken on record as additional evidence, holding that the document pertained to the ownership and possession of the suit property and could not be fabricated.

In respect of the original sale certificate sought to be led by way of additional evidence, it was held that, firstly, it could not be “tendered suo-motu” and that an official from the department of Rehabilitation was required

to be examined to prove it and with no such request having been made, the document could not be tendered in evidence.

5. Coming to the main issue of whether the plaintiff was entitled to the relief of permanent injunction, it was found that though the plaintiff-appellant could not establish his title to the suit property, however, he was proved to be in possession thereof.

6. As regards Section 56 of the Wakf Act, it was held, after reproducing the provision, that the said provision only required that notice should be given in respect of any act purporting to be done by the Board in pursuance of the Wakf Act, or of any rules made thereunder and not in all cases. Hence, the finding of the learned Senior Sub-Judge that the suit was not maintainable for want of notice under the aforesaid Act, was set aside and in view of the fact that the plaintiff had been found to be in possession of the suit land, as per the 'jamabandi' taken on record by way of additional evidence, the suit was decreed in his favour, holding that the respondent would not interfere in his possession except in due course of law.

7. Thus, it is seen that as a matter of fact, the suit of the plaintiff was decreed in his favour, granting him a decree of permanent injunction against the respondent-Board.

Yet, the appellant is in second appeal before this Court.

8. At the very outset, Mr. Goel, learned counsel for the appellant-plaintiff submits that the appeal has been filed for the reason that even though it is simply a suit for permanent injunction, the learned Senior Sub-Judge framed an issue with regard to the ownership of the appellant-plaintiff over the suit property, i.e. the first issue framed was with regard to ownership and possession. He, therefore, submits that no question of title ever having been

raised by the appellant-plaintiff, the judgments of the Courts below be clarified to that extent.

Learned counsel for the respondent-Board does not dispute the factual position that the suit filed was only one for permanent injunction and further submits that as regards that relief having been decreed in favour of the appellant-plaintiff, this appeal is not maintainable and in fact is superfluous.

9. Having considered the aforesaid arguments, as also the judgments of the learned Courts below, firstly, it is to be seen that the respondent-Board is not in appeal against the impugned judgment of the first appellate Court, decreeing the suit in favour of the plaintiff. Thus, as regards the possession of the appellant-plaintiff over the suit property, that has not been disputed by the respondent-Board, having accepted the decree of permanent injunction.

A perusal of the record shows that the suit in fact was one only seeking a decree of permanent injunction and thus, even if the first issue, as to whether the plaintiff was owner in possession of the suit land, was only framed actually to determine such possession, the Courts below should not have recorded detailed findings on the ownership of the suit property, no declaration in that respect having been sought by the plaintiff.

10. Hence, while dismissing this appeal, in view of the fact that the suit for permanent injunction was decreed correctly, on the basis of the finding of possession of the suit property in favour of the appellant, which is not under challenge by the respondent Board, it is clarified that no finding recorded by the Courts below, on the ownership over the suit property by the parties to the lis, shall be binding on either party, that question being left open for any appropriate proceedings, if initiated by either side. Any such suit or

other proceeding shall be decided on its own merits, on every issue and aspect arising therein.

No order as to costs.

November 18, 2016
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(AMOL RATTAN SINGH)
JUDGE

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| 1. Whether reportable? | Yes/no |
| 2. Whether order speaking/reasoned? | Yes/no |