

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2435 of 1988 (O&M)
Date of Decision: 01.02.2016

Romesh Chander

.....Appellant

Vs

Punjab Wakf Board, Ambala Cantt.

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. H.S. Grewal, Advocate
for the appellant.

Mr. S.K. Pipat, Senior Advocate with
Mr. Manoj Pundir, 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?*

RAJ MOHAN SINGH, J.

[1]. Defendant is in second appeal against the judgment and decree dated 17.08.1988 passed by Additional District Judge, Hoshiarpur whereby judgment and decree dated 04.12.1987 passed by Sub-Judge, Ist Class, Dasuya was maintained.

[2]. Plaintiff-Punjab Wakf Board (hereinafter for short 'the Board') filed suit for possession against the defendant/appellant on the ground that plaintiff-Board was owner of 17 *Kanals* 13

Marlas of land (hereinafter called as the 'suit land'). Plaintiff Board filed the suit being co-operative body governed by the Administrator and its Secretary.

[3]. Plaintiff alleged that defendant is in possession of the land as trespasser, having no right to remain in possession. In the earlier suit filed by the defendant titled as Romesh Chander vs. Puran Singh, the finding was recorded that Romesh Chander was a trespasser over the suit land and the said judgment has become final between the parties.

[4]. The suit was contested by the defendant alleging that he was inducted as a tenant and he continued thereafter. The earlier judgment passed by Sub-Judge, 1st Class, Dasuya was in no way effected the rights of the defendant. Jurisdiction of civil Court was also questioned as there was relationship of landlord and tenant between the parties.

[5]. No replication was filed. Parties went to trial on the following issues:-

- “1. *Whether Shri Shoeb Qureshi Aukaf Office of the plaintiff Wakf Board is competent to file the suit on behalf of the plaintiff board? OPP*
2. *Whether the defendant is occupying the suit land as a tenant? OPD.*
3. *Whether the Civil Court has got no jurisdiction to try this suit? OPD*

4. *Relief.*"

[6]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[7]. Trial Court decreed the suit vide judgment and decree dated 04.12.1987. Defendant being aggrieved from judgment and decree of the trial Court preferred appeal before the lower Appellate Court which was dismissed by the lower Appellate Court vide judgment and decree dated 17.08.1988.

[8]. I have heard learned counsel for the parties and have gone through the record of the case.

[9]. At the very outset learned counsel for the appellant submitted that the case of the appellant be tested on the substantial question of law which can be formulated orally during course of arguments.

[10]. From the arguments of learned counsel for the appellant, it is culled out that he intended to argue that once tenancy was created in favour of the defendant on year to year basis, then he can only be ejected in due course of law.

[11]. There cannot be any dispute with the proposition as submitted by learned counsel for the appellant. The submissions made by the learned counsel are in the context that the defendant was inducted as tenant by the Wakf Board in the year 1969-71 on year to year basis. Till the year 1984 the

Board accepted the rent and thereafter the Board stopped accepting the rent from the defendant. After the year 1984 till the year 1987 defendant deposited the rent in Treasury @ Rs.300/- per year for the land measuring 17 *Kanals* 3 *Marlas*.

[12]. The factum of passing of earlier decree even, if, admitted would not give any occasion to the trial Court to pass the decree in question solely on the basis of finding of trespasser recorded in the earlier suit because the present suit was required to be decided on the basis of evidence of the case.

[13]. Learned counsel for the appellant also argued that since the earlier suit was partly decreed, therefore, there was no occasion for the defendant (plaintiff of earlier suit) to challenge those findings. Learned counsel further argued that as per the statement of PW-1 Shoeb Qureshi, payment of rent and tenancy was admitted. Tenancy was admitted in the earlier suit also. Once tenancy was admitted, the tenant can only be ejected in due course of law.

[14]. Learned counsel for the appellant further contended that the jurisdiction of civil Court is barred in view of land being agricultural in nature.

[15]. Learned Senior counsel for the respondent submitted that the filing of present suit is the only course which is available

in due course of law. In earlier suit, finding was recorded that the present defendant was a trespasser. Even, if, the land in question was on tenancy at one point of time, after stoppage of payment of rent, the possession of the defendant became un-authorized and it is only a suit for possession by the plaintiff Wakf-Board which is lawful mode to get possession from an un-authorized occupant.

[16]. Learned Senior counsel also submitted that jurisdiction of Wakf Tribunal would come into being only in those cases where vesting of property under Wakf is the subject matter of controversy.

[17]. Admittedly Punjab Wakf Board is the owner of the property. In the earlier litigation a finding was recorded that the defendant was a trespasser. Even, if, the defendant was recorded to be tenant in terms of revenue record viz. Ex.P-17 and Ex.P-18 and having deposited the amount vide rent receipts Ex.D-2 to Ex.D-15 for the year 1985-86 and 1986-87 in the treasury in the name of Punjab Wakf Board vide challan Ex.D-16 and even, if, the finding recorded in the earlier suit to be that of trespasser not sufficient to operate as *res judicata* in the present suit, still the suit for possession is maintainable because this is the only mode of due course which is available to the plaintiff to seek possession of the land over which

defendant was found to be in un-authorised possession after the year 1986-87.

[18]. The judgment dated 20.01.1987 rendered in the earlier litigation was relevant under Section 13 of the Indian Evidence Act. Since the defendant was held to be trespasser over the land in question in earlier litigation, therefore, jurisdiction of revenue Court was not applicable, even if, the property was agricultural land. The trespasser can only be dispossessed in due course of law before the civil Court.

[19]. The alleged tenancy came to be end in the year 1986 itself, and therefore, finding was recorded that the defendant was a trespasser who can be ejected by the civil Court by due procedure of law which in considered opinion of this Court is the suit for possession at the instance of Punjab Wakf Board.

[20]. In view of discussion made hereinabove, I find that no indulgence can be granted in the present appeal. The appeal is found to be totally devoid of merits and is accordingly dismissed with no order as to costs.

February 01, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE