

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

RSA NO.1165 OF 1989

Date of Decision: February 02, 2016

Abdul Gafoor

-Appellant

Versus

Gurcharan Singh and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.S. Bhatia, Advocate
for the appellant.

Mr. Kabir Sarin, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

{1}. Plaintiff Abdul Gafoor is in second appeal against the judgment and decree dated 17.10.1988 passed by Additional District Judge, Gurdaspur whereby appeal filed by defendants No.1 and 2 against the judgment and decree dated 20.03.1987 passed by Sub Judge, 1st Class, Gurdaspur was accepted.

{2}. Plaintiff filed suit for possession of land measuring 12 Kanals out of 29 Kanals 10 Marlas on the basis of

lessee/tenancy under the Punjab Wakf Board- defendant No.3.

Plaintiff alleged that land in question was owned by Punjab Wakf Board and tenancy was created in his favour in respect of 29 Kanals 10 Marlas of land including the suit land. Defendants took forcible possession of the land despite knowing the fact that plaintiff was tenant over the land under Wakf Board since 1970-1971 and was paying rent regularly.

{3}. Suit was contested by the defendants on all counts including ground of maintainability of suit, locus standi and non-joinder of necessary parties and jurisdiction of the Civil Court.

{4}. On the basis of the pleadings of the parties, following issues were framed:-

[1]. Whether the land in dispute is owned by Punjab Wakf Board? OPP.

[2]. Whether the plaintiff is lessee of the Punjab Wakf Board? OPP.

[3]. Whether the plaintiff has no locus standi to file the present suit? OPD2.

[4]. Whether Gram Panchayat Muradpur village is owner of the suit land? OPD2.

[5]. Whether the plaintiff is estopped from filing the present suit by his previous acts and conducts? OPD2.

[6]. Whether this court has no jurisdiction to try the present suit? OPD2.

[7]. Whether the suit is bad for non-joinder of necessary parties? OPD2.

[8]. Whether the suit is within limitation? OPP.

[9]. Whether the suit land is shamlat deh and defendant no.1 is in cultivating possession of the same since partition of the country? If so its effect? OPD1.

[10]. Whether defendant no.1 has become owner of the suit land by adverse possession? OPD1.

[11]. Whether the plaintiff is entitled to the possession of the suit land? OPP.

[12]. Relief.

{5}. Both the parties led evidence and thereafter, trial Court decreed the suit vide judgment and decree dated 20.03.1987.

{6}. Defendants feeling aggrieved against the judgment and decree of the trial Court filed an appeal before the lower Appellate Court. On due consideration of evidence, the lower Appellate Court accepted the appeal vide judgment and decree

dated 17.10.1988 and that is, how, the present appeal came to be filed.

{7}. Though no substantial question of law has been framed in the appeal, yet learned counsel for the appellant has argued that whether the property fully depicted in the revenue record as *Makbooza Ahle Islam* supplemented by issuance of notification can be termed to be Wakf property even if user and dedication are not proved by any evidence?

{8}. I have considered the arguments of learned counsel for both the sides with reference to record.

{9}. The vital question that arises in the present appeal is:- Whether suit land is a Wakf property or not?

{10}. Since the plaintiff claims possession of the suit land being lessee under the Punjab Wakf Board, therefore, relief can only be granted to the plaintiff on his establishing that the suit property vests in Punjab Wakf Board. The title in favour of Punjab Wakf Board is sine qua non for the plaintiff to establish that he was inducted as lessee by the Punjab Wakf Board and is entitled to the possession of land from the defendants. In the revenue record viz Jamabandi for the year 1979-1980 (Ex.D1), Gram Panchayat is recorded to be the owner of the entire land measuring 29 Kanals 10 Marlas. In Column No.8 of the jamabandi, *Gair Mumkin Kabristan* has been shown in respect of

12 Kanals 15 Marlas of land and the remaining land i.e. 16 Kanals 15 Marlas has been shown to be *Barani Awal*. The land shown as *Gair Mumkin Kabristan* further recited the possession of *Makbooza Ahle Islam*.

{11}. Learned counsel for the appellant contended that the ownership of the entire land measuring 29 Kanals 10 Marlas was transferred from the Gram Panchayat to Punjab Wakf Board in view of letter dated 21.05.1972 issued by the Director Land Records.

{12}. Apparently, this letter has not seen the light of the day and it could not be established as to on what legal authority the mutation was entered. Mutation itself does not create any title. Punjab Wakf Board claimed title on the basis of Ex.P13 (Parat Patwar) and notification dated 30.09.1972 (Ex.P11) issued under Section 5 of the Wakf Act, 1954. Vide the aforesaid notification, land measuring 29 Kanals 10 Marlas was notified to be *Sunni* Wakf being graveyard. Perusal of the notification shows that the date of creation of Wakf is conspicuously missing, who created the Wakf and other necessary particulars are also missing. Notification cannot be termed to be a conclusive proof of Wakf property. The question as poised in the present appeal is whether the property shown by the term *Makbooza Ahle Islam* can be presumed to have been vested in Wakf Board without

proof of dedication and user of the same. Plaintiff could not lead any evidence of the user of the site as a burial ground nor could point out any such dedication attached to the site. The notification itself does not propound vesting of land in the absence of date of notification vis-a-vis the person who created the Wakf and other necessary particulars of its vesting as Wakf property.

{13}. In **Punjab Wakf Board vs. Kartar Singh 1987 PLJ 95**, it was held that notification under Section 5(2) of the Wakf Act is final and conclusive qua the Board and mutwallis of the Board and any other person interested therein, however third parties are not bound by such a notification particularly when there is a dispute between such third party as to vesting of the property as Wakf property.

{14}. Similarly, in **The Board of Muslim Wakf Rajasthan vs. Radha Kishan and others, AIR 1979 SC 289**, it was held that the ingredients of dedication and user are to be proved before proving the property to be a Wakf property. In the absence of dedication, the property alleged to be Wakf property cannot be held to be so, merely on the ground of notification and entries made in the revenue record. Since, there is no evidence on record to prove permanent dedication of the property by a person professing Islam for any of the purpose mentioned for

such vesting, therefore, the basic ingredients for such a vesting are missing altogether.

{15}. Similarly, in case of **Punjab Wakf Board vs. Sanatam Dharam Boys Higher Secondary School Hansi, 1987 All India Land Laws Reporter 712**, it was held that mere mentioning of *Gair Mumkin Takia* in the Jamabandi will not make the same to be a Wakf property. The plaintiff should have adduced evidence of user and dedication of such property for the purpose as recognized by Muslim law as pious, religious and charitable.

{16}. Similarly, in **Punjab Wakf Board Ambala Cantt. vs. Natha Singh, 1988 PLJ 10**, the Division Bench of this Court after considering law on the subject matter, held that the notification under Section 5(2) of the Act itself is not sufficient to bind the persons other than the person interested in the Wakf as defined in Section 2(h). In the instant case, if the question posed for consideration is tested in the light of precedents and the subject matter, it can be safely concluded that in the absence of any evidence of user and dedication of the site for any pious, religious and charitable purposes, the plaintiff cannot bring the suit land within the ambit of *Makbooza Ahle Islam* having vested in Punjab Wakf Board on the strength of mere entries in the revenue record and on the basis of notification alone.

{17}. In the light of aforesaid, since the plaintiff has failed to adduce any relevant evidence, therefore no indulgence can be granted to the plaintiff as the plaintiff has to stand on the strength of his own case and he cannot take benefit of any alleged weakness in the case of the defendants. The dispute in respect of vesting or non-vesting of the property as Wakf Property is squarely under the domain of the Civil Court in terms of Section 9 CPC, therefore, no such question as orally claimed by the plaintiff arises for consideration in this appeal.

{18}. Resultantly, this appeal is totally found to be devoid of merits and the same is accordingly dismissed.

February 02, 2016

jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**