

**203 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA-2617-2010 (O&M)

Date of decision : 28.11.2016

Punjab Wakf Board

..... Appellant

VERSUS

Harvallabh Parkash (Deceased) through LRs

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jai Bhagwan, Advocate for the appellant.

Ms. Deepali Puri, Advocate for respondents No.1 and 2.

AMIT RAWAL, J.(Oral)

The appellant-plaintiff is aggrieved of the findings rendered by the Courts below on issue No.11 holding that the jurisdiction of the Civil Court to eject the respondent-defendants being Gair Marusi on payment of rent was not maintainable.

Mr.Jai Bhagwan, learned counsel appearing on behalf of appellant-plaintiff submits that the suit for possession was filed against the respondent-defendant in respect of the property measuring 9 kanal 12 marlas comprising khasra No.249, situated at village Tung Pain Suburban, Batala Road, Amritsar as the same was dedicated to Muslims for worship. The said property was notified in the Government Gazette Notification dated 09.01.1971 as a wakf property and, therefore, the possession of the respondent being a trespasser and accordingly suit,with aforementioned relief was filed. However, the Courts below rendered the findings on the other issues holding the property to be Wakf property,non-suited the plaintiff on

the ground that Civil Court in view of the provisions of Section 9 of the Punjab Security of Land Tenures Act, 1953 (in short '1953 Act') had no jurisdiction. He submits that the judgment rendered by both the Courts below is against the judgment rendered by the Hon'ble Supreme Court in **Bhanwar Lal and another v. Rajasthan Board of Muslim Wakf and others 2013(4) RCR(Civil) 758**, wherein the Hon'ble Supreme Court had occasion to ponder upon a question as to whether in view of the provisions of Section 6, 7 and 85 of the Rajasthan Wakf Act, 1995 which is perimateria to the Punjab Wakf Act, would Civil Court have a jurisdiction to seek the ejectment of the tenant and answer was in the "positive". In essence he submitted that the Supreme Court held that where the controversy involving the provisions of Sections 6 and 7 of the Act is concerned, the jurisdiction of the Civil Court would be barred. In fact it would be with the Tribunal, whereas in all other matters including the eviction, with the Civil Court. In support of his contention drawn the attention of this Court to findings rendered in para 19 as well as 23 of the judgment cited supra which reads as under:-

“19. It would also be profitable to refer to that part of the judgment where the Court gave guidance and the need for a particular approach which is required to deal with such cases. In this behalf the Court specified the modalities as under:

“11. Before we take up the core issue whether the jurisdiction of a civil court to entertain and adjudicate upon disputes regarding eviction of (sic from) wakf property stands excluded under the [Wakf Act](#), we may briefly outline the approach that the courts have to adopt while dealing with such questions.

12. The well-settled rule in this regard is that the civil courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of the civil courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a civil court. Any such exception cannot be readily inferred by the courts. The court would lean in favour of a construction that would uphold the retention of jurisdiction of the civil courts and shift the onus of proof to the party that asserts that the civil court's jurisdiction is ousted.

13. Even in cases where the statute accords finality to the orders passed by the Tribunals, the court will have to see whether the Tribunal has the power to grant the reliefs which the civil courts would normally grant in suits filed before them. If the answer is in the negative, exclusion of the civil court's jurisdiction would not be ordinarily inferred. [In Rajasthan SRTC v. Bal Mukund Bairwa](#), a three-Judge Bench of this Court observed "There is a presumption that a civil court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where the jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction

23. The suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees. However, pleading in the suit are not filed before us and, therefore, exact nature of relief claimed as well as averments made in the plaint or written statements are not known to us. We are making these remarks for the reason that some of the reliefs claimed in the suit appeared to be falling within the exclusive jurisdiction of the Tribunal whereas for other reliefs civil suit would be competent. Going by the ratio

of Ramesh Gobind Ram (supra), suit for possession and rent is to be tried by the civil court. However, suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the Tribunal. In so far as relief of cancellation of sale deed is concerned this is to be tried by the civil court for the reason that it is not covered by Section 6 or 7 of the Act whereby any jurisdiction is conferred upon the Tribunal to decide such an issue. Moreover, relief of possession, which can be given by the civil court, depends upon the question as to whether the sale deed is valid or not. Thus, the issue of sale deed and possession are inextricably mixed with each other. We have made these observations to clarify the legal position. In so far as present case is concerned, since the suit was filed much before the Act came into force, going by the dicta laid down in Sardar Khan case, it is the civil court where the suit was filed will continue to have the jurisdiction over the issue and civil court would be competent to decide the same.”

Learned counsel for the appellant has also relied upon a Full Bench judgment of this Court rendered in **Shiv Charan v. Financial Commissioner, Haryana and others 2004(4) RCR(Civil) 543**, wherein the provisions of Section 77(3)(d) of the Punjab Tenancy Act, 1887 came to be debated on and it was held that where a person seeks relief under Section 5 and 8 of the Act, the Civil Court would have the jurisdiction and not the Revenue Court and, therefore, the findings rendered by both the Courts to the effect that Civil Court has no jurisdiction to try the present suit is only a preponderance of probability, fallacious and arbitrary and thus liable to be set aside.

Per contra, Ms. Deepali Puri, learned counsel appearing on behalf of respondents No.1 and 2 submits that as per the provisions of

Section 2 dealing with the definition of land owner, the Punjab Security of Land Tenures Act, 1953 Act, prescribes that the land owner would mean a person defined as such in the Punjab Land Revenue Act, 1887 and shall include an 'allottee' and 'lessee'. Section 9 of the Act prescribes the right of the tenant to be ejected where he fails to pay the rent regularly or is a tenant under the Act or a small land owner much less in arrears of rent or even on other grounds. She does not dispute the nature and character of the property before the lower Appellate Court or in this Court and neither the aid of the provisions of Order 41 Rule 33 of the Code of Civil Procedure was sought being Gair Marusi in view of the finding rendered by the Courts below. Even there was no prayer by filing any cross objections either. Thus, the findings of the Courts below under issue No.11 are perfectly justified and no interference of this Court is called for.

Learned counsel for the respondent-defendant has further argued that after the expiry of the lease period, the tenant becomes statutory tenant and not an unauthorised tenant and can be evicted only on the grounds specified in the 1953 Act and Civil Court would not have jurisdiction. In support of her contention relied upon ratio in **Ram Lal v. Darshan Lal and others , 2008(3) RCR(Civil) 427.**

I have heard learned counsel for the parties and perused the paper book and records of the Courts below.

With all humility at my command and due respect, the Hon'ble Supreme Court in Bhanwar Lal's case(supra) had an occasion to discuss the provisions of Section 6, 7 and 85 of the Rajasthan Wakf Act, judgments rendered by various courts in regard to the jurisdiction of the Tribunal and much less the

Andhra Pradesh Wakf Act, but was not apprised of the provisions of Section 9 of the 1953 Act (being local Act), which starts with non-substantive clause which reads as under:-

“9 Liability of tenant to be rejected- (1) Notwithstanding anything contained in any other law for the time being in force no land owner shall be competent to eject a tenant except when such tenant-

- (i) is a tenant on the area reserved under this Act or is a tenant of a small landowner[or]
- (ii) fail to pay rent regularly without sufficient cause [or]
- (iii) is in arrears of rent at the commencement of this Act [or]
- (iv) has failed, or fails, without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to the extent customary in the locality in which the land is ;situate [or]
- (v) has used, uses the land comprised in his tenancy in a manner which has rendered, or renders it unfit for the purpose for which he holds it [or] has sublet the tenancy or a part thereof; provided that where only a part of the tenancy has been sublet ,the tenant shall be liable to be ejected only from such part[or]
- (vi) has sublet the tenancy or a part thereof; provided that where only a part of the tenancy has been sublet, the tenant shall be liable to ejected only from such part [or]
- (vii) refuses to execute a Qabuliyat or a Patta, in the form prescribed, in respect of his tenancy on being called upon to do so by an Assistant Collector on an application made to him for this purpose by the land-owner.

Explanation -- For the purposes of clause (iii) a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the

execution or decree or order , directing him to pay such arrears of rent.]

(2) Notwithstanding anything contained herein before a tenant shall also be liable to be ejected from any area which he holds in any capacity whatever in excess of the permissible area :.

Provided that the portion of the tenancy from which such tenant can be ejected shall be determined at his option only if the area of his tenancy under the landowner concerned is in excess of the area from which he can be ejected by the said land owner:

Provided further that if the tenant holds land of several land owners and more than one land owner seeks his ejectment, shall be exercised in the order in which the applications have been made or suits have been filed by the landowners concerned and incase of simultaneous applications or suits the priority for ejectment shall commence serially from the smallest land owner.

Explanation -- Where a tenant holds land jointly with other tenants only his share in the joint tenancy shall be taken into account in computing the area held by him.”

In absence of the aforementioned provisions of law obviously the Hon'ble Supreme Court had an occasion to draw a distinction between the maintainability of the suit with regard to the interpretation of the provisions of the Wakf Act, conferred upon the Tribunal or otherwise. In essence the Hon'ble Supreme Court had formed an opinion that all the disputes other than the dispute under the provisions of Section 6 and 7 would be tried by the Civil Court. Thus in my opinion the finding rendered by the Hon'ble Supreme Court shall not apply to the facts and circumstances of the case in view of the provisions of the Section 9 *ibid*. The Coordinate Bench of this

Court had an occasion to interpret the provisions of Section 9 by referring to

the various other judgments of this Court for the purpose of seeking an ejectment of the tenant, held that jurisdiction of the Civil Court would be barred as there are specific grounds of eviction being provided under the provisions of Section 9. It is not the case of the defendant that having not taken the objection, or any specific issue in this regard been framed, therefore, the defendant cannot be thrown out on the ground of having waived the right qua the jurisdiction of the Civil Court. As regards the ratio decidendi culled out in Shiv Charan's case(supra) the same is only applicable with regard to the claims seeking declaration under section 5 and 8 of the Punjab Tenancy Act, 1887 by interpreting the provisions of Section 77(3)(d) of the Act which reads as under:-

77. Revenue Courts and suits cognizable by them -(1)

(2).....

(3) The following suits shall be instituted in, and heard and determined by Revenue Courts and not other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted :

Procedure where revenue matter is raised in a Civil Court.

[Provided that-

- (1) where in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by Order VII, rule 10, Civil Procedure Code and return the plaint for presentation to the Collector;
- (2) on the plaint being presented to the Collector, the Collector shall proceed to hear and determine the suit where the value thereof exceeds Rs. 1,000 or the matter involved is of the nature mentioned in section 77(3). First Group of the Punjab Tenancy Act, 1887, and in other cases may send the suit to an Assistant Collector of the first grade for decision.]

FIRST GROUP

- (a)
- (b)
- (c)

(d) suits by a tenant to establish a claim to a right of occupancy or by a landlord to prove that a tenant has not such a right;

.....”

and not with regard to Section (e) of the Act which deals with suits by landlords to eject tenants. If, it was so, the Hon’ble Bench would have definitely pondered upon the applicability of other provisions of sub-section 3 of Section 77 of the Act. During the course of hearing, Mr. Jai Bhagwan, also referred to a judgment rendered by Hon’ble Supreme Court in **Sardar Khan and others v. Syed Najmul Hassan(Seth) and others 2007(2) RCR(Civil) 419** to contend that owing to the promulgation of the Wakf Act any proceedings initiated prior to the aforementioned Act, in essence under the repealed Act, would continue and would not be effected by the new Act. In other words he submits that the suit for possession was filed in the year 1999 and, therefore, the Civil Court shall have, from all corners, jurisdiction to try the lis. I am not in agreement with the aforementioned submissions as the old or new Act did not provide the specific procedure for ejectment of a tenant. As far as the facts of the case are concerned, it has been established on record that the defendant was/is a tenant/Gair Marusi on payment of rent by virtue of document Ex.DW4/9 to Ex.DW4/10. Of course, a tenant on declaration would continue being a tenant and his status would not change and it would be based on analogy that once a tenant is always a tenant. In my opinion, the arguments of Mr. Jai Bhagwan that status on declaration of

the property being wakf, the defendant would be a trespasser, is wholly misplaced and is hereby repelled.

In view of all the circumstances noticed above, I am of the view that findings noticed by both the Courts below holding that Civil Court did not have the jurisdiction to seek ejectment is perfectly legal and justified. The appellant has to seek the ejectment of the respondent in view of the provisions of Section 9 of 1953 Act. Resultantly the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 28, 2016
sunita

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes / No