

Regular Second Appeal No.1245 of 2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1245 of 2016

Date of Decision: July 28, 2016

Sadanand & others

...Appellants

Versus

Raj Kumar Valecha & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Vivek Khatri, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendant Nos.1 to 3 are aggrieved of the judgments and decrees rendered by both the Courts below, whereby appellant-defendant Nos.1 to 3 have been restrained not to demolish the shop in question and dispossess the plaintiff to the extent of 128.66 sq.yards out of total 262 sq.yards, allegedly leased out by the Wakf Board.

Mr.Vivek Khatri, learned counsel for appellant-defendant Nos.1 to 3 submits that Shop No.17 originally was leased out by the Wakf Board in favour of plaintiff and defendant No.1 vide lease deed dated 1.7.1994. Thereafter, the lease deed expired on 31.5.1995. A fresh

lease deed in the year 2009 was executed in favour of appellant Nos.2

and 3, but the same was cancelled in 2011, which was challenged by filing Civil Suit No.14-C dated 12.10.2011. In the aforementioned suit, an application under Order 1 Rule 10 CPC was filed and the same was contested by the Wakf Board denying the interest of the respondent-plaintiff. The civil suit was dismissed for want of service under Section 89 of the Wakf Board Act. An appeal was filed and the matter was remitted back to the trial Court to decide the controversy on merits. Thereafter, the Wakf Board filed an SAO No.17 of 2014 before this Court and the order under challenge was upheld and in the findings rendered, it surfaced that defendant Nos.2 and 3 were in possession of the shop in dispute. On the contrary, the plaintiff has failed to prove the possession and, therefore, the Courts ought not to have relied upon Ex.P23, i.e., the lease deed dated 15.8.2013 executed in favour of the respondent-plaintiff, which culminated into passing of the order bifurcating the property in the manner and mode as noticed above.

He further submits that the plaintiff has failed to prove his possession. Even in the written statement, the appellants denied possession of the plaintiff. No doubt, possession of the defendants was also denied. It is a cardinal principle of law that a person seeking possession has to prove his title, but the plaintiff has failed to do so and, thus, urges this Court to formulate the questions of law as culled

out in the memorandum of appeal.

I have heard the learned counsel for the appellant and appraised the paper book and of the view that both the parties have not been able to prove on record that the entire possession was either of the plaintiff or the defendants. It is the conceded position on record that in the year 2004, a joint lease deed was executed by the Wakf Board in favour of both the plaintiff and the defendant, i.e., brothers. Thereafter, dispute arose with regard to the execution of the lease deed in favour of the appellants, cancellation thereof and a subsequent lease deed dated 15.8.2013. I am of the view that the findings rendered by the trial Court and upheld by the Lower Appellate Court are most reasonable and viable.

Since this Court in SAO No.17 of 2014 decided on 24.4.2015 had given liberty to the Wakf Board to seek possession in accordance with law, I do not intend to comment further on this aspect.

I do not intend to differ with the findings rendered by both the Courts below, much less no substantial question of law arises for determination by this Court.

Appeal stands dismissed.

July 28, 2016
ramesh

(AMIT RAWAL)
JUDGE