

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

**R.S.A No.51 of 2016 (O&M)
Date of decision :09.08.2016**

Rajinder Singh

..... Appellant

Versus

Punjab Wakf Board

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Gaurav Sharma, Advocate
for the applicant-appellant.

DARSHAN SINGH,J

CM No. 141-C of 2016

This application has been filed under Section 5 of the Limitation Act read with Section 151 of the Code of Civil Procedure, 1908 for condonation of 21 days delay in re-filing the present appeal.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and delay of 21 days in re-filing the present appeal is hereby condoned.

R.S.A No. 51 of 2016(O&M)

The present appeal has been preferred against the judgment and decree dated 07.08.2015 passed by learned Additional District Judge, Patiala, vide which the appeal filed by the appellant-defendant against the

judgment and decree dated 10.09.2014 passed by the learned Civil Judge (Jr. Division), Nabha was partly allowed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent has filed the suit for possession of the land measuring 16 Kanals as detailed and described in the head note of the plaint situated in the revenue estate of village Binaheri, Tehsil Nabha, District Patiala and for recovery of use and occupation charges at the rate of Rs.5100/- per annum w.e.f. 2002-03 to 2006-07 till the delivery of the possession.

4. As per the averments in the plaint, the plaintiff-respondent is owner of the land in dispute. The same was given on lease to the appellant-defendant at the rate of Rs. 5100/- per annum for the year 2001-02. The defendant-appellant made the payment of the lease money for the said period. Thereafter, he did not get the lease deed renewed nor paid the lease money. Therefore, his possession was illegal and unauthorized. Hence the suit.

5. Appellant-defendant contested the suit on the grounds *inter alia* that he has taken the land in question on lease from the plaintiff-board in the year 1986 on payment of lease money at the rate of Rs. 600/- per annum. The lease deed in his favour was renewed in the year 1989-90. He has been paying the lease money to the plaintiff and is in continuous possession of the suit land as a tenant. Plaintiff wanted to forcibly dispossess him from the land. He served a legal notice. When no action was taken on his notice, he filed the suit for permanent injunction.

But, the same was withdrawn with liberty to file the fresh suit. It was further pleaded that the appellant-defendant has already deposited Rs. 43420/- towards the lease money even in excess of the actual amount due. Even, during the pendency of the suit he has deposited the lease money in the treasury. Thus, he pleaded for dismissal of the suit.

6. Plaintiff also filed replication to the aforesaid written statement. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 09.01.2013:-

1. Whether the plaintiff is entitled for possession as prayed for? OPP
2. Whether the plaintiff has not come to the Court with clean hands? OPD
3. Whether the suit is barred being beyond limitation and jurisdiction? OPD
4. Whether the suit of the plaintiff is neither maintainable nor competent on its present form? OPD
5. Whether the plaintiff has got no cause of action and locus standi to file the present suit? OPD
6. Whether the plaintiff is estopped from filing the present false suit by his own act and conduct? OPD
7. Relief.

7. However, the following additional issue was framed on 10.09.2014:-

- 1-A. Whether plaintiff is entitled to recover use and occupation charges of the suit property @ 5100/- per annum from the year 2002-03 till delivery of possession along with interest, as prayed for? OPP

8. On appreciating the material on record and the contentions raised by learned counsel for the parties, the suit filed by the plaintiff was decreed by the learned trial Court vide impugned judgment and decree dated 10.09.2014.

9. Aggrieved with the aforesaid judgment and decree passed by the learned trial Court, the appellant-defendant preferred the appeal. The same was partly allowed by the learned First Appellate Court vide

impugned judgment and decree dated 07.08.2015. Hence this Regular Second Appeal.

10. I have heard Mr. Gaurav Sharma, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

11. Initiating the arguments, learned counsel for the appellant contended that the appellant is in possession of the suit property as a lessee of the plaintiff-board. He has been regularly paying the lease money. He contended that in-fact he was being harassed by the officers of the board and he was being threatened to be dispossessed forcibly. So, he had to file a suit for injunction. He further contended that defendant has already deposited the lease money for the year 2002-03 to 2009-10 in the Court vide challan form Ex.D-10/C. The lease money for the year 2010-11 to 2013-14 has been deposited vide challan form Ex.D-10/D. Learned counsel for the appellant contended that all these material aspects have been ignored by the Courts below. When the lease money was being regularly paid by the appellant, the plaintiff-board has no right to seek the possession. Thus, he contended that the decrees passed by the learned Courts below suffers from material illegality.

12. He further contended that only Wakf Tribunal was competent to entertain the suit. The Civil Court had no jurisdiction to entertain the suit for possession and recovery. To support his contentions he relied upon cases **Gurdial Singh and others Vs. Punjab Wakf Board 2006(4) R.C.R. (Civil) 289, Haryana Wakf Board Vs. Shabrati Khan 2010(2) R.C.R.(Civil) 404 and Sunil Kumar Vs. Punjab Wakf Board 2010(5) R.C.R.(Civil) 940.**

13. I have duly considered the aforesaid contentions.

14. Firstly, I take up the plea raised by learned counsel for the appellant that the Civil Court had no jurisdiction to entertain the suit. Even, as per the case of the defendant-appellant, the plaintiff-Board is the owner of the property in dispute. The appellant is claiming himself to be the lessee under the plaintiff-Board. So, there is absolutely no dispute between the parties that the suit property is a Wakf property owned by the plaintiff-Board and appellant-defendant is claiming to be in possession of the suit property only as a lessee. In case **Ramesh Gobindram (dead) Through Lrs. V. Sugra Humayun Mirza Wakf 2014(1) R.C.R (Civil) 633**, the Wakf Board has filed the suit for eviction of the appellant-defendants from admittedly the Wakf properties before the Wakf Tribunal. The Tribunal decreed the suit for eviction. The appellants preferred revision petition before the High Court of Andhra Pradesh. The said revision petitions were dismissed and order of eviction passed by the Wakf Tribunal was affirmed. The question arose before the Hon'ble Apex Court as to whether Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 was competent to entertain and adjudicate upon the disputes regarding the eviction of the appellants who were occupying admittedly the Wakf properties. After scrutinizing number of judicial precedents and statutory provisions, the Hon'ble Apex Court has laid down as under:-

“21. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute

a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the Civil Courts stands completely excluded by reasons of such establishment. It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a wakf or wakf property" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.

22. In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the Civil Court and not before the Tribunal. The contrary view expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound. So also the view taken by the High Courts of Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana in the decisions referred to earlier do not declare the law correctly and shall to the extent they run counter to what we have said hereinabove stand overruled. The view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay is, however, affirmed.”

15. Again in case **Bhanwar Lal and another Vs. Rajasthan Board of Muslim Wakf and others 2013(4) R.C.R. (Civil) 758**, the same legal position was reiterated and it was laid down that the

jurisdiction of the Civil Court to eviction cases from the Wakf property is not excluded. In view of the aforesaid consistent ratio of law laid down by the Hon'ble Apex Court, the cases relied upon by learned counsel for the appellant are of no help to him. Moreover, he has admitted at bar that no such plea regarding exclusion of the jurisdiction of the Civil Court was raised before the learned trial Court as well as learned First Appellate Court. Thus, there is no escape from the conclusion that the Civil Courts had jurisdiction to entertain the suit filed by the plaintiff-board.

16. This fact is not disputed that appellant-defendant was the lessee under the plaintiff-board. He initially took the land in question on lease in the year 1986. His possession as a lessee is also reflected in the copies of jamabandies for the year 1986-87 to 2006-07. The plea taken by the appellant-defendant that he continued to be in possession of the suit land as a lessee at the rate of Rs.600/- per annum is contradicted from his own documents. As per the observations of the learned First Appellate Court, appellant has moved the application Ex.D-1/2, whereby he has requested for renewal of the lease for the year 1989-90 on payment of Rs. 2500/- per annum, for the year 1990-91 at the rate of Rs. 3000/- per annum and for the year 1991-92 at the rate of Rs. 2500/- per annum. He had deposited the lease money of Rs. 9000/- vide receipt dated 15.10.1990 Ex.D-5 which shows that the lease money was charged at the rate of Rs. 2500/- for the year 1989-90, Rs.3000/- for the year 1990-91 and Rs.3500/- for the year 1991-92. He has also deposited Rs.5100/- as lease money for the year 2001-02 vide receipt dated 30.03.2000 Ex.D-10/A.

17. There is no evidence to show that the appellant has paid the lease money to the plaintiff after 2001-02 neither the lease in favour of the appellant-defendant has been extended by the plaintiff-board. The possession of the defendant-appellant over the suit land after the expiry of the lease period was certainly illegal and unauthorized.

18. The defendant had deposited Rs.4800/- as lease money at the rate of Rs. 600/- per annum from the year 2002-03 to 2009-10 vide challan Ex.D-10/C in the year 2010. He again deposited Rs.2400/- as lease money for the year 2010-11 to 2013-14 at the rate of Rs.600/- per annum vide challan form Ex.D-10/D on 09.02.2013. But, the present suit was filed by the plaintiff-board in the year 2007. After the filing of the suit, appellant started depositing the aforesaid amount in the Civil Court. Thus, unilateral act of the appellant-defendant to deposit the amount in the Civil Court will not extend the lease. There is nothing on record to show that appellant-defendant ever intimated the plaintiff regarding the deposit of the said amount and the plaintiff-board had agreed to accept the aforesaid amount for renewal of the lease. Thus, there is no escape from the conclusion that the possession of the appellant-defendant over the suit property after the year 2001-02 was illegal and unauthorized and the plaintiff-Board was certainly entitled for possession thereof.

19. Learned trial Court has also passed the decree of recovery of use and occupation charges in favour of the plaintiff-board at the rate of Rs. 5100/- per annum from the year 2002-03 till delivery of possession of the suit land by the defendant to the plaintiff. But, the learned First Appellate Court has modified the decree with respect to the recovery and

restricted it from the year 2008-09 till delivery of the possession as the claim of the plaintiff-board beyond that period was barred by limitation. No fault can be found with the rate of use and occupation charges awarded by the learned Courts below because the defendant has himself deposited Rs. 5100/-, the lease money for the year 2001-02 vide receipt Ex.D-10/A.

20. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

21. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

22. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

August 09, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No