

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

C.R. No. 2414 of 2017
Date of decision: 25.04.2017

Jaspal Singh

....Petitioner(s)

Versus

Sahab Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Pankaj Sharma, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 06.01.2017 (Annexure P-2) passed by the Additional District Judge-cum-Chairman, Wakf Tribunal, Ambala whereby the suit for permanent injunction has been dismissed. The reasoning which weighed with the Tribunal was that the lease in favour of the petitioner had expired in the year 2000 and he being in possession without the consent of the original owner cannot claim any right over the suit property and, thus, possession thereafter was illegal and he was not entitled to any relief of injunction as prayed for. Resultantly, other issues regarding maintainability of the suit was decided in favour of the respondents alongwith the locus standi as such of the petitioner to file the suit. Issue nos. 4 and 5 were decided against the respondents which were regarding the misjoinder of necessary parties and regarding whether the petitioner had concealed any true or material facts from the Court.

The petitioner had approached the Tribunal on the ground that

initially he had taken the plot in question on lease on 31.03.1999. A perusal of the above referred lease order would go on to show that the area leased out was 792 sq. yds. bearing Khasra No. 306 and it was a vacant plot. Monthly lease money was only ₹590/-. It is on this basis it was alleged that he had raised construction on the suit premises and taken electricity connection etc. The Board had been trying to dispossess him and resultantly, the suit had been filed on 06.04.2015. As per clause 7, the period of lease was 11 months.

The defence of the private respondents was that the petitioner was not in physical possession and respondents no. 1, 2 and 4 were in physical possession and their residential house existed there. The petitioner was only leased out the plot for 11 months and he had failed to deposit the lease money and remained in arrears. There was only one kacha kotha which was in dilapidated condition and the petitioner after receiving huge amount and had surrendered the vacant possession in their favour and they had raised construction. A lease deed had been granted in their favour on 26.02.2012.

The Wakf Board-respondent no. 5 took the plea that the property had been leased out vide order dated 26.02.2013 for 3 years to the said respondents. Earlier the plot had been leased out to the petitioner only for 11 months as a vacant plot and there was no renewal and neither he had paid the rent.

The petitioner examined as many as four witnesses whereas respondents examined five witnesses. As per Ex. D-19, which was the lease deed dated 01.01.2013, it has been noticed that the private respondents have come in possession. The suit was filed in the year 2015. The lease in

favour of the petitioner had expired way back in the year 2000. It is an admitted case itself, which the counsel does not deny, that he was no longer in possession of the property as such as on the date when the suit was filed. The argument raised that he was wrongly dispossessed as such in due course of law and, therefore, he was entitled to pursue the suit for permanent injunction, thus, cannot be accepted.

On the date when he filed the suit, his claim was for permanent injunction on the strength of the lease deed as such of 11 months. Once it is his own case now that he was never in possession on the date of institution which was after 15 years, he cannot turn around and contend that the order of the Tribunal dismissing his suit for permanent injunction is not justified. It is settled principle that injunction is to be granted to person even who is in unauthorized possession and he is entitled to protect his possession to the extent that his dispossession should be in accordance with law. Once he is not in possession, then the right of injunction as such is lost to him. Thus, on the date when the suit was filed he being not in possession, the suit itself was not maintainable.

In such circumstances, there is no scope for interference in the order impugned and the present revision petition and the same is dismissed.

25.04.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No