

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

CR No.327 of 2016
Date of decision: 02.12.2017

Mosque

..... Petitioner

Versus

Grududwara Prabandhak Committee and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.N. Malik, Advocate
for the petitioner.

Mr. Sanjay Jain, Advocate
for respondents No.1 and 3.

Mr. Athar Ahmed, Advocate
for respondent No.4.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-petitioner is in revision petition against the order rejecting the plaint under Order 7 Rule 11, CPC.

It is not disputed that in the earlier litigation, defendant No.1 was declared owner of the property vide Civil Court judgment and decree dated 01.12.1975 and it was declared that the property is not a wakf property.

Now plaintiff has filed a fresh suit seeking declaration with regard to the same property and it has been asserted that the judgment and decree dated 01.12.1975 has become infructuous and ineffective due to acts and conducts of defendant No.1.

Learned trial Court after considering the various aspects of the matter have allowed the application and rejected the plaint by recording as

“It is clear from the perusal of plaint of civil suit no.446, mentioned above, and the present plaint that, plaintiff no.1 in that suit has been arrayed as plaintiff no.2 in the present suit, but plaintiffs no.1 and 3 were nowhere arrayed as party in that suit. Further, in the present suit, the judgment and decree dated 01.12.1975 passed in civil appeal no.110/13 of 1975 by the court of Shri O.P. Gupta, the then HCS, Senior Sub Judge (exercising enhanced appellate powers), Ambala, has been challenged, but it was not so in that suit which was allowed to be dismissed as withdrawn vide order dated 16.05.2013, as mentioned above. It is also pertinent to mention here that alongwith present suit, application has been moved under Order 1 Rule 8 CPC for permission to file suit in representative capacity; however, no such permission is on record. It is apt to mention here that, vide judgment and decree dated 01.12.1975 passed by the court of Shri O.P. Gupta, the then HCS, Senior Sub Judge (exercising enhanced appellate powers), Ambala, had declared the appellants therein as owners of suit property by way of adverse possession and thus, even if Ajit Singh Cheema, the defendant no.2 by writing and affidavit dated 24.04.2004 claims the defendants to be licensees over the suit property; or delivery of possession is evidenced by virtue of compromises dated 01.03.2006 and 07.03.2006, that will not take away the legal rights conferred by virtue of judgment and decree dated 01.12.1975 passed by the court of Shri O.P. Gupta, the then HCS, Senior Sub Judge (exercising enhanced appellate powers), Ambala, as these documents have not been proved on record. Moreover, learned counsel for the plaintiffs has also failed to convince this court that why Haryana Wakf Board has not filed the civil suit. It is further provided in Proviso to Section 7(1)(b) of Wakf Act, 1995 that where any question is arisen whether a particular property is Wakf property or not and such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not re-open such question; meaning thereby, as

question relating to Wakf property has already been decided vide judgment and decree dated 01.12.1975 passed in civil appeal no.110/13 of 1975 by the court of Shri O.P. Gupta, the then HCS, Senior Sub Judge (exercising enhanced appellate powers), Ambala, which had attained finality, the same cannot be re-agitated and proceeding to trial on the basis of plaint which has not been filed on the same cause of action on which civil suit no.446 dated 15.06.2006/21.11.2012 was filed and was allowed to be dismissed as withdrawn vide order dated 16.05.2013, would a futile exercise and thus, the plaint is liable to be rejected under Order 7 Rule 11 CPC and is ordered accordingly. File be consigned to record room after due compliance.”

I have heard learned counsel for the parties at length and with their able assistance gone through the documents filed in the paper book.

It is not disputed before me that in the previous litigation which was decided in the year 1975, defendant No.1 was declared owner and it was finally decided that the property in dispute is not a wakf property.

As per Section 7(1)(b) of the Wakf Act, 1995, any such question which has been heard and decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not re-open such questions. For convenience of Section 7 is extracted as under:-

“7. Power of Tribunal to determine disputes regarding

(1) If, after the commencement of this Act, [any question or dispute] arises, whether a particular property specified as [waqf] property in a list of [acqaf] is [waqf] property or not, or whether a [waqf] specified in such list is a Shia [Waqf] or a Sunni [Waqf], the Board or the mutawalli of the [waqf], [or any person aggrieved by the publication of the list of auqaf under section 5] therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the

question and the decision of the Tribunal thereon shall be final:

Provided that-

(a) in the case of the list of [acqaf] relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the publication of the list of [acqaf]; and

(b) in the case of the list of [acqaf] relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any [waqf] shall be stayed by any Court, Tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of [acqaf] and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a Civil Court under sub-section (1) of section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

[(6) The Tribunal shall have the powers of assessment of

damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.]”

Once the Act under which the Tribunal has been constituted clearly bars the jurisdiction of the Tribunal to entertain and re-open such question which had been finally decided by the Competent Court before the commencement of such Act, this Court does not find any good ground to interfere with the order passed by the Court.

Revision petition is dismissed.

02.12.2017

Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No