

CR No 3424 of 2016 (O&M)

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

**CR No 3424 of 2016 (O&M)
Date of Decision: 16.2.2017**

Haryana Waqf Board, Ambala Cantt. through its Estate Officer

.....Petitioner

Vs.

Prem Singh Jogi

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ghulam Nabi Malik, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant revision petition, at the hands of unsuccessful plaintiff, is directed against impugned judgment and decree dated 6.2.2016 passed by learned Additional District Judge/Wakf Tribunal, whereby suit for possession filed by the plaintiff-petitioner was dismissed.

Brief facts of the case, as noticed by learned Wakf Tribunal, in para 2 of the impugned judgment, are that plaintiff was body corporate, having a perpetual succession and common seal. All the Wakf properties falling within the area of Haryana State were managed and governed by the plaintiff board. It was averred that, the Administrator and CEO of the plaintiff board had authorised the Estate Officer, Ambala, to file the present suit for possession against the defendant. It was averred that, mosque in question was Wakf property and its ownership vest in the almighty God for the purpose of title and in the plaintiff board for the purposes of

CR No 3424 of 2016 (O&M)

administration, management and control and the same very fact was also supported by the gazette notification dated 15.1.1972 which was prepared on behalf of Survey done by the then Commissioner, Ambala Division, by exercising the powers mentioned in Wakf Act, 1954/1995. It was further averred that suit property was Wakf in the name of mosque. Its structure was in existence from the time immemorial till February 2010 and same was used for purposes of offering Namaz/prayer by the people of locality till 1998. It was further averred that the defendant illegally, unlawfully and unauthorizedly occupied some vacant portion of suit property in the year 1996 and constructed two rooms for residence and thereafter started obstructing the Muslims of the village in offering Namaz/prayer on suit property.

It was further averred that the matter was brought to the notice of respectables of the village as well as Panchayat. A meeting was held on 22.5.1996 and defendant had agreed to vacate the portion of suit property/mosque under his unauthorized possession and the Panchayat of village had also agreed to give him alternative site but as the defendant was infected with greed, therefore, he did not obey the said writing dated 22.5.1996 and did not vacate the portion of suit property. It was further averred that Muslims of the village furnished same facts in writing to the administration, police and to the plaintiff board but in vain. It was further averred that in the night on 14.3.1998, the defendant alongwith family members and some other miscreants, demolished portion of the mosque building in order to forcibly and illegal grab the suit property and also in order to insult the Muslim religion by destroying their place of worship, thus, wounded the religious feelings of the Muslims.

Applications to this effect were also written to the administration

CR No 3424 of 2016 (O&M)

but to no effect. It was further averred that earlier a suit for possession was filed by the then composite Punjab Wakf Board which was bifurcated on 1.8.2003. However, said suit was dismissed on 22.8.2009 due to technical reasons as the dimensions/identification of suit property/mosque Rozawali was not filed along with suit. Revision thereof was also dismissed. It was further averred that in March 2009, the defendant had demolished entire remaining structure of suit property/mosque in order to grab entire suit property and started raising construction thereon. It was further averred that one of local Muslims namely Iqbal Mohammad filed a suit for permanent injunction restraining Prem Singh Jogi-defendant not to raise any sort of construction over suit property and the court had passed interim stay order before deciding the ad interim injunction application and the said suit is still pending in the court of learned Civil Judge (Junior Division), Ambala, however, despite the stay order, defendant had completed the construction work and consequently facing a contempt petition.

It was further averred that defendant had neither any right to forcibly, illegally, unlawfully, unauthorizedly occupy and retain any portion or mosque building/suit property, nor to raise construction thereon or to demolish any portion of the same. It was further averred that suit property was liable to be vacated from the defendant and vacant possession thereof was liable to be restored to the plaintiff Board for use and occupation of the Muslims for its original purpose. It was further averred that the defendant had been requesting many times to hand over the vacant possession of suit property to the plaintiff board by removing his illegal, unauthorized construction, but flatly refused. It was further averred that defendant threatened the plaintiff to raise further construction over suit property, then alienate and transfer its possession to another person, further changing

CR No 3424 of 2016 (O&M)

nature and existing position thereof, for which he had no right, title of any kind. It was further averred that as the defendant was enjoying the property of plaintiff-board without any right, title and interest and had further demolished the construction of mosque amounting to ₹20 lac and illegally raised construction over suit property, therefore, plaintiff was entitled for mesne profits to the tune of ₹10,000/- per month for use and charges since 2009 till handing over of vacant possession of suit property to the plaintiff alongwith damage caused to the structure of the mosque.

Defendant was served and as a consequence thereof, he put appearance. Defendant filed his contesting written statement, raising more than one preliminary objections. No replication was filed by plaintiff. On completion of pleadings of parties, learned Wakf Tribunal framed the following issues.

- “1. Whether the plaintiff is entitled to decree for possession as prayed for?OPP
2. Whether the plaintiff is entitled to decree for permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiff is hit by the doctrine of res judicata?OPD
4. Whether suit of the plaintiff is barred by limitation? OPD
5. Whether suit is barred under Order 2 Rule 2 CPC? OPD
6. Whether the plaintiff has no locus standi to file the present suit?OPD
7. Whether the suit is not maintainable in the present form?OPD

8.Relief.”

In order to prove their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned Wakf Tribunal came to be conclusion that plaintiff has failed to prove its case. Neither plaintiff was found to have any locus standi to file the suit, nor suit was found maintainable in the present form. Suit was also found hit by the principle of res judicata. Accordingly, suit of the plaintiff was dismissed vide impugned judgment and decree dated 6.2.2016. Feeling aggrieved, plaintiff has approached this court by way of present revision petition.

Heard learned counsel for the petitioner.

During the course of hearing, when specifically and repeatedly asked to explain as to why the decision on merits between these very parties in earlier suit bearing No. 1 of 12.6.1998, qua this very suit property, would not apply against the plaintiff-petitioner as res judicata, particularly when all the conditions for applicability of principle of res judicata were fulfilled, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the learned Wakf Tribunal committed no error of law, while passing the impugned judgment and the same deserve to be upheld.

It is the settled proposition of law that petitioner being the plaintiff, onus was on it to prove its case by leading cogent and convincing evidence, however, petitioner failed to do so. Contention raised by learned counsel for the petitioner that defendant could not justify his unauthorized possession on the suit land, has been found wholly misplaced and not worth acceptance. It is so said, because plaintiff cannot be allowed to take

CR No 3424 of 2016 (O&M)

advantage of weakness of defendant's case to get its suit decreed. Plaintiff has to prove its case. In the case in hand, plaintiff-petitioner miserably failed to discharge its onus on issues No.1 and 2. On the other hand, defendant duly discharged his onus on crucial issues No. 3, 6 and 7. Accordingly, the suit was rightly dismissed by learned Wakf Tribunal by passing the impugned judgment and decree, which deserve to be upheld, for this reason also.

Coming to the issue, whether the suit filed by the plaintiff-petitioner was hit by the principle of res judicata or not, this Court is of the considered opinion that present suit was hit by the principle of res judicata. It is a matter of record and not in dispute that earlier civil suit No.1 of 12.6.1998, filed by the present plaintiff-petitioner itself against the present respondent, qua this very suit property, came to be dismissed on merits vide judgment and decree dated 22.8.2009. This judgment and decree dated 22.8.2009 are available on record in the form of Ex. D4 and D5.

Under these circumstances, it can be safely concluded that there was no scope to ignore the abovesaid judgment and decree between these very parties qua this very suit property, because earlier judgment and decree dated 22.8.2009 had already attained finality between the parties much before filing of the present suit. In this view of the matter, it is unhesitatingly held that learned Additional District Judge/Wakf Tribunal was well justified to record its cogent findings on issue No. 3, holding that present suit was hit by the principle of res judicata. Under these undisputed facts and circumstances of the case, findings recorded by learned Wakf Tribunal on issues No.1, 2 and 3 deserve to be affirmed and the same are upheld, accordingly.

Similarly, findings recorded by learned Wakf Tribunal on issues

CR No 3424 of 2016 (O&M)

No. 6 and 7 have been found based on sound reasons and the same deserve to be affirmed. In fact, plaintiff-petitioner miserably failed to prove its pleaded case by leading cogent and convincing evidence. The cogent findings recorded by learned Wakf Tribunal in para 10 and 11 of the impugned judgment, which deserve to be noticed here, read as under:-

“10. After hearing learned counsels for the parties, it can be ascertained from the perusal of the Gazette of India published on January 15, 1972 that at serial No. 352 of the list of Sunni Wakfs existing in composite Punjab State u/s 5 (2) of the Central Government's Wakf Act, 1954 (29 of 1954) read with Rule 4 of the Punjab Wakf Rules, 1964, the land measuring 10 marlas 05 sarsais 06 square feet, i.e. Suit land is shown under the unauthorized possession of Charan Dass son of Lachhman Dass and there are neither pleadings nor evidence on record to show hat how and when the land is suit came in the possession of the defendant Prem Singh, as alleged by the plaintiff. It will not be out of place to mention here that in civil suit bearing No. 01 of 12.6.1998, titled as Punjab Wakf Board, Ambala Canntt, through its Estate Officer, Ambala Versus Prem Singh Jogt son of Ratti Ram, resident of village Durana, Tehsil and District Ambala, the plaintiff relied upon site plan as Ex.D1 (as Ex.P10 in that civil suit), whereas the defendant had relied upon site plan as Ex.D6 in that civil suit and said civil suit was dismissed vide judgment and decree dated

22.8.2009 as Ex.D4 and as Ex.D5 by the then learned Addl. District Judge/Wakf Tribunal, Ambala. It is also pertinent to mention here that, the plaintiff has remained unexamined in the present case and it is settled law that plaintiff has to stand on its own legs and cannot take advantage of weakness of the case of the defendant. Reference can be made to **Punjab Urban Planning and Development Authority Versus M/s Shiv Saraswati Iron & Steel RE-rolling Mills 1998 (1) PLJ 643 (SC)** wherein Hon'ble Apex Court has held that, "plaintiff must succeed or fail on his own case. He cannot take advantage of weakness of defendants' case to obtain decree". Though, the plaintiff has relied heavily upon compromise as Ex.P7 also bearing the signatures of Surinder Mohan, DW1; however, from the testimony of Surinder Mohan, the DW1 and Prem Singh, the DW3, it is proved that said property was vacated by Prem Singh, the defendant and presently is lying vacant. It is apt to mention here that in the site plan as Ex.D6, no Masjid was shown to be in existence and the plaintiff has not disputed the said site plan and now the plaintiff has relied upon the said site plan in the form of site plan as Ex.P1 and thus, the plaintiff has miserably failed to prove that the land in suit in the property known as Mosque Rozawali. In view of above discussion, both these issues are decided against the plaintiff and in favour of the defendant.

Issue No.3.

*11. Public policy on which res judicata is predicated is that the party who has raised any aspect in a litigation and has had an issue cast thereon, has led evidence in that regard and has argued on the point, remains bound by the crucial conclusions once they attain finality, as no party must be vexed twice for the same cause. The conditions to be fulfilled for applicability of res judicata are: (i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directed and substantially in issue either actually (explanation Iii) or constructively (explanation IV) in the former suit; (ii) The former suit must have been a suit between the same parties or between the parties under whom they or any of them claim-Explanation VI is to be read with this condition; (iii) The parties as aforesaid must have litigated under the same title in the former suit; (iv) the court which decided the former suit must have been a court competent to try the subsequent suit or the suit in which such issue has been subsequently raised-Explanation II is to be read with this condition; (v) the matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the first suit-Explanation V is to be read with this condition. Reference can be made to ***Sri Gangai Vinayagar Temple & Anr. Vs. Meenakshi****

Ammal & Ors. 2014 (3) Apex Court Judgments 763

(SC). As already discussed above, civil suit bearing No. 01 of 12.6.1998, regarding same property was filed by the Punjab Wakf Board, Ambala Cantt., through its Estate Officer, Ambala against Prem Singh, the present defendant and the same was dismissed vide judgment and decree dated 22.08.2009 by the then learned Addl. District Judge/Wakf Tribunal, Ambala, and learned counsel for the plaintiff has not disputed this fact that present suit pertains to the same property which was subject matter of the previous suit also. Thus, when the matter directly and substantially in issue in the present suit between the same parties has already been decided by the competent court in a former suit, the present suit is hit by the principles of res judicata. Accordingly, this issue is decided in favour of the defendant and against the plaintiff.”

A bare reading of the abovesaid findings would make it crystal clear that learned Wakf Tribunal rightly followed the law laid down by the Hon’ble Supreme Court, in the cases referred in para 10 and 11. Once the impugned judgment has been found in consonance with the law laid down by the Hon’ble Supreme Court, no fault can be found with the abovesaid findings recorded by learned court below and the same are accordingly upheld.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned judgment passed by the learned Wakf Tribunal, warranting interference at

CR No 3424 of 2016 (O&M)

the hands of this court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, findings recorded by learned court below have been found factually correct and legally justified because of which the impugned judgment deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant civil revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

16.2.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No