

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

**RSA No.2943-1988
Date of decision :-23.3.2017**

Punjab Wakf Board

..... Appellant

Versus

Karam Chand and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Argued by : Mr. Jai Bhagwan, Advocate
for the appellant.

None for the respondents.

H.S. MADAAN, J.

This appeal is directed against the judgment and decree dated 10.8.1988 passed by the Court of learned Additional District Judge, Hisar, vide which he had dismissed the appeal filed by plaintiff – Punjab Wakf Board, Ambala Cantt., being aggrieved by the judgment and decree dated 5.2.1988 passed by learned Senior Sub-Judge, Hisar dismissing suit for possession filed by the plaintiff – Punjab Wakf Board, Ambala Cantt. against defendants Karam Chand and another.

The plaintiff, who is appellant before this Court prays that the appeal filed by it be accepted, the impugned judgments and decrees passed

by the Courts below be set aside and suit filed by it be decreed.

Briefly stated, facts of the case are that plaintiff – Punjab Wakf Board, 50 Staff Road, Ambala Cantt., through its Field Officer/Estate Officer Sh.Abdul Sattar had brought a suit against defendants Karam Chand son of Mehnga Ram and Sukh Ram son of Nanka, both residents of Kabristan (Khasra No.915), Barwala, Tehsil and District Hisar, seeking possession of vacant land after demolition of the unauthorized construction, whatsoever, and removing the mulba etc. over site $52 \times 88 \frac{1}{2} = 4602$ depicted in the site-plan annexed with the plaint and situated at Kabristan, Barwala forming part of Khasra No.915, as per the jamabandi for the year 1963-64 of Barwala, District Hisar bounded as under:-

North : House of Lalji
South: House of Karam Chand & Lal Chand
East: Road
West: House of Ram Sarup

(Hereinafter referred to as 'the suit property').

Inter alia, in the plaint, the plaintiff had contended that the property in question happens to be Wakf property as it was 'Gair Mumkin Kabristan' and used as such for the last more than 100 years; that the property in dispute forms part of Khasra No.915 as per the jamabandi for the year 1963-64; that plaintiff Punjab Wakf Board is owner thereof under the provisions of Wakf Act, 1954; that the defendants had entered into unauthorized possession of the property in dispute after migration of Muslim population to Pakistan in the year 1947; that the defendants had constructed *kacha kothas* in the year 1951-52 without any right or interest in the property

and their status is that of trespassers. When the defendants did not accede to the request of the plaintiff Wakf Board to hand over the vacant possession of the suit property that gave rise to a cause of action to the latter bring the present suit.

Notice of the suit was given to the defendants. They were duly served but they did not put in appearance and as such they were proceeded against ex-parte. After recording ex-parte evidence, the suit of the plaintiff was decreed on 8.8.1969. Subsequently, the defendants appeared and moved an application for setting aside the ex-parte decree. That application after contest was dismissed by the learned trial Court, however, in appeal the order passed by the trial Court was set aside and application for setting aside the ex-parte decree was accepted. The trial Court was directed to proceed with the suit accordingly. The defendants then filed written statement denying that the suit property was Wakf property or that it was part of Khasra No.915 or that it was 'Gair Mumkin Kabristan' and had ever been used as such for the last more than 100 years. The defendants further denied that the suit property vested in Punjab Wakf Board. The defendants challenged the locus-standi of the person bringing suit on behalf of Punjab Wakf Board. According to defendants, the suit land was a vacant site and the defendants had raised construction therein in their own rights within knowledge of the plaintiff and has been in possession thereof for the last 40 years, therefore, they have become owners in their own right; that the plaintiff has no jurisdiction over the Wakf in the State of Haryana and suit property has not been notified under Section 5 of Punjab Wakf Act. The defendants claimed that the suit filed by the plaintiff was barred by time and they have become owners of the property by way of adverse possession and

further taking a legal plea that Civil Court has no jurisdiction to entertain and try the suit and plaintiff was estopped from filing the present suit by its own act and conduct. At the end, the defendants prayed for dismissal of the suit.

The plaintiff filed replication thereby controverted the contents of written statement whereas reiterated the averments made in the plaint.

On the pleadings of the parties, following issues were struck by the learned trial Court:-

1. Whether the plaint has been signed & verified properly by a duly authorized and competent person? OPP.
2. Whether the disputed property is Wakf Property ? OPP.
3. Whether the suit is time barred? OPD.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the plaintiff has no locus-standi to file the suit? OPD.
6. Whether the Civil Court has got no jurisdiction to try the suit? OPD.
7. Whether the defendant has become owner of the disputed property by way of adverse possession? OPD.
8. Relief.

The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

To prove its case, plaintiff – Wakf Board had examined Abdul Hafeez, Estate Officer as PW1, Abdul Sattar, Estate Officer as PW2 and Zahur Ahmad as PW3, besides tendering documents Ex.P1, Ex.P2, Ex.P3, Ex.PW2/A to Ex.PW2/D, Ex.PW3/A and Ex.PX.

On the other hand, defendants examined Deva Ram as DW1, Lalji Ram as DW2 whereas defendant Karam Chand himself appeared in the

witness-box as DW3.

After hearing the arguments, learned trial Court decided issue No.1 in favour of the plaintiff, issue No.2 against the plaintiff, issue No.3 against the plaintiff, issue No.4 in favour of plaintiff, issue No.5 in favour of the plaintiff, issue No.6 against the defendants, issue No.7 in favour of the defendants. As a collective effect of findings on the issues, suit of the plaintiff was dismissed.

Feeling aggrieved by the judgment and decree passed by the learned trial Court (Senior Sub-Judge, Hisar), the plaintiff – Punjab Wakf Board knocked at the door of Additional District Judge, Hisar but was unsuccessful there. The learned Additional District Judge, Hisar vide judgment and decree dated 10.8.1988 affirmed the findings of the trial Court on the issues with the result the appeal was dismissed.

Feeling dissatisfied, the plaintiff – Punjab Wakf Board had knocked at the door of this Court by way of filing the present appeal, notice of which was given to defendants but they failed to appear and offer a contest.

After hearing counsel for the appellant – plaintiff, it comes out that the impugned judgments and decrees passed by both the Courts below are not sustainable and are liable to be set aside by way of acceptance of the appeal.

It may be mentioned here that the Courts below have found that the plaint has been signed and verified properly by a duly authorized person while giving verdict on issue No.1. However, as regards the question whether the suit property is Wakf Property, the decision in that regard was given mainly on the basis that the land in question was never used as

graveyard/Kabristan (burial ground) since 1947. While saying so, reliance was placed upon oral evidence adduced by the defendants. This approach of the learned trial Court was totally wrong. The law is well settled that documentary evidence is best type of evidence taking precedence over the oral evidence. Unfortunately, oral evidence can be easily managed by a party for various considerations whereas the documentary evidence deserves to be given much more weightage. For finding about ownership and possession of land bearing khasra number, the revenue record is best type of evidence since the officials preparing such record in discharge of their official duties have no reason to prepare record contrary to the factual position at the spot. It is for that reason the presumption of truth is attached to entries in the jamabandi though such presumption is rebuttable. However, the presumption does not get rebutted in a light manner by saying a few persons coming forward and deposing orally to a position contradictory to the one reflected in the revenue record. The plaintiff has led enough evidence to show that the suit property is part of Khasra No.915, having native of Gair Mumkin Kabristan coming within the definition of Wakf property. PW1 Abdul Hafeez has categorically deposed in that regard stating that dead bodies of the Muslims used to be buried there and some Kabars (tombs) were there. The plaintiff has produced copy of statement No.1 as Ex.PW2/D prepared during survey and photostat copy of gazette notification regarding survey as Ex.PX, beside copy of jamabandi for the year 1963-64 as Ex.P2 in support of its contentions. But all those documents were conveniently swept under the carpet by the trial Court and first Appellate Court and acting on assumptions and oral assertions by the DWs which they had every reason to make so as to defeat the claim of plaintiff, the trial Court came to an

inference that dead bodies were not buried there after 1947 and no tomb was there after 1947 which inference was wrongly affirmed by the first Appellate Court . The trial Court has noted that copy of statement No.1 Ex.PW2/A reveals that at the time of survey, there was village *abadi* in the suit land and it was not being used as Kabristan. But then the fact cannot be lost sight of that nature and character of land cannot change in such a manner. Learned counsel for the appellant has referred to citation “**Punjab Wakf Board, Ambala Cantt. Versus Punjab State through The Collector, Hoshiarpur**”, ***The Punjab Law Reporter Vol.CXVII(1997-3) Page 155*** by this Court wherein it was observed that when in the revenue record property in dispute is recorded as 'Gair Mumkin Kabristan' and in possession of 'Ahle Islam', that by itself goes to show that the property in dispute became the Wakf property by user. It was further observed that list of Wakfs published in the Gazette shall be final and conclusive qua the Board, the Mutawallis of the Wakfs or any other person interested therein. In “**Syed Mohd. Salie Labbai (Dead) by L.R.s and others Versus Mohd. Hanifa (Dead) by L.R.s and others**”, ***AIR 1976, Supreme Court 1569*** discussing the rules for determination as to whether a grave-yard was private or public under Muslim Law, it was observed as under:

Under the Mohomedan Law the grave-yards may be of two kinds a family or private grave-yard and a public grave-yard. A grave-yard is a private one which is confined only to the burial of corpses of the founder, his relations or his descendants. In such a burial ground no person who does not belong to the family of the founder is permitted to bury his dead. On the other hand, if any member of the public is permitted to be buried in a

grave-yard and this practice grows so that it is proved by instances adequate in character, number and extent, then the presumption will be that the dedication is complete and the grave-yard has become a public grave-yard where the Mahomedan public will have the right to bury their dead. It is also well settled that a conclusive proof of the public grave-yard is the description of the burial ground in the revenue records as a public grave-yard.

Once a Kabristan has been held to be public grave-yard then it vests in the public and constitutes a Wakf and it cannot be divested by non-user but will always continue to be so whether it is used or not.

The entries in the jamabandi showing suit property as 'Gair Mumkin Kabristan' do not get rebutted in such a manner as the Courts below have tried to do. This property certainly comes within the definition of Wakf property. Furthermore, as per the provisions of Wakf Act, a Wakf does not cease to be a Wakf by reason only of the user having ceased irrespective of the period of such user. The trial Court has observed this fact in para No.12 of the judgment though stating that provision was inserted in the Wakf Act, 1954 by amendment of provision 3(e)(i) by Amendment Act 69 of 1984, as such it cannot have a retrospective effect and further there was no evidence that a Wakf had come into existence by user as such there was no question of its ceasing or not to be Wakf. The amendment as inserted is applicable to the present case which is pending for several decades including the appeals. Appeals are nothing but continuation of the suit, therefore, amendment is applicable and plaintiff has successfully

established that the property in question comes within the definition of Wakf property. The defendants had failed to show any right or concern with the suit property. Though the defendants had pleaded that they had become owner by way of adverse possession and the trial Court has accepted that plea of defendant but in view of the latest law laid down by the Apex Court this plea is not sustainable. Hon'ble Supreme Court in citation **"Gurudwara Sahib Versus Gram Panchayat Village Sirthala and another"**, 2013 (4) **R.C.R.(Civil) 703** has observed that a person in adverse possession of the property cannot seek declaration to the effect that such adverse possession has matured into ownership, only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence. In **"Jeet Singh deceased represented by his LRs Varkha Kaur and others Versus Ranjeet Singh and others"**, 2016 (3) **PLR 597**, it is clear that a person cannot claim to have become owner of the suit property by way of adverse possession.

The defendants are obviously trespassers. They were unable to bring cogent, convincing evidence on record to show that their possession has been open, notorious, continuous and hostile to the knowledge of true owner for a period of 12 years or more. They cannot resist the suit taking this plea against the plaintiff which is proved to be true owner of the property. Furthermore, Section 66 of the Wakf Act clearly provides that the limitation for seeking possession of Wakf property is 30 years. In view of detailed discussion above, the suit property has been found to be covered by definition of Wakf property. Therefore, the suit having been filed in 1969 even if the claim of defendants that they were in possession since 1951-52 is taken at its face value, the suit is within limitation and is certainly not

time barred. The finding of the trial Court in that regard is wrong. The trial Court has found that plaintiff has locus standi to bring the suit and suit in the present form was maintainable and further that the Civil Court has jurisdiction to entertain and try the present suit.

The judgments and decrees passed by the Courts below cannot stand judicial scrutiny, those are liable to be set aside by way of acceptance of appeal. Accordingly, the appeal is accepted, the impugned judgments and decrees passed by the First Appellate Court and trial Court are set aside, resultantly, the suit of the plaintiff for possession of vacant land after demolition of the unauthorized construction, whatsoever, and removing the malba etc. over site $52 \times 88 \frac{1}{2} = 4602$ depicted in the site-plan annexed with the plaint and situated at Kabristan, Barwala forming part of Khasra No.915, as per the jamabandi for the year 1963-64 of Barwala, District Hisar is decreed with costs.

(H.S.MADAAN)
JUDGE

Dated:23.3.2017
Brij

1. Whether reportable? No / Yes
2. Whether speaking / reasoned? No / Yes