

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

**RSA No.1845 of 2016 (O&M)
Date of Decision: 03.11.2017**

Sialkot National High School and another

... Appellants

Versus

Punjab Wakf Board and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Mandeep Singh Sachdev, Advocate,
for the Appellants.

ANIL KSHETARPAL, J. (ORAL).

The plaintiffs/appellants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the property.

It is the case of the plaintiffs that they are running a school in the adjoining land and this place is being used for playground. It was pleaded that the plaintiffs had taken the land on lease in the year 1965 and since then various lease deeds have been executed for renewal of the lease.

The defendants i.e. the Wakf Board contested the suit and took objection that the civil Court has no jurisdiction, the suit is not properly instituted and the last lease deed in favour of the plaintiffs was of 30.03.2000. It is further pleaded that neither any lease money has been paid nor any fresh lease has been executed. Defendant No.1 had served a notice

under Section 106 of the Transfer of Property Act calling upon the plaintiffs

to vacate and hand over possession of the leased property. On the basis thereof, the plaintiffs filed the present suit.

It was pleaded by the plaintiffs that Defendants No.1 and 2 i.e. the Wakf Board and its officials came to take forcible possession and that is how the suit for permanent injunction was filed.

Learned trial Court after appreciating the evidence and after noticing the documents Ex.D7 to D18 returned a finding of fact that the plaintiffs themselves have been giving affidavits enabling Wakf Board to lease out some part of the property in possession of the school. The affidavits given by the Chairman of the plaintiffs are Ex.D6, D9, D11 and D14. Further the trial Court noticed that the suit has not been properly instituted because notice under Section 89 of the Wakf Act 1995 (for short, the 1995 Act), which is a precondition for filing a suit, has not been served on the Wakf Board. Learned trial Court further noticed that since the plaintiffs have failed to prove any fresh lease deed or payment of lease money, they are not entitled to any injunction.

Appeal filed by the plaintiffs was also dismissed on the similar grounds.

I have heard learned counsel for the appellants. He has submitted the following submissions:-

(1) He submits that may be the suit is barred against Wakf Board/defendant No.1 but the suit is not barred due to lack of notice against defendant No.2, who is an official of the Wakf Board.

(2) The plaintiffs are lessee over the land and the Wakf Board can only take possession only in accordance with law.

(3) The plaintiffs have only filed the suit with respect to small portion of the land i.e. 1/3rd of the original property leased out to the school.

I have considered the submission of the learned counsel for the appellants and with his able assistance gone through the judgements passed by the Courts below as well as the documents which were produced by him during the course of arguments.

The suit was filed primarily against the Wakf Board. Defendant No.2 was impleaded by name as an Estate Officer. The plaintiffs had prayed for injunction against the defendants. Therefore, the main defendant in the case was the Punjab Wakf Board. As per Section 89 of the 1995 Act, no suit can be instituted against the Wakf Board without service of prior notice.

Learned counsel for the appellants has relied upon the judgement passed by this Court, reported as *Arya Prithinidhi Sabha (Punjab), Jullundur Now Haryana Sirsa Vs. Punjab Wakf Board, Ambala Cantt. and others, 2000(1) PLR 92* to contend that the suit could continue against defendant No.2.

I have considered the submission of the learned counsel for the appellants and gone through the judgement passed by this Court.

In the aforesaid judgement, this Court was deciding revision petition against the order rejecting the plaint. This Court found out that the

suit could continue against defendants No.2 to 10. The facts in that case were entirely different. The aforesaid judgement does not as a proposition of law, lays down that if in a suit apart from the Wakf Board, its officials are also impleaded as a party then the suit against such officials can be maintained even without notice. Learned counsel for the appellants has further referred to the judgement passed by the Himachal Pradesh High Court reported as *The Jawali Harijan Co-operative Agricultural Society Vs. Maghu*, 1992 AIR (H.P.) 34. A careful reading of this judgement shows that the Court did not hold as sought to be projected. Therefore, findings of the Courts below that the suit was not maintainable is upheld.

The next submission of the learned counsel for the appellants is that the plaintiffs are lessees over the land and, therefore, they can only be dispossessed in accordance with law. The plaintiffs have filed a suit for permanent injunction. Lease in favour of the plaintiffs was terminated by the Wakf Board by serving a notice under Section 106 of the Transfer of Property Act, calling upon the plaintiffs to hand over possession of the leased property. The plaintiffs have not pleaded any protection under the rent laws. The plaintiff itself has been giving affidavits enabling the Wakf Board to lease out property to various other persons. It is further established from the file that since the year 2005, the plaintiffs have not paid even a penny. In these circumstances, the plaintiffs have no right to continue in possession of the property in dispute.

The last submission of the learned counsel for the appellants is that the plaintiffs had filed a suit only with respect to small portion and,

therefore, at least the portion possessed by the plaintiffs should be protected.

I have considered the submission. Once the plaintiffs have no right, title or interest in the property and the lease in favour of the plaintiffs has come to an end, they have no right to continue in possession. The lease has further been terminated on the service of notice under Section 106 of the Transfer of Property Act.

For the reasons recorded above and also for the reasons recorded by the Courts below, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

The appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

03.11.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No