

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

**RSA No.3515 of 2015 (O&M)
Date of Order: 30.08.2017**

Chatra Devi

..Appellant

Versus

Piara and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Verma, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral).

Defendant No.1 is in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff-respondents filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the land measuring 11 kanals. It was claimed by the plaintiff that he is in peaceful possession of the property and his possession has already been upheld in an earlier suit vide judgment and decree dated 19.02.2002.

Defendant No.1, on the other hand, claimed that the disputed property is a Wakf property and defendant is tenant of the Wakf Board.

Learned trial Court after appreciating the evidence available on the file, held that the plaintiff is in peaceful settled possession. Learned trial Court further referred to the decision of the Sub Divisional Magistrate dated 29.09.1997, Ex.P1, whereby the possession was delivered to the plaintiff and his brother. Learned trial Court further referred to the revenue record which proves that the plaintiff and his brother are in continuous settled

possession of the property in dispute.

Defendant no.1 filed the first appeal. Learned first appellate Court after re-appreciating the evidence available on the file, upheld the judgment of the learned trial Court.

Counsel for the appellant has submitted that the dispute in the present case is with respect to Wakf property and, therefore, the jurisdiction exclusively vest with the Wakf Tribunal as constituted under the Wakf Act, 1995. He has further submitted that the plaintiff has failed to prove that in what capacity the plaintiff is in possession and, therefore, no injunction could be granted. Learned counsel for the appellant has further argued that the suit is bad for non joinder of necessary parties.

I have considered the submissions of learned counsel.

In the present case, the dispute is not whether the property is Wakf property or not. Wakf Tribunals are constituted under Section 85 of the Wakf Act, 1995. The jurisdiction of Wakf Tribunal is specified in Sections 6 and 7 of the Wakf Act, 1995. This is a simpliciter suit for permanent injunction. Wakf Board is not a party to the suit. In these circumstances, in my considered view, jurisdiction of the Civil Court cannot held to be barred because the plaintiff is only praying for protection of his possession from the defendants.

Learned counsel for the appellant has argued that the suit is bad for non joinder of parties.

I have considered the submission. The present case is only for protection of possession. The defendants claims to be tenants of the Wakf Board. The plaintiff has not challenged the lease deed in favour of the defendants. Defendants have not been able to prove the fact that pursuant to

the tenancy, the possession of the land was ever delivered to the defendants. Once the plaintiff is in settled possession, the Wakf Board was not justified in giving the lease of the land to some one else without taking possession from the plaintiff.

Learned counsel for the appellant has further argued that the possession of the plaintiff is illegal and forcible and therefore, plaintiff is not entitled to injunction.

In the present case, plaintiff was delivered possession pursuant to an order passed by a competent authority i.e. Sub Divisional Magistrate on 29.09.1997. Still further possession of the plaintiff was upheld in an earlier litigation decided on 19.02.2002. In these circumstances, the plaintiff is in peaceful and settled possession. The possession of the plaintiff can only be disturbed in accordance with law.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

August 30, 2017
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(ANIL KSHETARPAL)
JUDGE

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