

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**RSA No. 4646 of 2014 (O&M)
Decided on: 30.10.2017****Yaseen****.....Appellant****versus****Laldin and Ors.****.....Respondents****CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. R.S. Budhwar, Advocate
for the appellant.Mr. S. S. Dinapur, Advocate
for respondents No.1 to 10.*********RAJBIR SEHRAWAT, JUDGE (ORAL)**

This is the second appeal filed by one of the plaintiffs who is also the successor-in-interest of the other plaintiff-Jahangir, against the concurrent judgements and decrees passed by the Courts below. For convenience the parties shall be referred here as the plaintiff and defendant as they were described in the original sheet .

The brief facts of the case are that the plaintiffs filed a suit for permanent injunction restraining the defendants from interfering in any manner, whatsoever, in the peaceful, actual, physical and cultivating possession of the plaintiff over the land measuring 10 kanals 10 marlas bearing Khewat No.114, Khatauni No.127, Khasra No.19//11/2 (5-16), 19//20 (4-14), situated within the revenue estate of Village Islamgarh, Tehsil Jagadhri, District Yamuna Nagar. It was claimed that the Jamabandi for the year 1999-2000 shows the plaintiffs to be in possession. It was further claimed that originally the suit land was allotted to the plaintiff by Wakf Board when it was Banjar-Kadeem but after spending huge amount of money the same was made worth cultivation by the plaintiffs. Now the defendants are interfering into the

peaceful possession of the plaintiff. Hence the suit was filed.

Upon notice, the private defendants had filed written statement taking routine preliminary objections. On merits, it was pleaded that the suit property was laying vacant and is being used as burial ground by the residents of the village. It was further alleged that initially the suit property was lying waste but it was given on lease to Moju son of Barkhu. However, when the residents of the village objected to its cultivation then the Wakf Board decided to reserve this property as a burial ground. Therefore, notification was issued for reserving this property as a burial ground. It was further claimed that they being the residents of village have every right to use this property as burial ground. It was further alleged that the plaintiffs want to take forcible possession of the suit land.

Defendant No.11-Wakf Board filed separate written statement taking preliminary objections regarding the jurisdiction of the Civil Court being barred under Section 85 of the Wakf Board Act 1995. Still further, on merits, it was pleaded that the suit property is lying vacant and is being used as burial ground by the Mohammedan of the village. But, it was admitted that initially the suit property was given on lease for a fixed period to one Moju son of Barkhu. However, this act of the Wakf Board in leasing out the land for cultivation was not appreciated by the residents of the village and the Board received representation from the residents in this regard. Finally it was decided by the respondent Board that the land shall be reserved only for the purpose of burial ground. The remaining averments made in the plaint were also denied by the Wakf Board.

Parties led their respective evidence.

The plaintiff led in evidence the documents Ex.P1 to P4 to show the actual possession of the plaintiffs over the suit property. Besides this, the

oral evidence was also led by examining PW1- Roshandeen, PW2-Omi Chand, PW4-Sukhvinder Singh and PW5- Yasin. All these witnesses deposed regarding the possession of the plaintiffs over the suit property. On the other hand, the Board examined one witness Vilayat Mohammad as DW-1 to deny the claim of the plaintiffs. The Board led documentary evidences also regarding declaration of the property as burial ground and regarding the reservation of the land as such. However, the Board also proved in evidence as Ex. P-3, the lease deed in favour of Moju. The private defendants also led oral evidence in their favour and claimed that the land is being used as burial ground by the Muslim Community. After hearing the parties and appreciating the evidence, the trial Court dismissed the suit filed by the plaintiffs.

Aggrieved against the judgement and decree passed by the trial Court, the present appellant/one of the plaintiffs filed the appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the plaintiff / present appellant Yaseen.

While dismissing the appeal filed by the present appellant, lower Appellate Court recorded a finding that no revenue record has been placed on file, which could show that the plaintiff was ever given land in question on lease directly or through his father. Still further, the lower Appellate Court recorded that the revenue record shows the Wakf Board as the owner of the suit land. However, the lower Appellate Court recorded a finding that Moju son of Barkhu was given the land in question on lease. And the revenue record also shows that the plaintiff-Jahangir remained in cultivating possession of the same, but through the above said Moju. However, the lower Appellate Court held that since the land is under the ownership of the Wakf Board, therefore, the plaintiffs could not be granted injunction. Regarding the possession, the lower Appellate Court recorded that the one of the plaintiffs (Roshandeen),

while appearing into the witness box as PW-1 has admitted that the defendant were interfering with the possession and they were causing damaged to their crop and therefore, it means that it was admitted on behalf of the plaintiffs that possession of land was forcibly taken away by the defendants. Hence, the lower Appellate Court treated the plaintiffs to be not in possession treating the same as having been snatched by the defendants.

Arguing the case, learned counsel for the appellant has submitted that since it was suit for injunction, therefore, even if the plea of plaintiffs regarding ownership is not proved from the record, still he has got a right to be protected against a forcible dispossession of the suit property; being in possession of the same. Still further, it was pointed out by the learned counsel for the appellant that the document Ex. P1 which is the Jamabandi for the year 1999-2000 clearly shows the plaintiffs to be in possession of the suit property; as cultivator of the same. Ex.P.2 which is as Girdawari regarding this suit land also shows Jahangir i.e. the father of the present appellant to be in cultivating possession of the land. Ex.P-4 which is another Jamabandi for the year 1989-90 shows the plaintiffs to be in cultivating possession, of course, under the lessee Moju. Hence, the counsel for the appellant submits that the possession of the plaintiffs over the suit property is duly proved as per the evidence led on the file.

Counsel for the appellant has further pointed out that even DW1-Vilayat Mohammad, who is examined by the Wakf Board as a witness, has admitted the possession of the plaintiffs over the suit land, although, he is saying that the same was later on declared to be a burial ground. It is further, submitted by the counsel that even DW-1 has produced the Pattanama Ex.D-3 to show that the land, in fact, was given of to the Moju on lease under whom the plaintiffs is recorded to be in cultivating possession. Therefore, in any

case, the possession of the plaintiffs is shown over the suit land.

On the other hand, learned counsel for the respondents has submitted that the land stands declared as a burial ground by issuing the notification by the competent authorities. The plaintiffs have not challenged that notification. And hence it is rightly being used as a burial ground. Counsel for the respondents further submitted that even the plaintiffs are challenging the revenue entries regarding the tenancy in favour of Moju. Counsel further submitted that since the plaintiffs have claimed the suit land, as having been allotted to them and they have failed to prove their title, therefore, they cannot be granted even the injunction against their dispossession.

Having heard the argument of the parties and on perusal of the record, with the able assistance of the counsel of the parties, this Court is of the considered view that the arguments raised by the counsel for the appellant deserves accepted. It has come on record by way of the Jamabandi and Khasra Girdawari that the plaintiffs have been in cultivating possession of the suit land. Although the plaintiffs, originally, claimed to be the allottee of the suit land and they further claimed that Moju had forcibly entered into the suit land; but they failed to prove their allotment. However, the fact remains that they are shown to be in possession of the suit property. Even the respondent-Wakf Board has not denied the fact that the land was given to Moju. The plaintiffs are shown to be in cultivating possession under Moju only. Therefore, the claim of the plaintiffs is corroborated even by the written statement filed by the Wakf Board that they are in cultivating possession; as indicated by the revenue record.

Otherwise also, the plaintiffs have led sufficient evidence in the form of oral evidence by PW1 to PW4 who have deposed categorically that it is the plaintiffs who are in actual possession of the suit land. Not only that

even DW1- Vilayat Mohammad has admitted in cross-examination that the land is in possession of the Moju. Since Moju has not even come forward to claim the possession and the revenue entries shows the plaintiffs to be in possession under Moju, therefore, the witness of the Board, indirectly, has also admitted the possession to be with the plaintiffs as the representative of Moju as recorded in the revenue records and not with the Board. Hence, by any means, the possession of the plaintiffs over the suit property is established as per the evidence led on the file.

Learned counsel for the private respondents has submitted that since the plaintiffs have admitted that possession had been taken away from them, therefore, no injunction can be granted in favour of the plaintiffs. Hence, this suit has to be dismissed. However, this contention of the learned counsel for the respondents cannot be accepted.

The Hon'ble Supreme Court rendered in 2003 (2) RCR (Civil) 828, titled as Ramesh Chand Ardwatiya Vs. Anil Panjwani has held that even if the plaintiff is not owner but he shows himself to be in possession of the suit land then the person who do not claim a title better than plaintiff cannot be permitted to take away the possession from plaintiff. The plaintiff has every right to protect his possession against the trespasser. Hence, even if the possession is snatched from the plaintiff before filing of the suit, the plaintiffs can claim restoration of the same.

In the present case, defendants No.1 to 10 have failed to show their own title qua the suit land. They do not even claim to be in possession of the suit property. Therefore, defendant No.1 to 10, by any means, do not claim and cannot claim title better than that of the plaintiffs. Therefore, so far as to defendants No.1 to 10, are concerned the plaintiffs have got every right to seek injunction against them. Hence the Courts below have faltered in denying the

injunction in favour of the plaintiffs.

So far as the respondent-Board is concerned, admittedly, the respondent-Board has leased out the land and through that lessee, the present appellant/plaintiffs have been shown to be in possession of the suit property. Therefore, the Board, if it claims to have terminated the lease, should have taken the legal steps to eject the plaintiff or his claimed lessee from the suit land. Even the Board is not authorised to forcibly to take away the land from the plaintiffs.

Argument of the learned counsel for the private respondents and the Board that land is shown to be vacant land since it has been declared to be a burial ground by issuance of the notification, is totally immaterial for the purpose of present controversy. Even if the land is declared to be a burial ground, still the person in possession cannot be forcibly thrown out of the land, merely on the basis of notification. Still the legal proceedings for his ejectment, if permissible under law, have to be undertaken by the respondent-Board. Further more, the plaintiffs have come before the Court only after the Board attempted to use this land as a burial ground, after declaring the same as such by a notification. Therefore, this fact itself is no ground to deny the injunction to the plaintiffs, which was claimed by them on the basis of the existing revenue record showing him in possession of the suit property.

No further argument was raised.

In view of the above, the present appeal is allowed.

The judgements and decrees passed by the Courts below are reversed. Suit filed by the plaintiff is ordered to be decreed.

30th October, 2017

Manju

**[RAJBIR SEHRAWAT]
JUDGE**

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