

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.3571 of 2017

Date of decision:12.7.2017

Balbir Singh and another

...Appellants

Versus

Punjab Wakf Board through its Estate Officer, Hoshiarpur

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mrs.Amandeep Soni, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendants are in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit filed by the plaintiff-respondent for possession by way of ejectment of the defendants was decreed.

Brief facts of the case, as noticed by the learned trial Court in para 1 of its impugned judgment, are that the land in dispute being corporate body and the same vest with the plaintiff as detailed in the head note of the plaint situated in village Manak Tehsil Dasuya, Distt. Hoshiarpur as per jamabandi for the year 2002-2003. It was further alleged that out of the aforesaid 19 kanals 09 marlas, an area of 19 kanals was leased out to the defendants @Rs. 8500/- per month for a year in the year 2003-04 and after that no fresh lease was executed. However, the defendant paid lease money upto 2005-06. It was further alleged that the defendant neither deposited any lease money after 2005-06 and not executed any fresh lease deed and that the possession of the suit land of the defendant after 2005-06 i.e. June 2006

in possession of the defendants without any legal rights because the defendants were lessee for fixed term as per Sections 40 and 41 as well as Punjab Tenancy Act. The defendant had been called upon through legal notice dated 8.6.2009 to pay the arrears of lease money from 2006-07 to 2008-09 @Rs.8500/- per annum, which was agreed lease money but the defendants failed to pay the same. Through this notice the lease has been terminated and the defendants have no legal right to retain the possession of the suit land. It was further alleged that the aforesaid circumstances the plaintiff was entitled to the decree for possession after removal of super structure and tubewell if any and also recover of mesne profit Rs. 25,500/- from 2007-08 to 2009-10.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the defendants are liable to vacate the possession of premises in dispute, after removing super structure?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from the court?OPD
4. Whether the plaintiff is estopped from filling the present suit by his act and conduct?OPD
5. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on

record, the learned trial Court came to the conclusion that the plaintiff has duly proved his case. Accordingly, suit of the plaintiff was decreed, vide impugned judgment and decree dated 7.5.2014. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 30.1.2017. Hence this regular second appeal, at the hands of the appellants.

Heard learned counsel for the appellants.

It has gone undisputed before this Court that the suit land was the absolute ownership of the plaintiff-Board. Defendants-appellants were claiming themselves to be lessees over the suit land. The lease-deed in their favour expired in the year 2002-03. Thereafter, neither the earlier lease-deed was extended nor any fresh lease deed was executed between the parties and the possession of the defendants-appellants over the suit land became unauthorised. Although, defendants-appellants have no right to remain in possession of the suit land after expiry of the lease-deed in their favour, yet the plaintiff-Board did not try to dispossess the defendants-appellants forcibly and sought decree of possession against them, in accordance with law. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Learned counsel for the appellants could not raise any meaningful arguments, pointing out any illegality in the impugned judgments and decrees and rightly so, it being a matter of record. Further, before arriving at its judicious conclusion, the learned first appellate court

rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court at pages 34 and 35 of the paper-book, which deserve to be noticed here, read as under:-

“It is not disputed that the defendants took the dispute land on lease from the Wakf Board vide lease deed Ex. P9 for the agricultural year 2003-04 at the rate of Rs. 8500/- per annum. It is also not disputed that the period of lease was never extended nor any fresh lease deed was executed in favour of the defendants after the year 2003-04. In his cross examination, defendant Balbir Singh has admitted that no fresh 'Patanama' after the year 2002 was executed in favour of the defendants. DW-2 Balbir Singh has further stated in his cross examination that he was ready to make the payment of the lease money after 2005-06, but Wakf Board refused to accept the same. It means that the defendants have not not paid any lease money for the year 2005-06 onwards. Simply because the defendants sent amount through money orders in the year 2009, which were not even accepted by the Wakf Board, it cannot be said that the period of lease stood automatically extended. It is further in evidence that despite the notice Ex. P3, dated 8.6.2009, the defendants have not vacated the possession of the suit property though they were not entitled to retain the possession of the suit property any longer.

In Mandir Jhoke Hari Har and other Vs. Shrimati Ajit Kaur and others 1977 P.L.J. 315, relied upon by the learned counsel for the plaintiff Board, it has been held that a person remains a tenant so long as the tenancy subsists. It was further held in this very case that if the tenancy is for a fixed period, the tenants ceases to be a tenant after expiry of the said period. It was also held in this very case that if the tenant refuses to vacate the land on expiry of the period of lease, the landlord is entitled to evict the tenant in accordance with law. Even

otherwise, the defendants are covered in the definition of encroaches under Sec.3(ee) of the Wakf Act 1995 which includes a person whose tenancy, lease or license has expired or has been terminated by the Wakf Board. In the instant case also, the tenancy of the defendants was for a fixed period which was never extended beyond 2004-05 and in addition to that the tenancy has also been terminated by giving a notice Ex. P3. Therefore, the status of the defendants is nothing but that of trespassers/encroachers and they have rightly been ordered to be ejected from the suit property and also to pay the mesne profit for use and occupation of the suit property for the last three years immediately preceding the filing of the suit.”

During the course of arguments, learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.***

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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

12.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No