

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

120

CR No.1235 of 2015
Date of decision: 14.05.2018

Satish Kumar

..... Petitioner

Versus

Parkash Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Deepak Sharma, Advocate
for the petitioner.

Mr. Rajiv Joshi, Advocate
for respondents No.1 to 3, 5 and 6.

Mr. Athar Ahmed, Advocate
for respondent No.7.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-petitioner is in the revision petition against the order passed by the Wakf Tribunal dated 20.09.2014 dismissing the suit filed by the plaintiff for permanent injunction.

Plaintiff claims to be in possession of the property in dispute measuring 828 sq. yards as a lessee. It is not in dispute that the plaintiff has paid the lease money from 18.01.2006 till the year 2015. It is further case of the plaintiff that Smt. Subhagwanti was in possession and Subhagwanti had transferred the possession in his favour. Defendant-Wakf Board admitted the lease in favour of the plaintiff, however, defendants No.1 to 6 contested the suit and claimed that they are in possession of the property as they were lessees from 1990 to till 2006. Learned trial Court dismissed the

suit on the ground that the plaintiff has failed to prove how he is in possession of the property. The Court has further drawn adverse inference against the plaintiff on the ground that Subhagwanti has not been examined in evidence.

This Court has heard the learned counsel for the parties at length.

Learned counsel for the petitioner has drawn attention of the Court to the previous litigation filed by Avtar Singh, the predecessor-in-interest of defendants No.1 to 5. Sh. Avtar Singh filed a suit for possession on 18.01.2006 against Subhagwati and other legal heirs of Chabil Dass. He has further drawn attention of the Court to the application for injunction filed by Avtar Singh which was dismissed by the learned trial Court. During the pendency of the first appeal preferred by Avtar Singh, counsel representing Subhagwanti made a statement that she has transferred the possession in favour of Satish Kumar. On the basis of the aforesaid statement, counsel representing Avtar Singh made a statement which reads as under:-

“Statement of the counsel for the defendant has heard. Keeping in view that statement, I withdraw this appeal. Respondent be bound by the statement. I reserve my right to take action against Satish. I do not want to pursue the appeal.”

On the basis of the aforesaid statement, the appeal filed by Avtar Singh was withdrawn and the Court passed an order to the following effect:-

“Mr. Chawla, learned counsel for the respondents has made a statement, recorded separately that respondents had delivered the possession of the suit land to one Satish Kumar. At this, Mr. Garg, learned counsel for appellant has made a

statement that he does not want to pursue the present appeal and that the same be dismissed.

In view of the statement made by counsel for the appellant, present appeal is dismissed as withdrawn. The appeal file be consigned to records and the file of the lower court be sent back.”

Mr. Garg, who was representing Avtar Singh had withdrawn the appeal.

Learned counsel for the petitioner has submitted that the learned Tribunal while deciding the litigation has not adverted to the aforesaid documents. He has submitted that from the aforesaid documents, it is clear that it was Subhagwanti and other legal heirs of Chabil Dass who were in possession and Avtar Singh was not in possession even in the year 2006 when the suit was filed.

On the other hand, learned counsel for the private respondent has submitted that the statement of learned counsel of Avtar Singh would not bind Avtar Singh and it is nowhere prove that the plaintiff-petitioner was in possession of the property. It is further submitted that after 2015, the plaintiff-petitioner has no right, title or interest in the property and therefore, no injunction can be granted.

This Court has heard the submissions of learned counsel for the parties and gone through the paper book.

From the previous litigation, it is amply proved that Avtar Singh was not in possession when he filed a suit in 2006. Avtar Singh admitted Subhagwanti and other legal heirs of Chabil Dass to be in possession of the property. That is why Avtar Singh filed a suit seeking possession against Subhagwanti and other legal heirs. No evidence has been produced on file to prove that after 2009, when appeal filed by Avtar

Singh was withdrawn that the defendants-private respondents were ever delivered possession of the property. Therefore, the finding of the learned trial Court that the plaintiff has failed to prove its actual possession is erroneous. Non-production of Subhagwanti would not make any difference particularly in view of the fact that in the previous litigation, Subhagwanti had suffered a statement that she has handed over the possession to Satish Kumar.

In view of the aforesaid, the order under challenge is set aside.

However, this Court has noticed a disturbing trend which compelled this Court to summon Chairman of the Haryana Wakf Board. It has been noticed that the Wakf Board without evicting the previous tenant leases out the property to another tenant which results into civil and criminal litigation. It was further noticed that Wakf Board which is a public body, leases out the property without following any procedure. On 17.04.2018, Chairman of the Haryana Wakf Board appeared in Court and made a statement to the effect that Wakf properties are now being leased out as per Wakf Properties Lease Rules 2013. The order passed by this Court on 17.04.2018 where assurance of Chairman of the Haryana Wakf Board is recorded is extracted as under:-

“In deference to the order dated 04.04.2018, Sh. Raheesha Khan, Chairman, Haryana Waqf Board has appeared in Court. He has made a statement that after 2013, Waqf Board or its officials are not leasing out the property without first taking over possession from the previous tenant. It has further been stated that the lease is being given through bid system after the amendment in the year, 2013. Sh. Raheesha Khan, Chairman, Haryana Waqf Board has also stated that Waqf Properties Lease Rules, 2014 have been framed and the lease is being granted strictly in accordance with the aforesaid rules.

*On the joint request of learned counsel for the parties,
adjourned to 14.05.2018.*

*The presence of Sh. Raheesha Khan, Chairman, Haryana
Waqf Board, shall not be necessary on the next date of hearing.*

To be listed in urgent.”

In view of the aforesaid statement, while allowing the revision petition, it is directed that Haryana Wakf Board would not lease out the property without getting hold of the possession from the previous tenant. The property would be leased out only in accordance with Wakf Property Lease Rules 2014.

As noticed, the lease money was paid by the plaintiff-petitioner upto 2015. The Wakf Board shall be entitled to recover the lease money and initiate proceedings for eviction of the petitioner in accordance with law, if so advised.

Revision petition is allowed.

14.05.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No