

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

CR No.867 of 2011 (O&M)

Date of decision: 19.03.2018

Radhey Sham

..... Petitioner

Versus

Haryana Wakf Board and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vijay Singh Kajla, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Advocate
for respondents No.1 and 2.

Mr. Parminder Singh, Advocate
for respondents No.3 and 4.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-petitioner is in the revision petition against the order passed by Wakf Tribunal, Karnal dismissing the suit for grant of decree for permanent injunction restraining the defendants from interfering in his possession over the suit property.

Plaintiff claims that he is in continuous possession of the property since 1946 when the property was lying vacant and abandoned. It is pleaded that father of the plaintiff renovated the same and is being used for residential purposes. The defendants contested the suit and pleaded that the property is being used for religious purposes i.e. Mazar of Peer Baba and a Masjid and hence, vest with the Haryana Wakf Board. It was pleaded that it is the defendants who are in possession of the property.

After framing of issues, learned Wakf Tribunal allowed the parties to lead evidence. Learned Wakf Tribunal also appointed a Local Commissioner to visit the site and carry out local investigation. The Local Commissioner reported that one room situated on South western corner is without any roof and lying dilapidated. He has also reported that there is another room adjacent to that room having the area of 70/30 feet which is alleged to be in possession of the plaintiff containing only two iron boxes lying in the room along with wooden bench. The room was also found to be in a dilapidated condition and the malba of old bricks was lying in the aforesaid room. He has also further reported that there are three doors to this room but none of the room was either has a door or the frame. On the basis of the aforesaid finding, the Wakf Tribunal found that the plaintiff is neither owner nor in possession of the property. Learned counsel for the respondent has pointed out that the plaintiff when appeared in the witness-box admitted that no body is residing in the property in question.

In view of the aforesaid admission, the finding of the learned Wakf Tribunal that the plaintiff is not in the possession, cannot be faulted.

Learned counsel for the petitioner has vehemently argued that the learned Wakf Tribunal was not having any jurisdiction to try and decide the present case. It is not disputed that initially the plaintiff filed a suit before the Civil Court. Learned Civil Court had transferred the matter to the Wakf Tribunal finding that the plaintiff is claiming the property to be owned by him by way of adverse possession. The aforesaid order transferring the suit to the Wakf Tribunal has not been challenged. Hence, there is no force in the argument of learned counsel for the petitioner.

In last, learned counsel for the petitioner has submitted that in the year 1972, Wakf Tribunal had filed a suit against the father of the plaintiff seeking possession. He has submitted that the aforesaid suit was dismissed under the provisions of Order 17 Rule 3 as no evidence was led. He has submitted that in view of the aforesaid, the possession of the plaintiff-petitioner should be assumed. It is not in dispute that the aforesaid proceedings were not decided on merits. No finding was returned that the plaintiff or father of the plaintiff is in possession. In the present case, the Court has examined the evidence and found that the plaintiff is not in possession. Even the plaintiff has admitted in his evidence that no body is residing in the aforesaid house.

In view of the aforesaid discussion, there is no scope for interference in the finding of fact arrived at by the Wakf Tribunal.

Revision petition is dismissed.

19.03.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No