

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

RSA No.899 of 1991

Date of Decision.05.04.2018

Phool Chand

.....Appellant

Vs

Punjab Wakf Board and another

.....Respondents

2. RSA No.1950 of 1991

Punjab Wakf Board

.....Appellant

Vs

Puran Chand

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Mittal, Advocate
for the appellant in RSA No.899 of 1991.

Mr. G.S. Bhatia, Advocate
for the appellant in RSA No.1950 of 1991 and
for respondent No.1 in RSA No.899 of 1991.

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AMIT RAWAL J.

This order of mine shall dispose of two regular second appeals bearing No.1950 of 1991 and 899 of 1991. The former has been preferred at the instance of the Punjab Wakf Board against the dismissal of the civil suit bearing No.570 of 1985 titled as “Punjab Wakf Board Vs. Puran Chand” seeking permanent injunction and upheld by the lower Appellate Court whereas the latter also at the instance of one Phool Chand whereby the suit bearing No.1186 of 1986 titled as “Punjab Wakf Board Vs. Jiwan Ram and Phool Chand” has been decreed by the trial Court and appeal preferred against the same by the defendant-Phool Chand has been dismissed by the lower Appellate Court. In short, two suits in respect of the same property i.e. plot No.7287 were filed. The relevant facts are being

taken from RSA No.899 of 1991.

The Punjab Wakf Board, Ambala Cantt instituted the suit for injunction restraining Jiwan Ram son of Ram Narain and Phool Chand son of Mina Ram from interfering into possession of plot bearing No.7287 situated at Mohalla Miya-ki-sarai, Narnaul, which was used as Masjid as shown in the site plan in red colour with other relief of challenging the judgment and decree dated 19.7.1984 passed by the Senior Sub Judge, Narnaul and sale deed bearing No.1833 dated 25.1.1985 to be illegal and void and not binding upon it. It was pleaded that the suit property bearing No.7287 as per the survey register and gazette notification dated 29.8.1970 was owned and possessed by Wakf Board. The other properties of the Wakf Board situated in Masjid was /is in possession of other tenants namely Budh Ram, Manohar Lal, Nanak and Daulat Ram. Earlier Puran son of Jodha wanted to dispossess the Wakf Board forcibly and illegally, resulting into filing of the suit for permanent injunction on 26.10.1985 and the Civil Court had enjoined the defendants and found therein that the suit property was being used by the plaintiff as owner in possession but the defendants wanted to interfere in the possession and by way of collusive decree and a forged sale deed dated 25.1.1985 was executed by defendant No.2 in favour of defendant No.1.

Upon notice, defendant No.1 did not appear and proceeded ex parte whereas the defendant No.2 filed written statement and denied the actual possession of the plaintiff and as well as the correctness of the site plan was disputed. It was stated that the suit property was owned and possessed by defendant No.2 and his ownership and possession had been admitted by the plaintiff previously also. The sale deed was executed after contest and the civil court decree dated 19.7.1984 was perfectly legal and

valid whereby the sale deed dated 25.1.1985 had been executed. The site plan of the property was sanctioned by Deputy Commissioner, Narnaul on the premise that defendant No.2 was the owner and prayed for dismissal of the suit.

The plaintiff filed the replication by controverting the pleas made in the written statement and reiterated the averments of the plaint.

The trial Court on the basis of pleadings framed the following issues:-

- “1. Whether the impugned decree dated 19.7.1984 and registered sale deed bearing No.1833 dt. 25.1.85 is null and void and liable to be set aside as alleged? OPP*
- 2. Whether the plaintiff is entitled to the injunction as prayed for? OPP*
- 3. Whether the plaintiff is owner in possession through tenants over the property in dispute as alleged? OPP*
- 4. Whether the defendant No.2 has purchased the property in dispute and is owner in possession of the same as alleged? OPP*
- 5. Whether no cause of action has accrued to the plaintiff to file the suit? OPD*
- 6. Whether the court fee is deficient? OPD*
- 7. Whether the plaintiff has no locus standi to file the suit? OPD*
- 8. Whether the suit is not maintainable as alleged? OPD*
- 9. Whether the plaintiff has not come to the court with the clean hands if so its effect? OPD*
- 10. Whether the plaintiff has not properly described the*

property in dispute as alleged, if so its effect? OPD

11. Whether the defendants are entitled to the special costs? OPD

12. Whether the suit is time barred? OPD

13. Relief.”

The respondent-plaintiff examined PW1 Nasir Khan, Estate Officer Punjab Wakf Board, PW2 Sheodan Khan Rent Controller, PW3 Budh Ram, PW4 Daulat Ram, PW5 Rajinder Kumar Draftsman and closed the evidence in affirmative. The defendants examined Rohtash Singh, Clerk as DW1, Ram Chander record keeper as DW2, Lal Chand Kataria deed writer as DW3, Dinesh Chand Vashistha Adv as DW4, Sita Ram deed writer as DW5, Shri Mahesh Kumar Sharma Adv as DW6, OP Saini Adv. as DW7, Mahabir Parshad as DW8, Rajinder Parshad Saini Draftsman as DW9, Shri Bhuru Ram as DW10, Tara Chand as DW11, Giarshi Lal as DW12, Shri Basti Ram JE as DW13 and Phool Chand as DW14 and after tendering certain documents closed the evidence.

On the basis of the aforementioned evidence, the trial Court decreed the suit by injunctioning defendants from interfering into the suit property and also held the sale deed bearing No.1833 to be null and void and not binding upon the plaintiff. The appeal preferred against the same was also dismissed. In this background, the regular second appeal has been filed at the instance of Phool Chand.

In another regular second appeal, the Punjab Wakf Board filed similar suit for injunction against Puran Chand son of Jodha Ram in respect of plot bearing No.7287 on the premise that it had become owner of the plot by virtue of the notification dated 29.08.1970. The aforementioned suit was

contested by the defendant alleging that the plot in dispute was not part and parcel of the masjid. The aforementioned written statement was controverted by filing the replication.

The trial court on the basis of the pleadings framed the following issues:-

- “1. Whether the plaintiff is owner in possession of the property in dispute as alleged? OPP*
- 2. Whether the plaintiff is entitled to the injunction as prayed for? OPP*
- 3. Whether the court fee is deficient? OPD*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 5. Whether the suit is filed in mala fide intention? OPD*
- 6. Relief.”*

In support of the plaintiff, PW1 Mohamad Faruq deposed that he had seen the disputed land and found the plaintiff as owner of the suit land vide gazette notification Ex.P1, PW2 Sheo Bhan stated that the property bearing No.7287 was part and parcel of the masjid, PW3 Pehlad Sharma, Draftsman proved the site plan Ex.P3/A prepared by him and PW5 Budh Ram also deposed on the same line with regard to property bearing No.7287. On the other hand, the defendants brought on record the evidence.

The trial Court on the preponderance of the evidence dismissed the suit on the ground that injunction could not be granted on the premise that the plaintiff did not prove the ownership and the appeal preferred before the lower Appellate Court against the same also met with the same

fate. It is in that background, RSA bearing No.1950 of 1991 has been preferred.

Mr. Sanjay Mittal, learned counsel appearing on behalf of the appellant in RSA No.899 of 1991 submitted that the Punjab Wakf Board has not been able to prove the ownership of the property except by tendering the notification dated 29.08.1970 Ex.P3 and one form shown to be survey, which was not survey as per the provisions of Section 4 of the Wakf Act, 1984. The notification would not confer upon ownership, much less, possession of the suit property. The record prior to the notification and post notification was required to be proved to establish the long, settled and continuous possession for the purpose of obtaining injunction against the appellant-defendant No.2 whereas the appellant-defendant had already obtained a decree dated 19.7.1984 against Diwan Ram and had become owner of the suit property by virtue of specific performance of agreement to sell dated 17.7.1983, therefore, the trial Court could not have held the sale deed executed in pursuance of the decree to be null and void and not binding upon the plaintiff. The trial Court had also committed illegality and perversity in not referring to Ex.DD i.e. judgment rendered in civil suit bearing No.60 of 7.1.1971 titled as "Punjab Wakf Board Vs. Kashmira" which was based on the notification dated 29.8.1970 in respect of same very suit property. The said suit for possession was dismissed vide judgment and decree dated 31.1.1972, therefore, there is illegality and perversity. Mere tendering of the notification would not confer the ownership as per the provisions of Section 5 of the 1954 Act or 1995 Act. As per the provisions of erstwhile Act of 1954, a specific procedure has been prescribed for declaring the property to be wakf property before promulgation of the

notification under Section 5 of the Act. Section 4 of the 1954 Act dealt with the preliminary survey of the wakf whereby the State Government by notification in the official gazette may appoint a Survey Commissioner of Wakfs and as many Additional or Assistant Survey Commissioners of Wakf as may be necessary and in case of any dispute for settlement of the same, Section 6 provide the remedy. Second survey could not be done until the expiry of a period of twenty years of the first survey. The Wakf Board was required to place on record documents qua possession or ownership.

In support of his contentions, he relied upon the judgment of this Court in **Dev Raj and others Vs. Teja Singh and others 2004(2) RCR (Civil) 753** where the Punjab Wakf Board had sought the injunction on the premise that the property had been purchased from the custodian and on the basis of the notification, Wakf Board was not held to be the owner. On similar lines, judgments in **Abdul Gafoor Vs. Gurcharan Singh and others 2016(4) RCR (Civil) 676; 2016(2) PLR 533** and **Punjab Wakf Board Vs. Anil Modi Oil Industries Ltd. Sunam and others 2016 (4) RCR (Civil) 456** rendered by this Court wherein this Court had an occasion to deal with the nature and character of the property by examining the revenue record, which had been brought on record and gave the finding as per the ratio decidendi culled out by Hon'ble Supreme Court in **Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan AIR 1979 SC 289.**

Per contra, Mr. Bhatia, learned counsel appearing on behalf of the respondent-plaintiff submitted that mere notification issued under the Wakf Act is sufficient to prove ownership of the property. In support of his contention, he relied upon the judgment of this Court in **Kullu Ram Vs. Punjab Wakf Board, Ambala and others 2016(2) HLR 274.** He submitted

that Ex.P4 survey report brought on record is sufficient requirement of law to show that the provisions of Section 4 before promulgating the notification under Section 5 of the Wakf Act had been adhered to. The site plan proved that in the front, there were certain shops in the possession of tenants and some area i.e. 84 feet on the western side and eastern side there was a courtyard. The masjid is in existence and people are offering obeisance, therefore, the suit property as reflected in the notification had been dedicated for religious purpose of a particular community. It is in that background, the trial Court decreed the suit but the other suit preferred against Puran Chand has erroneously been dismissed. Entire evidence had been brought on record to establish the possession and ownership. Even otherwise, a person who is in long and settled possession cannot be dispossessed except in due course of law. Notification and the survey report was sufficient for the Courts below to decree the suit bearing No.570 of 1985, thus, urges this Court for dismissing the appeal bearing No.899 of 1991 and allowing the appeal bearing No.1950 of 1991.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is force and merit in the arguments of Mr. Mittal, therefore, the appeal bearing No.899 of 1991 is liable to allowed and 1950 of 1991 is liable to be dismissed. The reason is not one but many. In all the judgments referred to above, the question arose that whether by tendering copy of notification promulgated under Section 5 of the erstwhile Act or 1995 Act, Wakf Board would be assuming the right of owner or simply tendering of the notification would not confer ownership unless and until the record pre and post notification has been placed on record to show that the property was not only dedicated

for religious purpose but also used and even non-user would not render the property as non-wakf. The Wakf Board has failed to prove on record such evidence, therefore, in my view trial Court's finding granting injunction in favour of the Wakf Board is not sustainable in the eyes of law, for, it escaped the Ex.DD i.e. the decision rendered in the civil suit *ibid* where the suit for possession filed in 1971 against Kashmira had been dismissed.

There is another aspect of the matter. In civil suit seeking injunction, the plaintiff could not seek the sale deed bearing No.1833 dated 25.1.1985 executed on the basis of judgment and decree dated 19.7.1984 as null and void as he had become owner of the property on decretal of the suit for specific performance vide aforementioned judgment and decree. No survey report as per Section 4 had been placed on record for declaring the property as wakf property. Though it was a simplicitor suit for injunction, the Court had an occasion to discuss qua ownership. Be that as it may. It was incumbent upon the Wakf Board to seek injunction by proving long and settled possession on the basis of title or otherwise. Since the injunction was sought on the basis of title derived from notification, in my view, the same would not impliedly grab possession in favour of Wakf Board.

No evidence had been brought on record to form an opinion whether the property was dedicated for the purpose prescribed under the Act and in the absence of the same, this Court has been prevented to render finding on the point whether the property prior or post notification was in possession and enjoyment of private public or was used as *kabristan* or *ahle islam*. Nothing has been done on behalf of the plaintiff in the present case, therefore, the suit could not be succeeded simply by tendering notification.

No doubt, this Court, on earlier occasions had been framing the

ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29]”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the

commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

In view of the aforementioned, the judgments and decrees passed by the Courts below in RSA No.1950 of 1991 are upheld and the judgments and decrees passed by the Courts below in RSA No.899 of 1991 are set aside, meaning thereby, the RSA bearing No.1950 of 1991 preferred by the Punjab Wakf Board is dismissed and the RSA bearing No.899 of 1991 preferred by Phool Chand is allowed. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

April 05, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No