

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

**RSA No.1162 of 1998 (O&M)
Date of Order:29.01.2018**

**Punjab Wakf Board, Ambala Cantt through Wakf
Officer Punjab Wakf Board Rohtak.**

..Appellant

Versus

Kanshi Ram(deceased) through his LRs

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S.Brar, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in regular second appeal against the judgment passed by the learned first appellate court dated 18.07.1997.

Plaintiff-Punjab Wakf Board filed a suit for permanent injunction restraining the defendant from demolishing the mosque and stop him from using the property against the terms of the licence deed.

Learned trial court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff.

Since during the pendency of the suit, defendant had demolished mosque, therefore, learned trial court directed the defendant to reconstruct the mosque within two months. By a separate order, application under Order 39 Rule 2-A CPC was also disposed of sentencing the accused-defendant to three months civil imprisonment.

Defendant-appellant filed appeal before the first appellate

Court. Learned first appellant court has disposed of the appeal by passing the following order:-

“During pendency of the appeal parties have readjusted their rights. On 7.6.1997, appellant had made statement that respondent-Punjab Wakf Board had agreed to execute lease deed with respect to the suit property in his favour for Rs.9,000/-. Out of which appellant had deposited a sum of Rs.3,000/- (three thousand) in Court. The proceedings dated 7.6.1997 further reveal that the said amount of Rs.3,000/- was deposited by the appellant with Nazir of the office of District & Sessions Judge, Rohtak. Finally today appellant has made statement that he shall be paying the remaining amount (which comes to be of Rs.6,000/-) on 06.08.1997, failing which he shall not be claiming any rights in the suit property.

7. On behalf of the parties, as such common stand has been taken with respect to the adjustment of the rights during pendency of the appeal on above lines and as such appeal is hereby decided accordingly and to the effect that, appellant-defendant shall be continuing with possession of the suit property as lessee provided he pays the remaining amount of Rs.6,000/- on or before 6.8.97, otherwise the appeal of the appellant-defendant against the judgment and decree dated 25.8.93 of the trial court be deemed to be dismissed. However, the appeal of the appellant against the order of punishment

in proceedings under order 39 Rule 2-A CPC, as such is not opposed and accordingly the order dated 27.8.1993 is hereby set aside.”

Learned counsel for the appellant has submitted that there was no compromise between the parties and merely on the statement of the appellant, the judgment and decree passed by the trial court was modified. He has further submitted that the suit or appeal can only be disposed of on the basis of compromise in accordance with the provisions of Order 23 Rule 3 CPC. He submits that in the present case, a reading of the judgment passed by the learned first appellate court does not show that the appeal was disposed of in terms of Order 23 Rule 3 CPC. A reading of the order extracted above, does not even establish that any statement was made by the learned counsel for the plaintiff-respondent admitting any compromise/settlement.

This Court has considered the submissions and find force with the argument of learned counsel for the appellant.

If an appeal is to be disposed of on the basis of settlement, the Court has to comply with the requirement of Order 23 Rule 3 CPC. In the present case, neither there is any written compromise deed nor statement of the official of the Wakf Board has been recorded admitting readjustment of the rights . A reading of the impugned order further proves that even the statement of counsel representing the plaintiff-respondent was not recorded.

In these circumstances, the order passed by the learned first appellate court cannot be sustained, hence set aside.

Learned first appellate court is requested to re-decide the appeal in accordance with law.

The appellant through his counsel is directed to appear before the learned first appellate court on 20.02.2018.

January 29, 2018
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(ANIL KSHETARPAL)
JUDGE

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