

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

RSA No.4571 of 2001

Date of Decision.04.05.2018

Inder Singh

...Appellant

Vs

Punjab Wakf Board and others

...Respondents

2. COCP No.1432 of 2006

Inder Singh

...Petitioner

Vs

Lakha Singh @ Lakhwinder Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellant in RSA No.4571 of 2001 and
for the petitioner in COCP No.1432 of 2006.

Mr. Jai Bhagwan, Advocate
for respondent No.1 in RSA No.4571 of 2001.

Mr. Pritam Saini, Advocate
for respondent No.2 to 9 in RSA No.4571 of 2001 and
for respondent No.1 to 11 in COCP No.1432 of 2006.

-:-

AMIT RAWAL J.(ORAL)

This order of mine shall dispose of regular second appeal bearing No.4571 of 2001 and contempt petition bearing No.1432 of 2006.

The appellant-defendant No.1 is in regular second appeal against the concurrent finding of fact whereby the suit for possession instituted by the respondent-Punjab Wakf Board, Ambala Cantt in respect of the land (hereinafter called as the suit land) described in para 1 of the plaint has been decreed by the trial Court and affirmed

by the lower Appellate Court.

Succinctly facts which emanate are that the civil suit bearing No.343 of 1999 was instituted by the Punjab Wakf Board seeking possession of the agricultural land measuring 46 kanals 12 marlas comprised in Khewat No.112, Khatoni No.191, Khasra No.1896 (5-13), Khewat No.31, Khatoni No.54, Khasra No.2744(7-7) Khatoni No.34, Khewat No.23, Khasra No.2738 (7-7), Khewat No.407, Khatoni No.702, Khasra No.2750 (8-0), Khewat No.169, Khatoni No.282, Khasra No.2746(8-0), Khewat No.146, Khatoni No.240, Khasra No.2745 (10-13), Khewat No.146, Khatoni No.240, Khasra No.1899 (3-12) situated within the revenue estate of village Thaks Miranji, Tehsil Pehowa, District Kurukshetra on the premise that it was owner of the land whereas the defendant No.2 and 3 namely Darshan Singh and Avtar Singh were lessees over the suit land. The defendant No.1, Inder Singh, was in illegal and unauthorized possession over the suit land without consent and permission of the plaintiff. The defendant No.2 and 3 had already paid lease money to the plaintiff till 1995-96 and had been paying lease money to the plaintiff since 1987.

The aforementioned suit was contested by the defendant No.1 by raising numerous preliminary objections qua maintainability jurisdiction etc. On merit, it was stated that possession was lawful, for had been paying lease money vide court orders. There were some litigation in revenue court also regarding the suit property, therefore, the lease money had been deposited through the court order. It was alleged that there existed relationship of landlord and tenant and

without termination of the tenancy, the suit for possession of the suit land was not maintainable.

Defendant No.2 and 3 filed separate written statements and admitted the claim of the plaintiff but also filed a counter-claim alleging therein to be the lessee since 1989-1990 for had been paying the lease money with a prayer to direct defendant No.1 to hand over possession of the suit property.

The replication to the written statement was also filed.

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

- “1. Whether the plaintiff is the owner of the suit property and entitled to its possession? OPP*
- 2. Alternatively to the findings given in issue No.1 above, whether the defendants No.2 & 3 are entitled to the possession of the suit property? OP defendants No.2 & 3*
- 3. Whether this Court has got no jurisdiction to try and dispose of the present suit? OPD*
- 4. Relief.*

The respondent-plaintiff in order to prove averments made in the plaint examined PW1 Jamil Ahmed, Estate and tendered the following documents:-

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|-------------|------------------------------------|
| Ex.P1 | Authority letter dated 17.12.1997. |
| Ex.P2 | Gazette notification. |
| Ex.P3 to P6 | Copy of lease registration. |
| Ex.P7 | Gazette notification. |
| Ex.P8 | Jamabandi for the year 1995-96. |

Ex.P9 Khasra girdawari for Oct, 1996 to
October 1997.

On the other hand, defendants examined defendant No.1,
Inder Singh, himself as DW1, DW2 Hoshiyar Singh, DW3 Darshan
Singh and tendered into evidence following documents.

Ex.D1/1 & D2/1 Site Plan.

Ex.D3 Order of Addl. Senior Sub Judge, Pehowa.

Ex.D4 Decree sheet dated 23.4.99.

Ex.D5/1 Copy of order dated 16.12.96.

Ex.D6/1 Decree sheet dated 16.12.96.

Ex.D7/1 Copy of order of RSA dated 27.1.97.

Ex.D8/1 Copy of order dated 29.4.93.

Ex.D9/1 Copy of order dated 19.8.1998.

Ex.D10/1 Copy of order dated 18.1.99.

Ex.D11/1 Khasra girdawari from Kharif 1994 to Rabi
1995.

Ex.D12/1 to D13/1 Khasra girdawaries.

Ex.D19 Mutation No.3540 dated 14.7.1984.

Ex.D20/1 to Ex.D25/1 Jamabandis

Ex.D26/1 Order of commissioner dated
26.4.2001.

Defendant No.2 and 3 had tendered documents Ex.D1 to
D9 i.e. receipts of lease money and some document in vernacular i.e.
then regional language Urdu.

On the basis of the aforementioned evidence, the trial
decreed the suit of respondent No.1-plaintiff and as well as the
counter-claim by holding that defendant No.2 and 3 are entitled to get
possession of the suit land. However, in lower Appellate Court, the

appeal preferred by defendant No.1 was dismissed and counter-claim of defendant No.2 to 9 was also dismissed.

Mr. Amit Jain learned counsel appearing for the appellant in support of the memorandum of appeal raised the following submissions:-

(i) The suit for possession without termination of the tenancy was not maintainable. Concededly, the appellant was in possession of the property whereas defendant No.2 and 3 were not able to prove that they were lessees.

(ii) The finding of the Courts below on issue No. 2 and 3 that defendant No.2 & 3 and respondent No.2 to 9 herein were lessees were neither here nor there, for, it is clearly against the finding recorded by this Court in regular second appeal bearing No.214 of 1997 Ex.D7. The regular second appeal titled as Avtar Singh and others vs. Inder Singh arose out of the suit filed by appellant-defendant as plaintiff claimed injunction restraining the defendants from interfering into peaceful possession over the suit land described therein whereby the suit of injunction was decreed by the trial Court and affirmed by the lower Appellate Court, much less, by this Court.

(iii) Appellant-defendant No.1 had been paying lease money to the Punjab Wakf Board by filing application in the Court of Assistant Collector IInd Grade, Pehowa and paid lease money from Kharif 1986 to Rabi 1989 as per

order of the Assistant Collector IInd Grade, Pehowa, passed on 29.4.1993, which had been proved on record as Ex.D8. Similar another order was passed by the Assistant Collector IInd Grade, Pehowa for depositing the lease money from Kharif 1989 to Rabi 1996-97 as Ex.D9. Against the aforementioned Order i.e. Ex.D8 and D9, the Punjab Wakf Board filed appeal before the Collector, Pehowa which was dismissed vide order Ex.D10. Revision before the Commissioner was also dismissed vide order dated 26.4.2000, Ex.D26 wherein the appellant was held to be tenant under the Punjab Wakf Board. All these documents have not been adverted to by the Ld. Additional Sessions Judge and therefore, there is gross illegality and perversity. The revenue record placed on record shows status of the appellant of a tenant.

On the other hand, Mr. Jai Bhagwan, learned counsel appearing on behalf of respondent No.1-Punjab Wakf Board submitted that no evidence had been brought on record to prove that the rent had been received by the Punjab Wakf Board. In fact, tenancy was never admitted by respondent No.1. No agreement of tenancy between the appellant and Punjab Wakf Board had been brought on record and the documents Ex.D26 to D29 would not help, for, the possession of the appellant-defendant No.1 had been unauthorized. As per the provisions of Punjab Tenancy Act, the lessee is tenant and cannot be land owner. Rule 18 of the Wakf

Properties Lease Rules, 2014 provides that the lease is not automatically renewed. The lease was only for a period of one year. Rule 19 supports the plea of the Wakf Board as in case of lease it is only from year to year, thus, possession of the appellant-defendant No.1 cannot be termed to be a tenant holding over. The decision rendered in the regular second appeal was between the private parties wherein the Punjab Wakf Board was not a party, therefore, the decision would not have any binding effect on the Punjab Wakf Board, thus, urges this Court for upholding the judgment and decree under challenge.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jain. The orders of the authorities regarding the proof to pay the lease money would not establish the relationship of landlord and tenant, for, in none of the proceedings, it has come on record that Wakf Board admitted the tenancy. Filing of the application before the authorities was a unilateral act on behalf of appellant-defendant No.1 and while taking the advantage of the incorrect entries in the revenue record, he continued to retained possession for subsequent period as none of the Lease Rules provide the perpetuate tenancy, owing to Rule 18 and 19. For the sake of brevity, Rules 18 and 19 reads as under:-

“18. Renewal of lease.- (1) No lease agreement shall contain a clause providing for automatic renewal.

(2) The Board shall, while renewing the lease, give preference to the present lessee if such lessee

participates in the bid and matches the highest bid.

19. Purpose and period of lease. (1) The Board may give on lease any immovable wakf property for the purposes and for the period relating thereto as under, namely:-

(i) for shops, lease shall be granted for a period of up to five years;

(ii) for cold storages, marriage halls or small industries, lease shall be granted for a period of up to ten years;

(iii) for establishing or running of shopping malls, residential buildings, hotels, restaurants or Inns, lease shall be granted for a period of upto thirty years;

(iv) for establishing or running educational institutions like schools, colleges, universities, hospitals, dispensaries, madarasa's or maktabas, lease shall be granted for a period of upto thirty years;

(v) for agricultural purposes, the lease shall be granted on year to year basis or until the life of the crop in case the crop has a life span of more than one year, but no lease for agricultural purposes shall be granted for a period exceeding three years in any case.

(2) The commencement date of the lease shall mean the date of execution of lease deed or the effective date of lease mentioned in the lease deed.”

Therefore, Ex.D26 dated 26.04.2004 i.e. order of the

Commissioner accepting the orders of the authorities would not come to rescue. The suit for possession itself is an act on behalf of the Punjab Wakf Board for termination of the tenancy. In these circumstances, the appellant cannot be permitted to take technical pleas to retain possession for infinite period. Had it been so, Wakf Board would have been issuing receipts in respect of the land rent, which had not been brought on record or proved except the alleged payment through the orders of the revenue courts. Written statement reveals that the respondent-Wakf Board never admitted the tenancy of appellant-defendant No.1 nor defendant No.1 could place on record any document to said effect. The suit land concededly belongs to the Wakf Board. Any person, who was/is in unauthorized or in possession on termination of the tenancy, which was only for a period of one year that too many years ago would not clothe status of tenant. Therefore, the suit for possession would only lie.

The lower Appellate Court correctly rejected the counter-claim of defendant No.2 to 9 as the same was not maintainable, for, co-defendant sought possession from the defendant No.1. The trial Court decreed the suit of the plaintiff-Wakf Board and directed the appellant-defendant No.1 to hand over possession. It is settled law that possession of such person would not be tenant holding over and which cannot be created by unilateral act of tenant, rather the alleged status of the defendant No.1 was at the sufferance of the Wakf Board.

As an upshot of my finding, the lower Appellate Court has rightly interpreted the provisions of law and examined the

documentary evidence by reiterating the judgment and decree of the trial Court with modification by rejecting the counter-claim of defendant No.2 to 9, thus, argument of Mr. Jain has not been able to cut ice enabling this Court to form a different opinion than the one rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

In view of the decision rendered in the regular second appeal, the contempt petition is rendered infructuous and dismissed as such.

(AMIT RAWAL)
JUDGE

May 04, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No