

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1873 of 2013 (O&M)

Date of Decision: January 30, 2018

Sher Singh alias Shamsheer Singh

...Appellant

Versus

Bahi Mohamad & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Rai Singh Chauhan, Advocate,
for the appellant.

Mr.I.S.Bajwa, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Appellant-defendant No.2 is in Regular Second Appeal against the judgments and decrees rendered by both the Courts below, whereby the ejectment order has been passed in favour of respondent No.1-plaintiff.

Mr.Rai Singh Chauhan, learned counsel appearing on behalf of appellant-defendant No.2 submits that the respondent-plaintiff instituted the suit on the premise that he was the lease holder of the land in dispute and defendants No.1 and 2 illegally and unlawfully possessed the suit land without any right and title and entry of Gair Marusi in column No.5 of the jamabandi was also illegal and wrong. The aforementioned suit was contested by the defendants on the premise that one Tara Chand was a lessee of the Wakf Board and he expired on 7.1.2005, but had executed a Will dated 17.9.1982 in favour of the defendants and in this capacity, the defendants were in occupation of the land. The suit was also contested on

the ground of maintainability in view of the provisions of Sections 84 and 85 of the Wakf Board Act, 1994 (for short “1994 Act”).

He further submits that though the Wakf Board admitted the claim of the respondent-plaintiff, but the fact of the matter is that the Civil Court was enjoined upon an obligation to determine whether the trial Court had the jurisdiction, much less status of the appellant-defendant. The tenancy of Tara Chand, as per the lease of 1971, was in force and the entry in the revenue record as Gair Marusi had not been controverted and, thus, both the Courts have misread and misinterpreted the evidence resulting into perversity.

He also submits that as per the marked document, Wakf Board had instituted the suit for ejectment against Tara Chand before the Assistant Collector Ist Grade, Dasuya, but the same was rejected vide order dated 27.4.1982.

Mr.I.S.Bajwa, learned counsel appearing on behalf of respondent-plaintiff submits that the execution of the lease deed in favour of the respondent-plaintiff and payment of the lease money had been proved vide Ex.P1, Ex.P2, Ex.P3, Ex.P4 and Ex.P5, i.e., Pattanama, receipts and Kabuliatnama. The only point which the Court was required to ponder upon was whether previous tenant Tara Chand, who had died in 2005, could bequeath the rights in favour of a third party by way of a Will, *ibid*. Both the Courts below, after appreciating the documentary evidence, found that the appellant-defendant could not place on record any other documents except a reliance upon the Will and passed an ejectment order. Concurrent findings cannot be interfered with until and unless there is a gross illegality or perversity, which has not been made out or pointed out during the course

of arguments and, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendant.

Concededly, Pattanama Ex.P1 shows that the Wakf Board had given the land in dispute consisting 2 kanals and 8 marlas to the respondent-plaintiff for the agricultural year 2003-04 at the rate of ₹2600/-. The payment of the amount of rent had already been proved vide Ex.P3 and Ex.P4. The ownership of the Wakf Board had not been disputed by defendant Nos.1 and 2 and, thus, the jurisdiction of the Civil Court can be only invoked when the question of title whether the land is of Wakf Board or not is involved. However, the nature and character of the land had been proved, therefore, in my view, the objection is wholly unsustainable and rejected, in essence the suit was maintainable.

It surfaced in the cross-examination that entry in the revenue record in the name of Tara Chand was incorrect. Any previous tenant, whose status was only for limited period, could not bequeath tenancy for indefinite period by way of a Will and that too to a third party. Had the appellant-defendant been a family member, there was no need of execution of the Will as the tenancy is always inheritable. Once the nature and character of the land of the Wakf Board had been proved, much less execution of the lease deed and possession of the appellant-defendant had been found to be illegal and unauthorised, the Courts below had no other option but to order for ejectment. The reliance upon the Will would not come into play in view of the fresh lease, meaning thereby the validity of the previous lease deed had already elapsed.

No other argument has been raised or brought into the notice of this Court during the course of hearing. No ground for interference is made out, much less no substantial question of law arises for determination by this Court. Resultantly, appeal stands dismissed.

January 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No