

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

109

**RSA-3623-2016 (O&M)
Date of Decision : 28.08.2018**

Dera Sai Akbar Shah

..... Appellant

Versus

Estate Officer, Punjab Wakf Board and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Raj Kumar Kakkar, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the lower appellate court reversing that of the trial court and thereby dismissing a suit for injunction filed by the appellant.

The appellant claims to be the incharge of the Dera which in turn claim to be in possession of 6 kanals 3 marlas of land which was admittedly owned by the respondent No.1 and which the respondent No.1 had leased to the respondent No.2. The trial court held that the appellant had been able to prove its possession on the basis of the revenue record from 1976 onwards. In an appeal, the lower appellate court reversed the finding on possession of the trial court. It noticed that the appellant relied upon some rent receipts which did not pertain to the land in dispute and as regards the land in dispute there was no explanation in the revenue record as to in what capacity the appellant was in possession. It further held that the person who filed the suit was not authorized to file the same and that the mandatory notice under Section 79 of the Punjab Wakf Act having not been served, the suit on this score also was not maintainable.

Counsel for the appellant has argued that he accepts the legal infirmities and prays that the appellant may be permitted to withdraw this suit and file a fresh one after overcoming the legal infirmities.

In my opinion, that course would not be appropriate in the present case because the lower appellate court has dismissed the suit even on merits.

On coming to the merits, counsel for the appellant has argued that the lower appellate court has erred in interpreting the revenue record.

In my opinion, the lower appellate court has rightly analyzed the supervening circumstances of the case which include the conduct of the appellant. Once the appellant had placed on record receipts, it was clear that it was setting up his case as a tenant. If that was so, then the revenue record should have depicted this. It cannot be lost sight of that the land in dispute is public land which belongs to the Wakf Board. There was no occasion for the respondent No.2 to have continued to pay rent to the Wakf Board if he was not in possession.

In the totality of circumstances, I am not persuaded that the findings recorded by the courts below are either based on no evidence or based on such a perverse misreading of evidence so as to justify the interference of this Court in second appeal.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 28, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No