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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1691 of 2014 (O/M)
Date of decision : 22.5.2018

Kuldeep Singh and another

..... Appellants

Versus

Balkar Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. A.K. Chopra, Senior Advocate, with,
Mr. Ankit Midha, Advocate,
for appellants.

None for respondents No. 1 to 5.

Mr. A.K. Saini, DAG Haryana,
for respondents No. 6 to 8.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
- . -

KULDIP SINGH J. (ORAL)

Impugned in present regular second appeal is judgment and decree dated 10.9.2013, passed by learned Additional District Judge, Ambala, vide which while allowing appeal against judgment and decree dated 28.10.2010, passed by learned Civil Judge (Junior Division), Ambala, vide which suit of plaintiffs was decreed restraining defendants from interfering in peaceful possession of plaintiffs over suit land, dismissed the suit being not maintainable and further held that learned Civil Judge has no

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jurisdiction to entertain, try and decide the suit. It was further held that plaintiffs are at liberty to avail remedy available to them as per law declared in above stated reports and provisions contained in Wakf Board Act, 1995.

The short controversy which requires to be noticed for purpose of disposal of present regular second appeal is that plaintiffs had filed a suit for permanent injunction restraining defendants from dispossessing them forcibly and illegally from suit land, fully detailed in headnote of plaint. Plaintiffs, Kuldeep Singh and Kanwarjit Singh, claimed that they got suit land measuring 47 kanals 2 marlas on lease from Dargah Shah Kumesh Sahib through Syed Shah Abdul Kayum, vide sale deed dated 22.10.2002 and suit land measuring 105 kanals 4 marlas vide lease deed dated 28.3.2003 for a period of 99 years. Khasra girdawari were continued in name of dead persons, alleged to be predecessors of defendants No. 1 to 5. Plaintiffs move Assistant Collector, 2nd Grade, Barara, for correction of khasra girdawari. Vide order dated 19.11.2004, AC, 2nd Grade, Barara, ordered correction of khasra girdawari. Mutation on the basis of lease has been sanctioned in favour of plaintiffs. Defendants No. 1 to 5 were threatening to dispossess them and pressurized defendants No. 6 to 8 to register false case against plaintiffs.

Defendants No. 1 to 5 appeared before trial Court and took preliminary objection on Abdul Kayum, who had given suit land on lease, has not been made party. Defendants claimed that they were in possession of suit land for last more than 50 years. Earlier, their predecessors in interest were in possession as tenants and their tenancy rights were inherited by them. It was further pleaded that as per Mohammedan Law, a Mutawali has no power to grant lease of agricultural land for term exceeding three

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years without obtaining leave of Court, therefore, lease dated 28.3.2003 is illegal, null and void.

At the same time, they took plea that defendants were detained by police. Plaintiffs with help of police took forcible possession by trespassing over suit land being cultivated by defendants. AC 2nd Grade did not follow correct procedure to alter and correct revenue entries. Therefore, order dated 19.11.2004 is illegal. It was further stated that plaintiffs entered into possession of suit land illegally and to protect their possession, plaintiffs filed civil suit against them. Plaintiffs are in unauthorized, illegal and forcible possession of suit land.

From the pleadings, following issues were framed :-

1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for by them ? OPP
2. Whether suit of plaintiffs have no locus standi and cause of action to file present suit ? OPD
3. Relief.

The learned Civil Judge (Junior Division), Ambala, held that plaintiffs are in possession of suit land on the basis of lease deed and consequently decreed the suit.

In appeal, learned Additional District Judge, Ambala, took the view that property belongs to Muslim Wakf Board and owned by Dargah Shah Kamesh Sahib. While referring to copy of jamabandi Ex. PX, copies of jamabandi entries Ex.D1 to Ex.D4 and copy of khasra girdawari Ex. D5, it was held that Muslim Wakf Board is a tenant. Therefore, suit is not maintainable before the Civil Court.

I have heard learned senior counsel for appellants and have

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carefully gone through this file as well as lower Court record.

Respondents No. 1 to 5 have not appeared despite service. They are proceeded against ex parte.

Before trial Court, stand of defendants No. 1 to 5 was that plaintiffs have taken forcible possession of suit land, meaning thereby that plaintiffs' possession is not denied. Before trial Court, no plea was taken that property was owned by Muslim Wakf Board and suit is not maintainable. The lower appellate Court has relied upon copy of jamabandi Ex.PX. Copy of jamabandi Ex.PX is not copy of jamabandi, but infact copy of khasra girdawari for the years 2004-05 to 2008-09. Copy of khasra girdawari shows that Dargah Shah is recorded as owner and Muslim Wakf Board is recorded as first tenant prior to year 2003-04. When in the year 2004-05, entries were corrected, khasra girdawari entries were corrected in favour of plaintiffs, vide order dated 19.11.2004 and it is continuing as such till date. Therefore, it cannot be said from the said khasra girdawari that Muslim Wakf Board is owner. In the copies of jamabandis for earlier period, Board was recorded only as tenant and not as owner with further lease being created in favour of sub tenant. Therefore, nowhere it is found that Wakf Board was owner of land. Infact, copy of judgment Ex.P4 shows that Punjab Wakf Board had filed Civil Suit No. 873 of 1988 against Shri Sayyed Abdul Basit for declaration regarding suit land and other properties claiming that it is owner of land. Said suit was dismissed on 21.5.1997. Therefore, lower appellate Court erred in holding that Wakf Board is owner in possession of suit land. Moreover, it is case of none of the parties that Board has anything to do with the suit land. It is simply an injunction suit which is to be decided on the basis of possession. Therefore, I am of the

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view that findings recorded by learned Civil Judge (Junior Division), Ambala, are correct. Consequently, impugned judgment dated 10.9.2013, passed by learned Additional District Judge, Ambala, is set aside and judgment and decree dated 28.10.2010, passed by learned Civil Judge (Junior Division), Ambala, is restored. Consequently, appeal is allowed. Since main case has been allowed, therefore, pending applications, if any, also stand disposed of.

(KULDIP SINGH)
JUDGE

22.5.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No