

**In the High Court of Punjab and Haryana at Chandigarh**

**RSA-589 of 2015(O&M)**

**Date of Decision:9.10.2018**

**Lallu and others**

**---Appellants**

**vs.**

**Punjab Wakf Board through Chairman through Estate Officer Punjab  
Wakf Board, Dasuya District Hoshiarpur**

**---Respondent**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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**Present:** Mr. A.P.Kaushal, Advocate  
for the appellants

Mr. G.N.Malik, Advocate  
for the respondent

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**Rekha Mittal, J.**

The present appeal directs challenge against judgment and decree dated 30.9.2014 passed by the Additional District Judge, Hoshiarpur whereby appeal preferred by Punjab Wakf Board through its Chairman (hereinafter to be referred as “the Board”) against the judgment and decree dated 16.12.2011 passed by the trial court was allowed, judgment and decree passed by the trial court were set aside and suit filed by the respondent-plaintiff for vacant possession of land measuring 11 kanal 10 marlas out of land measuring 23 kanal 2 marlas, detailed in head note of the

plaint was decreed to the following effect:-

“The suit for vacant possession of the suit land after removing superstructure and for recovery of Rs. 37,260/- as mesne profit for use and occupation of suit land unauthorizedly for the period from 1999-2000 to 2004-05 as fully detailed in the head note of plaint is hereby decreed with costs throughout. Defendants/respondents are given two months' time to hand over the vacant possession of the disputed property and to pay mesne profit to the appellant/plaintiff, failing which the plaintiff/appellant would be at liberty to take possession and recover mesne profit through process of Court.”

The facts relevant for disposal of present appeal are that the respondent-plaintiff filed the suit with the averments that suit land was leased out to the appellants-defendants by the Board from year to year and when one year was completed, a fresh lease was executed in favour of the appellants. The appellants had violated terms and conditions of the agreement i.e. *Kabuliatnama* signed by both the parties. They had raised illegal construction over some part of land by taking advantage of absence of the plaintiff. They are using the said property for residential purpose. The lease period stood expired after 1999-2000. Thereafter possession of the appellants has become unauthorized. The appellants are liable to pay Rs. 44,850/- as mesne profits for illegal use and occupation of land from 1999-2000 to 2004-05.

The appellants-defendants filed the written statement raising preliminary objections inter alia that the suit is not maintainable and the

plaintiff is estopped from contending that the lease is not permanent. On merits, it has been averred that the respondent-plaintiff created a permanent lease in favour of defendants. Possession of the appellants-defendants over suit land is decades old. As per terms and conditions of lease, the tenants were entitle to continue cultivating the land. Initially, the property was leased out @ Rs. 125/- per annum in favour of appellants in the year 1969-70. The lease money was enhanced from time to time and finally fixed at Rs. 1300/- per annum. Now the plaintiff has illegally enhanced the fee to Rs. 8000/- per annum. The Board had refused to accept the lease fee of Rs. 1300/- from the defendants. The defendants have raised only one cattle shed to the knowledge of plaintiff. All other material averments of the plaint have been denied with prayer for dismissal of the suit.

The controversy between the parties led to framing of following issues by the trial court:-

1. Whether the plaintiff Wakf Board is entitled for vacant possession of plot measuring 11 K 10 Marlas out of the land 23 K 2 M after removing super structure raised thereon illegally and unauthorizedly on suit property as detailed in the head note of the plaint in village Rajpur Tehsil Dasuya?  
OPP
2. Whether plaintiff is entitled for decree of Rs. 44,850/- as mesne profits for use and occupation of Wakf Land illegally and anauthorizedly by defendants? OPP
3. Whether defendants are permanent lessees on suit land? OPD

4. Whether the suit is not maintainable?OPD
5. Whether the claim of the plaintiff regarding damages is illegal and not valid?OPD
6. Whether the plaintiff is estopped from filing present suit by his conduct and act? OPD
7. Relief.

Abdul Shakoor, one of the representatives of the Board appeared in the witness box. The appellants examined Dalbir Singh DW1 and Didar Singh DW2.

The learned trial court determined issues No. 1 and 2 against the plaintiff-respondent and issues No. 3 to 6 were decided in favour of the plaintiff. However, in view of findings on issues. No. 1 and 2, suit filed by the respondent-plaintiff was dismissed.

As has been noticed hereinbefore, appeal preferred by the plaintiff-Board was accepted by the first appellate court and suit filed by the Board was decreed in terms noticed hereinabove.

Counsel for the appellants has assailed judgment and decree passed by the appellate court primarily on two counts. The first submission made by counsel is that as suit has been filed by the respondent-Board seeking vacant possession after removing the superstructure raised on a part of suit land, the civil court lacks jurisdiction to entertain and try the present suit in view of bar created under Section 85 of the Wakf Act, 1995 (in short "the Act").

Another submission made by counsel is that as lease in favour of the appellants since the times of their predecessor is permanent in nature,

the respondent-plaintiff cannot recover possession of suit land so long as the same is being used for the purpose of cultivation. In the same breath, counsel would argue that as the appellants have raised construction of their houses in suit land and have been living there alongwith their families, a serious prejudice shall be caused to them in case they are evicted from the suit land, in their possession for the past about 50 years.

Counsel representing the respondent, on the contrary, would argue that as there is no dispute between the parties if land in question is wakf property or otherwise, jurisdiction of the civil court to decide recovery of possession and mesne profits is not barred under Section 85 of the Act. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court ***Ramesh Gobindram (dead) through LRs v Sugra Humayun Mirza Wakf, 2014(1) R.C.R. (Civil) 633.***

To refute contention of the appellants that lease in their favour is permanent in nature, it is argued that the appellants have failed to produce any material evidence to substantiate their plea in this regard. It is argued that no such document has been produced that lease in favour of the appellants or their predecessor in interest is permanent in nature. In addition, it is argued that the appellants were lessees under the Board till 1999-2000 and thereafter they are merely encroachers, defined under Section 3(ee) of the Act, as such, suit for vacant possession after removal of superstructure is meritorious and has rightly been allowed by the appellate authority.

So far as plea of the appellants to challenge jurisdiction of the civil court to entertain and try the present suit, the same is misconceived

and liable to be rejected. As has been rightly argued by counsel for the respondent that since in the case at hand, there is no dispute between the parties if the suit property is wakf property or otherwise or the same vests or does not vest in the Board, jurisdiction does not lie with the Wakf Tribunal constituted under the Act and the same actually lies with the civil court when examined in the light of Section 9 of the Code of Civil Procedure.

The appellants have admitted that they are the lessees of the Board and had been paying lease money to the Board. They have failed to adduce satisfactory much less cogent evidence to establish their plea that they are permanent lessees under certain terms and conditions agreed between the parties.

The respondent raised the plea that the appellants have violated terms and conditions of lease by raising construction and using the property for residence. In the written statement filed by the appellants, they have disputed having raised construction of residential houses with the plea that they had raised only cattle shed to the knowledge of the plaintiff. The contention raised by counsel for the appellants that in case they are ordered to be evicted from the suit land, it would be of serious consequence for them and their families is contrary to their stand taken in the written statement and rather substantiates plea of the respondent that the appellants have raised construction of residential houses in suit land. This fact shows that the appellants are guilty of concealing true facts from the court.

No other point has been raised.

In view of what has been discussed hereinabove, finding no

merit, the appeal fails and is accordingly dismissed with costs. As a consequence, the judgment and decree passed by the appellate court are affirmed.

**(Rekha Mittal)**  
**Judge**

**9.10.2018**  
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Whether speaking/reasoned: Yes  
Whether reportable : Yes/No