

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-2572-2017 (O&M)
Date of Decision: 13.11.2018

Punjab Wakf Board

--Appellant

Versus

Hari Chand & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ghulam Nabi Malik, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

CM-6326-C-2017

In view of the averments made in the application, sufficient cause has been shown to condone delay of 63 days that has occurred in filing the instant appeal.

Accordingly, prayer is allowed.

Delay is condoned.

Application is disposed of.

Main Appeal

Appellant-Punjab Wakf Board is in second appeal before this Court having remained unsuccessful in both the courts below.

Briefly noticed, Punjab Wakf Board filed a suit for possession, permanent injunction as also mandatory injunction in respect of the suit property described as property bearing MC No.56, 57 and 58, Ward No.2, (now Ward No.4) being part of site of mosque, Mohalla Sayaddan, Machi Hattan, now known as Mohalla Ghumaran, Samana and marked as ABCDEFG. Case set up was that the plaintiff-Board is the owner of the suit property on the basis of notification of Govt. of Punjab dated 29.5.1971. It was asserted that the suit property had been encroached upon by the defendants and they have started to reside therein illegally and by force.

Defendants had been requested to hand over the vacant possession of the

suit property and upon refusal suit was instituted. Defendant no.1 contested the suit by filing a written statement claiming that he was in actual, physical and uninterrupted possession of the suit property since 1961. Construction in the nature of two bed rooms, kitchen, bathroom and toilet had also been effected. Furthermore, defendant no.1 denied title of the plaintiff-Board on the suit property.

Upon the pleadings of the parties, the following issues were framed by the Trial Court:-

- “i). Whether plaintiff is entitled to relief of possession and if yes then relief of mandatory and permanent injunction as prayed for?OPP*
- (ii) Whether the suit of the plaintiff is not maintainable?OPD*
- (iii) Whether the suit of the plaintiff is barred by the principle of res judicata?OPD*
- (iv) Relief.”*

Issues no.1 and 2 were decided against the plaintiff-Board and the suit was dismissed by the Trial Court on 14.8.2014. A civil appeal having been preferred, the same has been dismissed vide judgement dated 4.10.2016 passed by the learned Additional District Judge, Patiala.

Counsel for the appellant has argued that the Wakf Board had examined the Estate Officer as PW-1 and had proved on record the Gazette Notification dated 29.5.1971 as Ex. PW-1/C and had also produced the site plan to prove the case but such evidence has been completely ignored by the courts below. Further argued that the defendants had not adduced any evidence to show their title/ownership over the suit property and under such circumstances suit filed by the appellant-Board ought to have been decreed.

Yet another submission raised by counsel is that in matters of eviction of

tenant occupying Wakf property, the Civil Court would have the jurisdiction to entertain and adjudicate such lis and accordingly Issue no.2 has been wrongfully decided against the appellant-Board. Reliance in support of such contention has been placed upon the judgement of the Apex Court in ***Ramesh Gobindram (dead) through Lrs Vs. Sugra Humayun Mirza Wakf, 2010 AIR (SC), 2897.***

Having heard counsel for the appellant at length, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

The suit had been instituted by the Punjab Wakf Board for possession of property described in the head note as follows:-

“MC No.56, 57 and 58, Ward No.2, now Ward No.4 being part of site of mosque, Mohalla Sayaddan, Machi Hattan, now known as Mohalla Ghumaran, Samana and marked as ABCDEFG.”

Reliance was placed by the plaintiff-appellant Board on a notification dated 29.5.1971 to assert that the suit property is Wakf property. Suit had been filed on the basis of one site plan marked with letters A,B,C,D,E,F and G. Head note of the plaint recited that site plan was attached with the plaint. Counsel, however, does not controvert the factual premise and as noticed in the impugned judgements that no such site plan was attached with the plaint. Mohd. Ashraf, Estate Officer, PW-1 examined by the appellant-Board had admitted in his cross-examination that no site plan had been produced on the file. However, having been recalled for cross-examination, copy of a site plan had been produced but such site plan did not reflect the property wherein the defendants were stated to be in illegal and unauthorized possession.

It is a case where the onus was upon the appellant-Board to prove by leading cogent and clinching evidence that they are the owner of the suit property. No site plan had been proved on record depicting the identification of the suit property. Even though, heavy reliance had been placed upon a notification dated 29.5.1971 but no evidence had again been brought forth to link such notification with the suit property stated to be in the unauthorized and illegal possession of the defendants. In this regard even counsel appearing for the appellant-Board has failed to point out any perversity with regard to the concurrent finding recorded by the courts below.

The submission advanced by counsel with regard to Civil Court having jurisdiction to entertain and adjudicate upon disputes regarding eviction of tenants/unauthorized occupants from Wakf property would not be relevant. In the judgement relied upon by counsel i.e. ***Ramesh Gobindram's*** case (supra) there was no dispute as regards the property in question being Wakf property. In the present case the appellant-Board has been non-suited on the premise that no evidence has come forth to conclude that the suit property alleged to be in the unauthorized and illegal occupation of the defendants/respondents was covered under the notification dated 29.5.1971 or that it was Wakf property. The judgement in ***Ramesh Gobindram's*** case (supra) as such, would have no applicability to the facts of the present case.

In view of the discussion above, no patent infirmity or perversity is found in the impugned judgements.

There is no merit in the instant appeal and the same is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

13.11.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No