

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : 16.11.2018

1. CM-9286-C-2018 in/and
RSA No.3526 of 2018 (O&M)

Hardeep Singh

..... Appellant

Versus

The Punjab Wakf Board

..... Respondents

2. CM-9308-C-2018 in/and
RSA No.3540 of 2018 (O&M)

Banta Singh (since deceased)
through his LRs.

..... Appellants

Versus

The Punjab Wakf Board

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Vinod Khunger, Advocate for the appellant.

AJAY TEWARI, J. (Oral)

CM-9286-C-2018 in RSA No.3526 of 2018

For the reasons recorded, the application is allowed. Delay
of 127 days in filing the appeal is condoned.

CM-9308-C-2018 in RSA No.3540 of 2018

For the reasons recorded, the application is allowed. Delay
of 121 days in filing the appeal is condoned.

Main Cases

These two appeals have been filed against the concurrent judgments of the Courts below decreeing two suits which were filed by respondent-The Punjab Wakf Board.

The case of the respondent-Wakf Board was that the appellants were in illegal possession of the land owned by the Wakf Board and they consequently, sought a decree of possession. The cases of both the appellants were that infact they were lessee on 1/3rd *batai* and this fact was recorded in the jamabandi. The further cases of both the appellants were that about 13 years ago officials of the respondent-Wakf Board had stopped taking rent from them and thereafter they had become owners by way of adverse possession. Both the Courts having decreed the suit the appellants are before this Court.

Along with ***RSA No.3526 of 2018*** an application bearing ***CM No.16505-C-2018*** for additional evidence has been filed in which it has been averred that the original lease deed of 1970 could not be found at the time when the case went to trial and the same has now been found and it is prayed that this is an essential document and the appellant-Hardeep Singh should be allowed to lead evidence of the same. In the first place the application does not satisfy the strict parameters of Order 41 Rule 27 CPC. No explanation has been given as to how the document could not be traced when the case was in trial and how it has now been traced. In the circumstances, there is no ground to lead the additional evidence.

Apart from this there is another aspect and that is whether a public authority like the Punjab Wakf Board can create perpetual leases at a fixed rate i.e. 1/3rd or whether it is enjoined to lease out land by auction for fixed period. Counsel has argued that infact the practice of the respondent-Wakf Board is to give land on rent without conducting any auction. In my opinion, even if there is such a practice this Court can not condone the same. The facts which have emerged are that the appellants have now been in possession of the land for the past two decades without having paid anything. The plea of adverse possession has also been rightly rejected in view of the judgment of the Supreme Court passed in *Annakili Vs. A.Vedanayagam and others 2008 (1) Civil Court Cases, page 243.*

In the totality of circumstances, I am not persuaded that the findings of fact 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.

Appeals stand dismissed.

Since the main cases has been decided, the pending Civil Miscellaneous Applications, if any, also stand disposed of.

16.11.2018
pooja sharma-I

(AJAY TEWARI)
JUDGE

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