

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

RSA No. 5408 of 2017 (O&M)

Date of decision : September 17, 2018

Balbir Singh

.....Appellant

Versus

Chief Executive Officer, Haryana Wakf Board and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. A.S. Manaise, Advocate
for the appellant.

LISA GILL, J.

Appellant - plaintiff is aggrieved of concurrent findings rendered against him by the learned Civil Judge (Junior Division), Naraingarh vide judgment and decree dated 23.07.2015 and learned District Judge, Ambala vide judgment and decree dated 05.04.2017 and consequential dismissal of his suit.

Appellant – plaintiff filed a suit for declaration to the effect that he is a tenant in possession of the land in village Ganeshpur as detailed in the plaint, with consequential relief of permanent injunction for restraining respondent No. 2 from interfering in the lawful and peaceful possession of the appellant – plaintiff. It was pleaded that the plaintiff is a tenant of the Haryana Wakf Board in respect to the premises in question by way of lease deed No. 25//Lease Rural/F.No.205/07/3919 dated 21.10.2007 and 205/7/10 dated 23.09.2010. It was further stated that the plaintiff-appellant's father was in possession of this property measuring 32 kanal 3 marlas, as a tenant for the last more than 50 years. The lease after the death of his father was in

favour of the appellant – plaintiff. Defendant – respondent No. 2 Gurbachan Singh threatened to take forcible possession of 1 kanal 3 marlas of the land out of 30 kanal 3 marlas in possession of the plaintiff on the basis that respondent No. 2 had taken 1 kanal 3 marlas of the land out of 30 kanal 3 marlas of land on lease from the Wakf Board. Respondent No. 2 tried to take forcible possession of the property on 18.12.2012 but his attempt was thwarted due to the timely intervention of the plaintiff – appellant and other villagers. Hence, the suit.

Respondent – defendants resisted the suit. Respondent No. 1 in his written statement stated that the appellant – plaintiff was a lessee of only 29 kanal of land under the Haryana Wakf Board. Rest of the property was not leased out to the appellant. 2 kanal (khasra No. 17//26/2) land was leased out to respondent – defendant No. 2 for agricultural purpose. 684 square yards of land was leased out to respondent No. 2 for construction of shed and shops. Respondent – defendant No. 2 reiterated that he was in actual physical possession of two kanal of land since 16.01.2009 as a lessee under the Haryana Wakf Board. Prayer for dismissal of the suit was addressed.

Replication was not filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiff is entitled to decree for declaration to the effect that the plaintiff is tenant and in possession of the land fully mentioned in the head note of the plaint as prayed for?OPP.
- ii) If issue No. 1 is proved whether the plaintiff is entitled to a decree for permanent injunction restraining the defendant no. 2 not to interfere in the lawful and peaceful possession of the

plaintiff as prayed for?OPP

iii)Whether the suit of the plaintiff is not maintainable in the present form? OPD.

iv)Whether the plaintiff has got no locus standi to file the present suit? OPD.

v) Whether the suit of the plaintiff is bad for non joinder of necessary parties and misjoinder of parties?OPD

vi)Relief.

Evidence was led by both the parties.

Learned trial Court concluded that the appellant – plaintiff himself admitted the possession of respondent No. 2 over the suit property. Moreover, no lease deed in respect to the suit property existed in his favour after the year 2010. Suit filed by the appellant was, accordingly, dismissed. Appeal filed by the appellant was also dismissed by the learned District Judge, Ambala vide judgment dated 05.04.2017. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have erred in dismissing the suit filed by the appellant – plaintiff. It is contended that lease deed of 32 kanal 3 marlas was executed by the respondent – Wakf Board in his favour. As per the revenue record, the appellant is clearly in possession of 30 kanal and 3 marlas of land. Learned counsel refers to the statement of Parveen Kumar, the Halqa Patwari – PW1 who stated that suit land was given on lease to the father of the appellant and khasra girdawaries are continuing as such because there is no change in possession of the land. It is further submitted that reliance upon communication dated 26.12.2012 by the learned District Judge, Ambala is clearly misplaced. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 23.07.2015 passed by the learned

Civil Judge (Junior Division), Naraingarh and judgment and decree dated 05.04.2017 passed by the learned District Judge, Ambala be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file with his assistance.

Land measuring 32 kanal 3 malas in village Ganeshpur was initially leased out to Mela Singh father of the appellant – plaintiff. It was pleaded by the appellant – plaintiff that he is now in possession of 30 kanal 3 marlas of land. Learned courts below have rightly held that the appellant – plaintiff failed to prove that he is the lessee of respondent No. 1 in respect to 32 kanal 3 marlas of land or that he is in possession of 30 kanal 3 marlas of the suit property. It is apparent from the evidence on record that the land leased out to the appellant – plaintiff stood reduced. His possession over only 29 kanal of land was proved. A perusal of Ex.D1 i.e. letter dated 26.12.2012 by the Estate Officer, Ambala to the Chief Executive Officer, Haryana Wakf Board, Ambala Cantt. clarifies the entire position. The said letter has been reproduced in para 20 of the judgment dated 05.04.2017 passed by the learned District Judge. It is specifically mentioned therein that the land measuring 32 kanal 3 marlas was owned by the Wakf Board. Whole of the Wakf land was leased out by the Board in favour of the appellant – plaintiff vide lease order dated 21.11.2007. However, portion of the Wakf land i.e. 684 square yards adjacent with the road of the village was already running on a monthly rent with three individuals, for the area measuring 228 square yard belonging to Balmiki Community since 1987. While considering the transfer of the lease/patta in favour of the appellant, this portion was not deducted from the whole area of 32 kanal 3 marlas.

Thereafter, another piece of Wakf land measuring 2 kanal in the same khasra No. 17//26/2 (4-14) was further leased out for agricultural purpose in favour of Gurbachan Singh (respondent No. 2) on 16.01.2009 without revision of the lease in favour of appellant - Balbir Singh. It was a clerical mistake. Both the lessees (pattedars) are mentioned to be regular payees of the Board. It was specifically recommended that the lease of the appellant – plaintiff be revised for 29 kanal instead of 32 kanal 3 marlas as the Board had already leased out the remaining portion to respondent No. 2 in two parts i.e. 2 kanal on yearly patta and 684 square yards for urban rent.

It is relevant to note that PW4/appellant – plaintiff has not denied that respondent – defendant No. 1 Gurbachan Singh had been leased out the land as mentioned above. PW4 further admitted the construction of shops and shed on the land taken on lease by respondent No. 2 from the Wakf Board. PW2 did not deny that the appellant – plaintiff is in possession of 29 kanal of land. Similarly, PW3 – Gurdev Singh admitted respondent No. 1 to be in possession of the land taken on lease by him from the Wakf Board. PW1 Parveen Kumar, Halqa Patwari in his cross examination expressed his inability to state as to who was in possession of the suit property and to what extent the khasra girdawaries had been prepared, merely on the basis of past records. Thus, the plaintiff's suit was rightly dismissed.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 23.07.2015 passed by the learned Civil Judge (Junior Division), Naraingarh and judgment and decree dated 05.04.2017 passed by the learned District Judge, Ambala which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

September 17, 2018
rts

(Lisa Gill)
Judge

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