

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

**RSA-5332-2018 (O&M)
Date of Decision: 11.10.2018**

Roshan Lal

... Appellant

Versus

Randhir Singh (deceased) through L.Rs

... Respondent(s)

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

Present:- Mr. Puneet Jindal, Senior Advocate with
Mr. Varun Goyal, Advocate for the appellant(s).

Mr. Akshay Jindal, Advocate for the respondent(s).

...

TEJINDER SINGH DHINDSA, J. (ORAL)

Defendant-Roshan Lal is in second appeal before this Court.

2. Brief facts of the case are that Randhir Singh (since deceased) filed a suit for ejectment against defendant-Roshan Lal claiming himself to be the owner/landlord of Shop No.2 situated in Meeran Ghati, Karnal. It was pleaded that defendant was carrying on his business in the shop in question under the name and style of M/s Adarsh Engineering Works as a tenant and on monthly tenancy of Rs.800/-. Tenancy had commenced w.e.f. 01.02.1990 on an initial rent of Rs.550/- per month and which was later on increased to Rs.800/- per month. Plaintiff asserted that the defendant had not paid the rent w.e.f. 01.07.1995 to 31.08.1995. It was averred that the tenant/defendant had filed a suit for permanent injunction against the plaintiff claiming himself to be a tenant under the Punjab Wakf Board, Ambala Cantt. and thereby denying the relationship of landlord and tenant

and accordingly, he was called upon to vacate the premises and to hand over peaceful possession of the shop to the plaintiff. Case of the plaintiff was that tenancy had been terminated by issuing a notice dated 12.08.1995 under Section 106 of the Transfer of Property Act. Since defendant did not respond to the Notice, suit for ejectment was instituted to recover the possession of the shop along with arrears. It would be pertinent to note that during the pendency of the suit, plaintiff moved an application under Order 6 Rule 17 CPC seeking amendment in the plaint qua the relief of mesne profits @ Rs.2000/- per month and such application was allowed and consequently, plaintiff amended the plaint seeking a decree for mesne profit as well @ Rs.2000/- per month w.e.f. 01.09.1995 till delivery of possession.

3. Suit was contested by defendant-Roshan lal by filing a written statement taking a stand that plaintiff was neither the owner nor the landlord of the shop in question and as such, had no right to seek eviction of the defendant. It was claimed that defendant was the tenant under the Punjab Wakf Board, Ambala Cantt. Vide letter dated 23.06.1995.

4. Vide judgment and decree dated 31.03.2004, trial Court decreed the suit filed by the plaintiff. An appeal preferred by the defendant was decided by the lower Appellate Court on 28.03.2005 and whereby the judgment and decree of the trial Court dated 31.03.2004 was set aside and the case was remitted back to the trial Court for deciding the lis afresh after giving a notice to the Wakf Board in the light of Section 57 (1) of the Wakf Act. It so transpires that vide order dated 08.06.2006, the matter was referred to Wakf Tribunal by the trial Court on the basis that a question of title is involved as regards the suit property. Ultimately, matter came to be referred

back to the civil Court in view of an order dated 17.12.2014 passed by this Court in CR-2612-2007.

5. Vide judgment and decree dated 06.01.2016, trial Court decreed the suit of the plaintiff and directed defendant-Roshan Lal to hand over the vacant possession of the suit property to the plaintiff. A decree for recovery of Rs.2567/- was also passed and the plaintiff was held entitled to recover mesne profits @ Rs.800/- per month from the defendant towards use and occupation of the suit shop from the date of filing of the suit till delivery of possession.

6. Two appeals arose from the judgment and decree of the trial Court i.e. one at the hands of the Wakf Board and the other filed by defendant-Roshan Lal. Both the appeals stand dismissed vide judgment dated 29.08.2018 passed by the learned Additional District Judge, Karnal.

7. It is against such brief factual backdrop that the instant second appeal has been filed by defendant-Roshan Lal.

8. Learned senior counsel representing the appellant has argued that the suit filed by the plaintiff/respondent was not maintainable as no notice envisaged under Section 89 of the Wakf Act, 1995 had been issued/served on the Wakf Board. It is urged that the Wakf Board had terminated the lease deed in favour of plaintiff/respondent as regards the suit property vide Notice dated 22.06.1995 and thereafter, the Wakf Board issued an allotment letter dated 23.06.1995 in favour of the appellant and had inducted him as a tenant. Under such circumstances, the suit itself was not maintainable in the light of the specific bar contemplated under Section 89 of the Wakf Act.

9. Another limb of the argument raised by learned senior counsel is that by operation of law and mandate of Section 56 of the Wakf Act, 1995, the lease in favour of the plaintiff/respondent in respect of his suit property stood elapsed and accordingly, the plaintiff/respondent himself was to be considered as a rank trespasser and under such circumstances, he had no right to seek ejectment of the defendant/appellant. Further argued that the Courts below have erred in not appraising the evidence adduced on record and thereby have overlooked that there was no relationship of landlord and tenant between the parties inter se. Yet another submission raised by learned senior counsel is that the suit itself was not maintainable as the shop in question was situated within the limits of Municipal Corporation, Karnal and as such the jurisdiction vested with the Rent Controller, Karnal.

10. Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the appeal and the same deserves to be dismissed.

11. It has gone uncontroverted that the present appellant along with certain other tenants had earlier filed a suit for permanent injunction against the plaintiff/respondent-Randhir Singh on 12.10.1995 claiming that Randhir Singh was a stranger to the suit property and he wanted to dispossess them from the suit property. Randhir Singh had filed a written statement to the suit claiming that the plaintiffs (including appellant herein) were his tenants. Suit was dismissed by the trial Court vide judgment and decree dated 23.02.2001 and thereby holding that relationship of landlord and tenant was existed between the parties on the basis of rent receipts Ex.DW5/A to Ex.DW5/E. Appeal preferred against the judgment of the trial Court was

dismissed by the lower Appellate Court on 04.12.2001 and the same was even affirmed upto the High Court by dismissal of the Regular Second Appeal. In other words, the issue as regards relationship of landlord and tenant between the parties herein stood settled in a previous round of litigation. The Hon'ble Supreme Court in **Gorie Gourie Naidu (Minor) & another Vs. Thandrothu Bodemma & others, (1997) 2 RCR (Civil) 298** had held that an inter party judgement, even if erroneous, binds the party, if the Court of competent jurisdiction had decided the lis. In view of the above, contention raised on behalf of the appellant as regards there being no relationship of landlord and tenant between the parties, is without merit.

12. Even the submissions raised by learned senior counsel on the strength of Sections 56 and 89 of the Wakf Act, 1995 are not well founded. It was sought to be contended that lease in favour of plaintiff/respondent, Randhir Singh (since deceased) had been cancelled by the Punjab Wakf Board vide registered letter dated 22.06.1995. However, the Courts below on due appreciation of evidence have returned a finding that the purported letter/Notice regarding cancellation of lease had never been communicated/served upon the plaintiff/respondent. In this regard, it was noticed that DW3 Khursid Ahmed from the Wakf Board had admitted in his cross-examination that the registered Notice vide which lease deed of the plaintiff was cancelled had been received back un-delivered and thereafter, no fresh notice had ever been issued. Furthermore, it was also an admission on the part of the Wakf Board that no proceedings had at all been initiated at any point of time against the plaintiff/respondent for his eviction and for delivering the possession of the suit property to the Wakf Board. Even

though, DW7, Khalil Ahmad had suggested that the Wakf Board was in possession of the suit property but in his cross-examination, he had admitted that there was no record to remotely suggest that the suit property had at any point of time been delivered by the plaintiff/respondent to the Wakf Board.

13. The contention raised on behalf of the appellant as regards jurisdiction of the civil Court to entertain the suit on the plea that the matter ought to have been agitated before the Rent Controller has been demolished by Mr. Akshay Jindal, learned counsel, who was present in Court and appeared on behalf of the respondents.

14. Mr. Jindal, Advocate, during the course of arguments furnished a copy of the Haryana Government Gazette Notification dated 07.05.1976 and which is in the following terms:

The 7th May, 1976

No. 4813-4-CII-76/15445 - In exercise of the powers conferred by section 3 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, the Governor of Haryana hereby directs that the provisions of the aforesaid Act shall not apply to the buildings and rented lands which are the properties of any Wakf as defined in clause (1) of Section 3 of the Wakf Act, 1954.

*(B.S. OJHA)
Commissioner and Secy."*

15. Learned senior counsel representing the appellant was also furnished a copy thereof and who does not dispute the issuance/contents of the Notification dated 07.05.1976. The argument raised as such as regards the civil Court lacking jurisdiction in the matter cannot sustain.

16. The judgments of the Courts below are found to be based on cogent and valid reasoning and founded upon due appreciation of evidence

adduced on record.

- 17. There is no merit in the appeal.
- 18. Dismissed.

11.10.2018
harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |