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

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Date of decision : 21.05.2019

Punjab Wakf Board

... Petitioner

Versus

Kudsia Begum and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ghulam Nabi Malik, Advocate for the petitioner.
Mr. Sangram S. Saron, Advocate with
Mr. Izar Alam, Advocate and
Mr. Mohd. Yousaf, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J.

The present revision petition is directed against the impugned judgment dated 26.02.2015 passed by the Wakf Tribunal, Sangrur, wherrby the claim of the Wakf Board for declaration to the effect that the property bearing Khasra No.1665, 2B-9B, was the Wakf property as per the Notification issued under Section 5(2) of Central Govt. Wakf Act, 1954 (in short 'the 1954 Act') and further declaration that possession of the defendants is illegal, has been rejected.

The suit, aforementioned, was filed, on the premise that the suit property was a wakf property including in the list of Aukafs in Kitabul Aukaf, maintained by the Board. Previously, Chote Shah Gafoor Shah, instituted the suit bearing No.147 of 1987, which was dismissed on 01.04.2000. The aforementioned finding did not have binding effect, in the absence of impleadment. It is only when the plaintiff came to know about the aforementioned judgment, filed the present suit claiming declaration on

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the ground of Notification, as the plaintiff had been in possession of the land, which is being used as grave yard since times immemorial.

Defendant Nos.1 to 3 filed the joint written statement and raised the objection qua maintainability as the objection petition filed by the plaintiff, against the execution of the judgment and decree, had already been dismissed, thus, the separate suit was not maintainable.

On the basis of the evidence brought on record, the Wakf Tribunal dismissed the suit.

Mr. G.N. Malik, learned counsel appearing on behalf of the petitioner-plaintiff/Wakf Board, submitted that the plaintiff, in order to prove the case examined, Estate Officer as PW1 and three more witnesses and brought on record Notification to establish that it was a wakf property. The Wakf Tribunal came to the conclusion that that wakf board, failed to prove on record, the dedication of the suit property, as wakf. The Tribunal also failed to appreciate the contents of the Notification, being public document carried presumption of truth. The judgment of the Civil Court, at the back of the plaintiff, could not have the binding effect, therefore, the suit could not have said to be not maintainable. Ex.D21, order dated 28.05.2013 of the Executing Court, dismissing objection, could not operate as res judicata i.e. estoppel of filing the suit for declaration as it was based upon the independent cause of action. In support of his contentions, relied upon the *ratio decidendi* culled out by this Court in **“Sulochna V/s Jasbir Singh and others” 2017 (5) RCR (Civil) 89** to contend that where the land of grave yard, once reserved for that purpose, it would be permanent dedication of the wakf, as its nature did not change by mere non-user, even for a long time as well as the judgment rendered in **“Smt. Madhu Sharma**

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V/s N.K. Mair and others” 2018 (4) RCR (Civil) 881, that doctrine of *lis pendens* i.e. Section 52 of the Transfer of Property Act, 1882, would not apply, as against dismissal of the objection, there is no bar of filing the separate suit, where the objection was to the validity of the decree and not to the execution of the decree. Reference was made to para No.26 of the same.

Per contra, Mr. Sangram S. Saron, learned counsel appearing on behalf of respondent Nos.1 to 3, submitted that not only objection was dismissed, even the appeal, vide order dated 15.10.2013, was allowed, as the execution application was dismissed as withdrawn. Nothing prevented the plaintiff to assail the same, by filing the Execution Second Appeal. The party cannot be permitted to take the separate remedy, in view of the provisions of Order 21 Rule 101 of the Code of Civil Procedure. Two remedies cannot be availed. In support of his contentions, relied upon the ratio decidendi culled out by Hon'ble the Supreme Court in *“B. Gangadhar V/s B.G. Rajalingam” 1996 AIR (SC) 780*, as well as of this Court in *“Punjab Wakf Board V/s Gurdev Singh and others” 2014 (2) PLR 561* and *“Jeet Singh and others V/s Mohan Singh and others” 1990 (2) PLR 466*.

I have heard learned counsel for the parties, appraised the paper book and gone through the record.

It is a matter of record that the genesis of the judgment passed by the Wakf Tribunal, was that as per the definition 'Wakf', it is a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by Muslim law as pious, religious or charitable and includes (i) Wakf by user, (ii) Mashrut ul khildmat, and (iii) a wakf ala aulad to the extent to which the property is dedicated for any

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purpose recognized by Muslim law as pious, religious or charitable. No explanation has come forth as to how the property was entered in the list of Aukaf. Mere publication of the Notification is not a ground for declaring the property of wakf as separate procedure for the same is prescribed. No evidence has come on record that whether the property was dedicated to Islam. The law with regard to availing the two remedies is no longer *res integra* as the person, who has already filed the objections, being third party, as per the provisions of Order 21 Rules 101 & 102 of the Code of Civil Procedure, is not required to file the separate suit and the objections are treated to be as a suit and have the trapping of decree, which is appealable before the lower Appellate Court. It is a matter of record that both the remedies have been availed and thereafter, the present suit has been filed. The Tribunal has rightly dismissed the suit being not maintainable, even on merits, except tendering the evidence i.e. notification, no other procedure was followed i.e. survey, invitation of the objections, before the publication of the notification. In such circumstances, the suit property cannot be said to be a wakf property, having been dedicated to Islam, as per the definition *ibid*.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgment, under challenge, much less, no ground is made out for interference. Accordingly, the present revision petition is dismissed.

21.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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