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

CR-7300-2012 (O&M)

Date of decision : 17.01.2019

Punjab Wakf Board Ambala Cantt.

... Petitioner

Versus

Sat Pal Verma (deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.N. Malik, Advocate
for the petitioner.

Mr. Sarju Puri, Advocate
for respondent Nos.2 to 5.

AMIT RAWAL, J. (ORAL)

The present revision petition, at the instance of the petitioner-plaintiff/Punjab Wakf Board, Ambala Cantt., is directed against the order dated 05.09.2012 passed by the Tribunal in a suit filed for declaration that the property known as Bara-Roza shown in red colour in the site plan, was wakf and consequently, sought the possession from the defendants.

It was alleged that vide notification bearing No.3524, the land, subject matter of the suit, had fallen to the ownership of the Punjab Wakf Board being Mosque and grave yard. Punjab Wakf Board was stated to be part of Bara Roza and dedicated to the persons professing Islam and therefore, the defendants had no right and interest in the property as they were not muslim and being strong persons wanted to take the law in their own hands had taken forcible possession of some portion and built a room varanda without consent of the petitioner, therefore, necessity arose to file the suit.

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The defendants opposed the suit by raising preliminary objections qua locus standi, estoppel and on merits, the authority of the Wakf Board was challenged. It was stated that the notification was not a document of title and the identity of the property was also disputed. The alleged possession of the plaintiff as stated in the plaint was seriously disputed. It was further clarified that defendants being Members of the Management Committee had been organizing a festival in the property, in dispute, for the last forty years.

From the pleadings of the parties, the following issues were framed:-

- 1. Whether the property in suit vests in Punjab Wakf Board? OPD*
- 2. Whether the petition has been filed by PWB through duly authorized officer? OPP*
- 3. Whether the plaintiff is entitled to the declaration as well as possession of the suit property? OPP*
- 4. Whether the plaintiff has no locus standi or cause of action to file the suit? OPD*
- 5. Whether the plaintiff is estopped from filing the suit by his act, conduct, admission or acquiescence? OPD*
- 6. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 7. Whether the suit is not within time? OPD*
- 8. Whether suit is not maintainable in present form? OPD*
- 9. Whether plaintiff has changed the nature of suit after the return of plaint by the Civil Court for presentation before the Tribunal? if so its effect? OPD*
- 10. Relief.*

The plaintiff in support of the case examined Qasim Khan as PW1 and Aziz-Ur-Rehman as PW2 and closed the evidence, whereas the

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defendants tendered some documents and closed the evidence.

On the basis of the preponderance of the evidence, the Tribunal dismissed the suit by holding that Wakf Board failed to prove its ownership. Except site plan, no documentary or any *aks shajra*, has been placed on record to connect the numbers viz-a-viz notification and property at spot.

Learned counsel for the petitioner submitted that the Tribunal has erroneously dismissed the suit as the notification issued by the Central Government under Section 5 of the Wakf Board, had been proved on record as Ex.P1 and Ex.P3, which carried presumption of truth. The defendants failed to lead any evidence to rebut the contents of the notification. The Tribunal abdicated in not referring to the terms and conditions of the notification, therefore, there is illegality and perversity.

Learned counsel for the respondents supported the order, under challenge, by asserting that the plaintiff failed to discharge the onus with regard to the nature and character of the property. A procedure prescribed under the Wakf Act for making survey before issuing of the notification had not seen the light of the day, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Malik, for, the plaintiff-Board miserably failed to prove on record to be owner of the property. Tendering of the notification, is not sufficient as there is a procedure prescribed under the Act for declaring the property by conducting a survey and invitation of the objections. No such material has been placed on record to establish that the notification was in consonance

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with the provisions of the Act. Even the identity of the property could not have been established as only site plan was tendered. The relevant khasra numbers reflected in the notification could not connect with the revenue record. Having failed to do so, the plaintiff miserably failed to discharge the onus as per the provisions of Section 101 of the Indian Evidence Act.

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

17.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**