

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA-1677-1988 (O&M)
Date of Decision: April 01, 2019

Mohinder Singh

... Appellant

Versus

The Punjab Wakf Board and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Surabhi Kaushik, Advocate,
for Mr. Prateek Mahajan, Advocate,
for the appellant.

Mr. Ajay Aggarwal, Advocate,
for Mr. Denesh Goyal, Advocate,
for the respondent-Punjab Wakf Board.

Amit Rawal, J. (Oral)

Learned counsel for the appellant submits that other respondents are proforma respondents, hence need not be served. Accordingly, service upon them may be dispensed with.

Ordered accordingly.

Present regular second appeal is directed against the concurrent finding of fact whereby suit of the appellant-plaintiff for declaration to be owner in possession of land measuring 11 kanal 5 marlas, has been dismissed by the trial Court and affirmed in appeal.

Plaintiffs 23 (twenty-three) in numbers sought the afore-mentioned declaration declaring that they are proprietors of Patti Tarro, having respective share as per the pedigree table of Village Chugawan,

District Amritsar and had been in possession of the same and also built shops in Khasra No. 99/2min, 99/2 min, 99/1, 99/2 min, 99/2 min, 99/2 min, 99/2 min and also 90/8 and 103. Entries in regard to khasra no. 103 and 90/8 as Khangari Haidar Shahwali were wrong without any reason. As per the jamabandi for the year 1976 shamlat patti land and was never dedicated to Ahle Islaam as reflected in column no.5. The suit aforementioned was preceded by legal notice. It was also alleged that defendant laid the claim on the basis of mutation no. 2064 which was on account of notification declaring the land to be of Wakf Board.

Defendant contested the suit and raised preliminary objections qua locus standi. On merit, it was denied that the suit land belongs to Patti Taro Tarf Alakh Jat. The shop vested in the wakf board and as per the revenue record, the possession is of the muslims. Mutation was sanctioned on the basis of the notification. Natha Singh son of Assa Singh, Kishori Lal son of Parma Nand, Narinder Kumar son of Lekh Raj and Harbhajan Singh son of Piara Singh were the tenants of the wakf board.

Replication was filed, reiterated the averments made in the plaint and on the basis of the pleadings, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled to the declaration prayed for? OPA*
- 2. Whether the plaintiffs are entitled to the injunction as prayed for? OPP*
- 3. Whether the plaintiffs have no locus standi to file the present suit? OPD*
- 4. Whether the suit is in the present for is not legally maintainable? OPD*
- 5. Whether the suit is banned for mis-joinder and non-*

joinder of necessary parties? OPD

6. *Whether the suit is properly valued for the purposes of court fee and jurisdiction? OPP*
7. *Whether the property in dispute is wakf property and is in possessio of the defendant? If so, to what effect? OPD*
8. *Whether the suit is barred by the principles of res judicata? OPD*
9. *Relief.”*

The plaintiff in support of the evidence, examined PW1 Tara Singh, PW2 Tara Singh, PW3 Tara Singh son of Ishar Singh, PW4 Charan Dass, PW5 Arjan Singh, PW6 Balbir Singh, PW7 Ashok Kumar, Clerk, PW8 Arvinder Singh, Draftsman, PW9 Mukhtiar Singh, whereas, the defendant examined DW1 Moharban Rent Controller, DW2 Natha Singh.

An attempt was made to establish on record that by way of notification Nos. 3068 to 3070 dated 09.01.1971 Part III Section 4 of the Wakf Act declaring the property to be of wakf. Ex.DW1/2 to Ex.DW1/4 – were the copies of the vahi khata. The trial Court on the basis of the aforementioned evidence i.e. jamabandis of 1976-77 and 1981-82, Ex.PX/2 and Ex.PX/1 held that plaintiffs are in possession of the land in dispute as tenants but dismissed the suit qua declaration. Appeal taken by the lower appellate court was also dismissed.

Learned counsel for the appellant submitted that one entry in jamabandi of 1976-77 cannot be ground for non-suiting the appellant-plaintiff. Defendant did not establish on record that property was in the name of muslims. It was the shamlat property whereas in column No.1, owing to some notification, revenue record reflected as Ahle Islaam. For declaring the property as wakf board, it has to be dedicated or used for a graveyard or as a mosque and without any survey issued the notification. If,

at all, there were some survey nothing prevented the defendant to place on record the contents of the notification declaring the property to be wakf. In support of the afore-mentioned contention, relied on para no. 40 of the Supreme Court's judgment in the case of *Syed Mohd. Salie Labbai (Dead) by L.Rs. and others vs. Mohd. Hanifa (Dead) by L.Rs. and others*, reported in *(1976)4 SCC 780*, judgment of this Court in *Nimmo and another vs. Punjab Wakf Board, Sector 22-B, Chandigarh*, reported in *2016(3) R.C.R. (Civil) 1031*, Division Bench judgment of this Court in *Punjab Wakf Board vs. Joint Development Commissioner*, reported in *2008(4) RCR (Civil) 693*.

Per contra, learned counsel for the respondent submitted that notification itself is a complete piece of evidence to establish that property was a wakf as it was reflected as Ahle Islaam. There were already a devastation of the ownership of panchayat and could not establish the nature of the land as shamlat patti, falling within the definition of Section 2(g) of Punjab Village Common Land Act, 1961 (as applicable to Punjab). Concurrent finding of fact do not suffers from illegality or perversity and urges for dismissal of the appeal.

Before I could deal with the case, this Court while admitting the appeal, also stayed dispossession of the appellant. Order dated 24.06.1988 reads as under:-

“Admitted.

Dispossession stayed meanwhile.”

I have heard learned counsel for the parties, appraised the paper book, record of the case and of the view that there is force and merit in the submissions of Ms. Surabhi Kaushik and following Substantial Questions of

Law arise for determination:

- 1) *Whether the judgment and decree of Courts below could lie?*
- 2) *Whether tendering the notification would itself without any dedication or proof of survey etc. be treated as wakf property?*
- 3) *Whether the judgment and decree of the Courts below suffers from illegality or perversity?*

In Para no. 40 of ***Syed Mohd. Salie Labbai's case (supra)***, the Supreme Court after analysing the Muslim Law observed as under:-

“40. It would thus appear that in order to create a valid dedication of a public nature, the following conditions must be satisfied :

(1) that the founder must declare his intention to dedicate a property for the purpose of a mosque. No particular form of declaration is necessary. The declaration can be presumed from the conduct of the founder either express or implied;

(2) that the founder must divest himself completely from the ownership of the property, the divestment can be inferred from the fact that he had delivered possession to the Mutawalli or an Imam of the mosque. Even if there is no actual delivery of possession the mere fact that members of the Mahomedan public are permitted to offer prayers with azan and ikamat, the wakf is complete and irrevocable; and (3) that the founder must make some sort of a separate entrance to the mosque which may be used by the public to enter the mosque.

As regards the adjuncts the law is that where a mosque is

built or dedicated for the public if any additions or alterations, either structural or otherwise, are made which are incidental to the offering of prayers or for other religious purposes, those constructions would be deemed to be accretions to the mosque and the entire thing will form one single unit so as to be a part of the mosque.”

In my view, the defendant failed to discharge the onus in support of the notification declaring the property to the wakf. In other words, no evidence has been brought on record to firm the opinion whether the property was dedicated for the purpose prescribed under the Act. In the absence of the same, the Courts below ought not to have rendered the impugned finding which, in my view, are totally perverse. Division Bench of this Court in ***Punjab Wakf Board (supra)***, in para no. 15 to 18 found that entries in the jamabandi and the revenue record reflected the gram panchayat to be the owner and non-suiting the wakf board as the ownership was based upon the notification only. Para nos. 15 to 18 reads as under:-

*“15. The case of the petitioner is covered by the ratio of the judgment of the Hon'ble Supreme Court in **Punjab Wakf Board vs. Gram Panchayat, 2000(2) PLJ 91**. The said judgment deals with identical question of law and facts and the judgment relied upon by the petitioner i.e. **Sayyed Ali and others v. A.P. Wakf Board Hyderabad and others, 1998(2) PLJ 642** has been considered in Punjab Wakf Board's case, 2000(2) PLJ 91 (supra) and, therefore, the said judgment relied upon by the petitioner is not applicable to the facts of the present case.*

16. As per Section 310 of the Wakf Act, 1995, the essentials of Wakf are (i) dedication by a person professing Islam for a pious, religious or charitable purpose (ii) by way of user. Both the ingredients are missing in the present case. Moreover, notification is not

*conclusive of ownership of Wakf Board and Wakf Board has to show that the land was dedicated by a Muslim i.e. person professing Islam for charitable purposes and it has to be proved that the land was used as a Kabristan but in the case in hand, none of the ingredients is present. The issue in dispute has been discussed in the case reported as **Dev Raj v. Teja Singh, 2004(2) PLR 709.***

*17. The argument of the learned counsel for the petitioner does not carry weight as admittedly no notice as per notification was issued to the Panchayat before inclusion of the property in wakf properties. Moreover, limitation of one year does not apply for filing the suit by the Panchayat who is a third party as held by the Supreme Court in Punjab Wakf Board's case (supra) and in **Abdul Rais and others v. Madhya Pradesh Wakf Board and others, 2005(91) Apex Court Judgments 433.***

18. Even in the jamabandis for the years 1961-62 and 1971-72 on which the petitioner-Board is relying, the Gram Panchayat has been recorded as owner of the property. The Panchayat has throughout been recorded as owner even before 1947 and the land in dispute has been Shamlat Deh. The fact regarding ownership of the Gram Panchayat has been admitted by the Punjab Wakf Board through official witness Mohmood Hassan, who appeared as RW-5 before D.D.P.P. as is clear from the order dated May 29, 2003 and the land has been recorded in the name and ownership of the Panchayat. It has also been admitted by RW-5 that neither any notice was served nor any objection was invited from the Gram Panchayat per provisions of Wakf Act before land was included in the notification. Moreover, the land has never been used as Kabristan and there are no Muslim houses in the Village.”

This Court in the case of **Nimmo (supra)**, dealing with two

matters, also held in para no.6 which reads as under:-

*“6. I have heard the learned counsel for the parties and appraised the paper book and of the view that there is merit and force in the submission of Mr.Chadha, for, the jamabandies, referred above, do indicate that the khasra number, in the year 1982-83 as per Ex.D1, was bifurcated in two sets of area, i.e., 11 kanals 12 marlas each and in column No.5, it has been shown as Maqbuja Chamaran and Kutia Maiya Bhagwan and in none of the column of possession, property was dedicated to Islam or for the purpose as indicated in the definition of Wakf Property and, therefore, cannot be treated to be Wakf property. No report of Survey Commissioner has been placed on record, in essence there is no compliance of provisions of Section 4 of 1995 Act. In other words, Wakf Board has failed to prove on record that proper procedure was followed before declaring the property to be Wakf. Had there been any proper compliance, the party in occupation ought to have been given notice and right to file objections. Withholding of such record would lead to irresistible conclusion that no such procedure has been followed. Mere promulgation of the notification under Sections 5 of 1995 Act would not include the property under the definition of Wakf. This view of mine is supported by the judgment rendered in **Punjab Wakf Board Versus Joint Development Commissioner (supra)**. A stray entry “Ehle Islam” during pre-consolidation would not fall within the exception clause of Section 3(b) of the Act to form an opinion that even if the property had ceased to exist for period and still remain to be Wakf property. The post consolidation, khasra number shows the possession of aforementioned nature, much less in few of the jamabandies, it has been shown as “Kutia Maiya Bhagwan Da Bhawan”. The expression “itself” does not*

convey that it was dedicated to Ehle Islam. All these facts have totally been ignored, much less trial Court misdirected in misreading the evidence.”

The defendant had not placed on record any material to form the opinion that property is wakf except notification. The Courts below remained oblivious of the fact and non-suited the appellant/plaintiff without any rhyme and reason.

In view of what has been observed, judgments and decrees of both the Courts below, are not sustainable in the eyes of law. The Substantial Questions of Law, framed above, are answered in favour of the appellant-plaintiff and against the respondent-defendant. The judgments and decrees of both the Courts below are set aside. Suit of the appellant-plaintiff is decreed.

Present regular second appeal is allowed. Decree sheet be prepared accordingly.

April 01, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No