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

RSA-2080-1988 (O&M)

Date of decision : 02.04.2019

Punjab Wakf Board, Ambala Cantt.

... Appellant

Versus

Dev Raj and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Pipat, Sr. Advocate with
Mr. H.K. Brinda, Advocate
for the appellant.

Mr. Pawan Kumar Longia, Advocate
for respondent No.2.

Mr. Gobind Rai Sharma, Advocate
for respondent Nos.3(ii), (iii) and (iv).

Mr. R.D. Bawa, Advocate
for the applicant in CM-6036-C & 6037-C of 2012.

AMIT RAWAL, J.

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the appeal of the respondents-defendants, against decretal of the suit by the trial Court, has been accepted, in essence, the suit of the appellant-plaintiff, has been dismissed.

The plaintiff sought the possession of land measuring 16 kanals 4 marlas comprised in Khewat No.395, Khatauni No.507, Khasra Nos.44 Min, as per jamabandi for the year 1978-79 situated in Village Kheri Somal,

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Tehsil and District Ludhiana with declaration to the effect that the plaintiffs was the owner of land measuring 25 kanals 4 marla comprised in Khewat No.395 Khatauni No.507 and 508 Khasra Nos.44 Min as per jamabandi for the year 1978-89, also challenged registered sale deed dated 10.02.1982, by Bachan Dass Chela Sadhu Ram in favour of defendant No.2, in respect of land measuring 2 kanal 10 marlas i.e. 50/324 shares of land measuring 16 kanals 4 marlas and also the sale deed of even date made by Nachan Dass Chela Sadhu Ram in favour of defendant No.3, in respect of land measuring 2 kanals 10 marlas, out of the same parcel of land, was without consideration, ineffective and not binding upon their rights.

It was alleged that since 1909-10, one bigha pucca equivalent to 25 kanals 4 marlas comprised in Khasra No.44 Min, was being used for the purpose of graveyard by the muslims. The notification dated 19.09.1970 notified the land measuring 25 kanals 4 marlas comprised in Khasra No.44 as the property of the Punjab Wakf Board. The notification remained unchallenged. A Dera adjoining to the land, in question, was managed by Bachan Dass Chela Sadhu Ram and on demise of Bachan Dass, Dev Raj, the defendant, started resided in the said Dera and proclaimed to be only the legal heir of Bachan Dass and propounded a Will dated 06.09.1983 and in this regard, submitted an application for sanctioning the mutation and in connivance with the Patwari, managed to obtained the mutation of Khasra No.44, in respect of land measuring 16 kanals 4 marlas and of 9 kanals and thereafter, transferred the land, as aforementioned, vide impugned sale deeds.

In pursuance to the notice, the suit was contested and it was alleged that the suit land was not included in the schedule prepared by the

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Government regarding the Wakf property and was bad for mis-joinder of parties. Bachan Dass, had full control over the suit property and after his death, his Chela Dev Raj.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether plaintiff is entitled to declaration prayed for? OPP*
- 2. Whether plaintiffs is entitled to get possession of the disputed property? OPP*
- 3. Whether plaintiff is entitled to permanent injunction prayed for? OPP*
- 4. Whether suit is bad for mis-joinder of parties? OPP*
- 5. Whether suit of the plaintiff has been filed within limitation? OPP*
- 6. Whether suit is bad for mis-joinder of causes of action? OPP*
- 7. Whether the suit of plaintiffs is correctly valued for the purposes of Court fee and jurisdiction? OPP*
- 8. Relief.*

The plaintiff in support of the pleadings examined four witnesses and brought on record Ex.P1, jamabandi for the year 1954-55, under the column of ownership, showed as Bachan Dass of Khasra No.404, Ex.P2, jamabandi for the year 1909-10, wherein, under the column No.4, showed as Bihari Dass, *Malik kabza, Shamlat deh*, Ex.P5, wherein under column No.5, reflecting as Ahle Islam and in column No.8, as *gair mumkin*, Ex.P5 jamabandi for the year 1929-30, in column No.5, reflected the name of owner as Bachan Dass, Mohan Dass Wasi Khud caste and pooja malkhan, Ex.P3, notification, Ex.PW2/B notification, Ex.PW2/3, order of mutation. On the other hands, the defendants brought on record Ex.D1 to Ex.D3, jamabandi, sale deed etc., to show their possession.

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The trial Court, on the basis of the evidence brought on record, decreed the suit in toto, whereas the lower Appellate Court partially accepted the appeal of the defendants by setting aside the judgment and decree of the trial Court, to the extent of land measuring 16 kanals 4 marlas and finding qua land measuring 9 kanals comprised in Khasra No.395/508, Khasra No.44/graveyard, was upheld.

Mr. S.K. Pipat, learned Senior Counsel assisted by Mr. H.K. Brinda, learned counsel appearing on behalf of the appellant-plaintiff submitted that the law with regard to the declaration of the land as Wakf property is no longer *res integra* in view of the ratio decidendi culled out by Hon'ble the Supreme Court in **“Syed Mohd. Salie Labbai (Dead) by LRs and others V/s Mohd. Hanifa (Dead) by LRs and others” AIR 1976 Supreme Court 1569.** The revenue record placed on record established that the land was dedicated to Ahle Islam and therefore, rightly so, declared, vide notification dated 19.09.1970 of Khasra No.44, measuring 25 kanals 4 marlas as Wakf property. In such circumstances, the defendants were no longer owner of the property and did not have right to part with the title, vide impugned sale deeds. New khasra No.44 was allocated to Khasra No.404. Jamabandi, as referred to above, of pre-consolidation, reflected the nature of the property, under column 5 as Ahle Islam. For ascertaining the the character of the property, dedication of the property is a *sine qua non*, which has been proved on record.

Per contra, Mr. Pawan Kumar Longia and Gobind Rai Sharma, learned counsel appearing on behalf of respondent No.2 and respondent Nos.3(ii), (iii) & (iv), respectively, submitted that the findings rendered by the lower Appellate Court, being the last court of fact and law, are perfectly

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legal and justified as the plaintiff miserably failed to connect the suit property i.e. whether khasra No.404 was allocated new khasra No.44 Min. Mere publication of notification would not confer the right as there is a separate procedure prescribed for declaring the property as Wakf. It is required to be established that the property to be declared Wakf was actually dedicated to the Muslims like *Dargah* or graveyard or for any religious purpose.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following "Substantial Questions of Law" arise for determination:-

- 1. Whether the appellant-plaintiff has been able to connect the identity of the property, pre and post consolidation.*
- 2. Whether the appellant-plaintiff has been able to establish that khasra No.404 was assigned a new khasra number as 44 Min.*

In order to establish the claim of possession, on the basis of the title, it was obligatory upon the plaintiff to prove on record through direct and cogent evidence the title. The jamabandis brought on record by the plaintiff as well as the defendants, as noticed above, reflected the ownership, in respect of land measuring 16 kanals 4 marlas, of Bachan Dass. No survey allegedly conducted, preceding to the promulgation of the notification declaring the land measuring 25 kanals 4 marlas of khasra No.44 as Wakf, has been brought as such, in its absence cannot confer the title. The plaintiff miserably failed to place on record *khatauni paimaish*, a determining factor, to establish that khasra No.404 as reflected in the jamabandi pre-consolidation era, was assigned khasra No.44 Min. It

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is established on record that land measuring 16 kanals 4 marlas bearing khasra No.44 Min, had not been in possession of the Muslims of *Kheri Somel* and *Malaude Rudian* or had been ever used as graveyard from 1957 till 1984, in other words, was dedicated for Muslims purposes. Jamabandis, as referred to above, reflected that land measuring 9 kanals, in respect of same very khasra number, was being used by the Muslims as inhabitants and the ownership of land measuring 16 kanals 4 marlas, was in the name of Bachan Dass. The sale deeds, Ex.D1 and Ex.D2, executed by Bachan Dass, out of chunk of which was the owner in possession since 1957-58, in nutshell, the plaintiffs failed to prove the ownership of entire chunk of land measuring 25 kanals 4 marlas, in such circumstances, the judgment cited supra relied upon by Mr. Pipat, would not be applicable.

Keeping in view the aforementioned facts, the finding arrived at by the lower Appellate Court, with regard to conferring the ownership in favour of the appellant-plaintiff, in respect of land measuring 9 kanal excluding the land measuring 16 kanals 4 marlas, cannot be said to be suffering from illegality and perversity. The 'Substantial Questions of Law' as framed above are answered against the appellant-plaintiff and in favour of the respondents-defendants. No ground is made out for interference.

Resultantly, the present regular second appeal is dismissed.

02.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**