

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

RSA No.1733 of 1992 (O&M)

Date of decision:01.04.2019

Punjab Wakf Board, Ambala Cantt ... Appellant

Vs.

Kulbhushan Rai and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Bhatia, Advocate
for the appellant.

Mr. V.K.Mahajan, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiff for possession of alleged shop being part of mosque built on the area measuring 100 square feet situated in Chowk Patel Main Bazar, Faridkot, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff alleged that vide resolution no.11177 dated 5.5.1975 Part III, Section 4 of Punjab Wakf Board authorized its Wakf Officers to institute the suit. Since this property was being used by the muslims for offering prayers and had become religious place by long users, owners were divested of the ownership and vide notification of 1981, became the wakf property.

Defendant no.1 contested the suit and raised the objection of

res judicata as the similar suit was dismissed on 04.08.1983 and denied that property vested with the Punjab Wakf Board. Defendants no.2 to 4 also contested the suit and stated that Jai Singh had purchased the shop in dispute from Jagdish Lal, vide sale deed dated 27.7.1951 registered on 02.11.1951.

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

- “1. *Whether the suit has been properly filed?OPP*
2. *Whether the suit property is wakf property?OPP*
3. *Whether the suit barred by principle of res judicata?OPD*
4. *Whether the suit is bad for non-joinder of necessary parties?OPD*
5. *Whether the suit is properly valued for the purpose of Court fee and jurisdiction?OPP*
- 5A *Whether Jai Singh has purchased the suit property and is owner of the same?OPP*
- 5B *Whether defendant is tenant of Jai Singh on yearly rent of Rs.500/-. If so its effect?OPD*
- 5C *Whether the suit is within time?OPP*
- 5D *Whether defendants no.2 to 7 are owners of the shop as heirs of Jai Singh?OPD*
6. *Relief.”*

The appellant-plaintiff in support of the averments examined

seven witnesses and brought on record permission as Ex.P1, site plan as Ex.P2; notification dated 13.02.1981 and various other documents i.e. Ex.P3 to Ex.P9-some Urdu document, whereas, defendants brought on record Ex.D1 to Ex.D13.

Mr.G.S.Bhatia, learned counsel appearing on behalf of the appellant-plaintiff submitted that notification established that the property was mosque and used for religious purposes and vested within the vicinity of respondents. By virtue of the notification, they had become the tenants of the appellant and sought the eviction but the trial Court non-suited the appellant. The aforementioned piece of evidence un-clinchly proved the case of the appellant.

Mr. V.K.Mahajan, learned counsel appearing on behalf of the respondents submitted that plaintiff miserably failed to discharge the onus under Section 101 of the Indian Evidence Act, to establish its ownership as the notification is silent with regard to shops and thus, prayed for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that the following substantial question of law arises for adjudication of the present appeal:-

“Whether the appellant-plaintiff has been able to prove the identity of the property to be wakf property?

The evidence noticed above, particularly notification of 1981 established that shops were never part of the wakf property. In my view, the

plaintiff was first required to seek declaration of ownership by placing on record the sufficient evidence that property was dedicated for religious purposes and owners were divested of the ownership. Para 40 of the judgment by the Hon'ble Supreme Court in ***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*** reads 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.”

Neither there was any reference of the property number. Simpliciter suit for injunction in the absence of any concrete evidence establishing the ownership, in my view, was not maintainable and rightly has been dismissed.

The findings of fact and law cannot be said to be suffering from illegality and perversity. The substantial question of law, noticed above is answered in favour of the respondent-defendants and against the appellant-plaintiff.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 01, 2019

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No