

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

**RSA No.2171 of 1991 (O&M)
Date of Decision.08.05.2019**

Ram Phal (since deceased) through LRs and another ...Appellants

Vs

Punjab Wakf Board ..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Umesh Aggarwal, Advocate
 for the appellants.

 Mr. G.S. Bhatia, Advocate
 for the respondent.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court whereby suit of the respondent plaintiff for possession of vacant land measuring 44 ½ sq. yards dismissed by the trial Court, has been decreed.

The respondent-plaintiff/Wakf Board sought possession of the aforementioned plot No.42 situated in khasra No.210/132 min situated at Bhiwani Road, Jind on the basis of notification dated 29.08.1970. It was alleged that the appellants-defendants being in unauthorized occupation of the plot started raising construction resulting into irreparable loss, thus, filed the suit.

Defendants resisted the suit and stated that the suit property was not wakf property. It bears plot No.42. Ownership of Wakf Board was emphatically denied and asserted that possession of the plot was since 12.09.1976 as purchased in the auction from

Improvement Trust and entire payment had been made.

Replication was filed and on receipt of the replication, the trial Court framed the following issues:-

- “1. Whether the plaintiff board is exclusive owner of the suit property? OPP*
- 2. Whether the plaintiff is entitled to possession of the suit property? OPP*
- 3. Whether the plaintiff board is entitled to the relief of injunction as prayed for? OPP*
- 4. Whether the suit property is not described? If so to what effect? OPD*
- 5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 6. Whether the suit is not properly valued for the purpose court fee? OPD*
- 7. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 8. Whether the suit is time barred? OPD*
- 9. Relief.”*

In support of evidence, the plaintiff examined seven witnesses and brought on record umpteen documentary evidence including local commissioner report Ex.P1 to establish that area in possession of defendants was falling within khasra No.210/132, jamabandi for the year 1984-85 Ex.P3, copy of notification No.35 of 1970 Ex.P4 etc. whereas defendants examined DW1 Ram Niwas Sharma, Patwari who deposed that as per record, Khasra No.210/133

min and 210/135 min were acquired by the Improvement Trust, Jind on 12.08.1975 and earlier, Municipal Committee and Welfare Nirman Committee were the owners. Plots were carved out and allotted in open auction on 12.09.1976 and allottees were put in possession and the disputed plot was assigned number as 42.

The trial Court noticing the aforementioned facts, non-suited the respondent-plaintiff of having not filed suit for declaration of entire khasra number, however, the lower Appellate Court, as noticed above, reversed the finding and decreed the suit.

Mr. Umesh Aggarwal, learned counsel appearing on behalf of the appellants-defendants submitted that application for additional evidence under Order 41 Rule 27 CPC bearing No.1779-C of 2018 to place on record application form and information receipt under RTI submitted to the Tehsildar and various other documents has been filed establishing that Khasra No.210/132 was not in possession of plaintiff as their share was in Khasra No.210/135. Notice in the application was issued and reply also taken on record. The lower Appellate Court did not read statement of DW1, who categorically stated that Khasra No.210/133 and 210/135 were acquired by Improvement Trust and allotted in open auction, therefore, defendants are their allottee.

Per contra, Mr. G.S. Bhatia, learned counsel appearing on behalf of the respondent submitted that statement of DW1 was not in consonance with the record. Report of the local commissioner Ex.P1 dated 14.06.1988, who was not an ordinary person but a Kanungo was not objected. In such circumstances, as per provisions

of sub-rule 2 of Rule 10 of Order 26 CPC was *per se* admissible. The lower Appellate Court after examining the evidence rightly reversed the finding of trial Court, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the appellants, appraised the paper book, records of the Courts below and of the view that following Substantial Question of Law arises for determination:-

“Whether the respondent-plaintiff has been able to prove the identity of the property allegedly in unauthorized possession of the appellants-defendants and ownership of khasra No.210/132 being Wakf Board, as per notification No.35 of 1970 Ex.P4?

This Court vide order dated 30.10.1991 while issuing notice of motion, stayed the execution of the decree till further orders. The appeal stood admitted with continuation of interim stay.

The notification of 1970 conferred ownership of khasra No.210/132 of the Improvement Trust but jamabandi and the statement of DW1, if read conjunctively, leaves no manner of doubt that defendant is an allottee and the Improvement Trust allotted plots in open auction in 1976 owing to ownership of the land acquired of Khasra No.210/133 and 210/135. Concededly, shop in possession of the appellants-defendants falls in Khasra No.210/135, ownership of Improvement Trust. In such circumstances, the lower Appellate Court, in my view, completely abdicated in reversing the finding while decreeing the suit, being totally off the record.

In view of such circumstances, the substantial question

of law is decided in favour of the appellants-defendants and against the respondent-plaintiff. The judgment and decree of the lower Appellate Court is set aside and of the trial Court restored. The second appeal is allowed.

(AMIT RAWAL)

JUDGE

May 08, 2019

Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No