

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

RSA No. 3910 of 2008 (O&M)
Date of decision: March 5, 2019

Hardavinder Singh and others

...Appellants

Versus

Punjab Wakf Board

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Ghulam Nabi Malik, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The appellants herein seek to challenge the judgment and decree of the Civil Judge, Yamuna Nagar, whereby the suit for possession filed by the respondent—Punjab Wakf Board was decreed and appeal filed against the judgment and decree of the trial court was affirmed in appeal.

2. In brief, the facts are that a civil suit was instituted by the Punjab Wakf Board, respondent herein seeking possession of the agricultural land measuring 4 kanal 1 marla comprising Khewat No. 28 Khatauni No. 48 min Khasra No. 23//1 Min (3-0) Khatauni No. 49 min, Khasra No. 23//2 (1-1) situated at village Nahar Taharpur, H.B. No. 211, Tehsil Chachharauli, District Yamuna Nagar, as per jamabandi for the year 1994-95. It was averred in the plaint that 4 kanal land was allotted to

Gurdial Singh, appellant herein on lease for the year 1992-93 @ ₹400/- per

annum and in the year 1993-1994 at the rate of ₹720/- per annum. However, the residents of the village made representation that this land is a part of the grave yard and the lease was cancelled as per order dated 17.2.1999. Thereafter, since the appellants/defendants did not vacate the land and were in illegal possession of the same, a civil suit was filed seeking their eviction, possession as well as for mesne profit.

3. On notice, the appellants/defendants appeared and filed a written statement taking preliminary objections of maintainability; estoppel, concealment of facts, mis-joinder and non-joinder of necessary parties. From the pleadings of the parties, the following issues were framed on 7.10.2003:-

- “1. Whether the plaintiff is entitled for the possession on the suit property? OPP
2. Whether the plaintiff is entitled for the recovery of mesne profit from the date of institution till the delivery of possession ? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the civil court has no jurisdiction to try the present suit? OPD
5. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD
6. Whether the plaintiff is estopped from filling this suit by its own act and conduct?
7. Whether the plaintiff has concealed true and material

facts from this Court? OPD

8. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

9. Relief.”

4. Thereafter, the parties led evidence to substantiate the respective stand taken by them. The plaintiff/respondent examined Abdul Hafiz, Estate Officer (PW-1) and closed his evidence on 12.9.2005. The appellants/defendants examined Surjit Singh alias Sukha as DW-1 and their evidence was closed on 18.4.2007.

5. The trial court, after scrutinizing the evidence brought on record, decreed the suit of the plaintiff/respondent. On appeal filed by the appellants, the same was dismissed by the first Appellate Court, giving rise to the instant appeal.

6. Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellants herein, contends that the civil court had no jurisdiction to try and decide the suit land pertaining to the Wakf Board after notification dated 25.9.2001 constituting a Wakf Tribunal. It is also argued that as per Section 54 of the Wakf Act, 1995 (hereinafter referred to as '**the Act**'), before removal of a person, who has encroached upon the wakf land or building, a notice has to be served upon him and give him an opportunity to file objection to the said notice and it is only thereafter that possession can be taken in terms of Section 55 of the Act. It is argued that the appellants were not served with notice as prescribed under Section 54 of the Act, and therefore, possession cannot be taken from them, while further submitting that the civil court has no jurisdiction to entertain the matter.

7. Per contra, Mr. Ghulam Nabi Malik, Advocate, appearing on behalf of the respondent, submits that in fact the civil court has the jurisdiction to entertain and try a civil suit, wherein eviction of a person occupying the wakf property is involved. In support of his arguments, he relies upon **Ramesh Gobindram (dead) Through Lrs Versus Sugra Humayun Mirza Wakf 2010 AIR (SC) 2897**, wherein it was held that from a conjoint reading of the provisions of Section 6 and 7 of the Act, it is clear that the jurisdiction to determine whether or not a property is a wakf property or whether a wakf is a Shia wakf or a Sunni wakf rests entirely with the Tribunal created under the Act and no suit or other proceeding can be instituted or commenced in a civil court in relation to any such question after the commencement of the Act.

8. I have heard learned counsel for the parties and perused the impugned judgments.

9. Admittedly, ownership of the suit property and leasing out the same to the appellants is not disputed. Under the circumstances, the only question that arises for consideration in this appeal is, whether a civil court had the jurisdiction to entertain and decide the civil suit?

10. The contention as raised by the learned counsel for the appellants that the procedure as provided under Sections 54 and 55 of the Act have to be followed, but has not been done in the present case, is an argument which is without any merit. Mr. Aggarwal has tried to project that the appellants had received a notice under Section 54 of the Act treating them to be encroachers and without giving them an opportunity of filing objections to the same, the civil suit filed by the respondent was not

maintainable. However, the order dated 17.2.1999 cannot be termed to be a notice under Section 54 of the Act which would require any opportunity of hearing to be afforded to the appellants herein. In fact, the order dated 17.2.1999 is an order that was passed whereby the land measuring 4 kanal 1 marla which was allotted to Gurdial Singh and his successors-in-interest was cancelled on account of the fact that part of the land fell into the grave yard. Once proceedings under Section 54 of the Act have not been initiated, it cannot be said that there has been non-compliance thereof by not affording them an opportunity to file objections to the show cause notice. The question that would remain for determination is, whether the suit as filed by the respondent—Punjab Wakf Board through its Estate Officer would be maintainable, in view of the fact that a Tribunal has been constituted under the Act. However, this issue is no longer res-integra having been settled in the judgment rendered in **Ramesh Gobindram's case (supra)** wherein a similar question arose, whether the civil court would have jurisdiction to entertain and adjudicate upon the dispute regarding eviction of a tenant from the wakf property. The Hon'ble Supreme Court, while referring to Sections 7 & 6 of the Act held as under:-

“From a conjoint reading of the provisions of Sections 6 and 7 (supra) it is clear that the jurisdiction to determine whether or not a property is a wakf property or whether a wakf is a Shia wakf or a Sunni wakf rests entirely with the Tribunal and no suit or other proceeding can be instituted or commenced in a Civil Court in relation to any such question after the commencement of the Act. What is noteworthy is that under Section 6 read with Section 7 (supra) the institution of the Civil Court is barred only in regard to questions that are specifically

enumerated therein. The bar is not complete so as to extend to other questions that may arise in relation to the wakf property.”

11. Further, while dealing with Section 85 of the Act which barred the jurisdiction of the Civil Court in so far as it read that no suit or other legal proceeding shall lie in any [civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any [wakf] property or other matter, which is required by or under this Act to be determined by a Tribunal, the Hon'ble Supreme Court in ***Ramesh Gobindram's case (supra)*** held as under:-

“There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or 28 Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the Civil Courts stands completely excluded by reasons of such establishment. It is noteworthy that the expression “for the determination of any dispute, question or other matter relating to a wakf or wakf property” appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms

provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is 29 not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.”

12. Therefore, once it has been authoritatively held that it is only the civil court which will have the jurisdiction to entertain a suit seeking eviction of a tenant from the wakf property, it can safely be concluded that the argument raised that the matter cannot be agitated before the Civil Court is without merit.

13. Finding no ground to interfere in the well reasoned order of both the courts below, wherein the civil suit for possession of the respondent has been decreed, this Regular Second Appeal is dismissed.

March 5, 2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No