

RSA No. 3670 of 2018 (O&M)

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

RSA No. 3670 of 2018 (O&M)

Date of decision: 15.10.2019

Prem Dutt (deceased) through his LRs

... Appellants

Versus

Punjab Wakf Board Dasuya, Tehsil Dasuya, District Hoshiarpur

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Sunil Agnihotri, Advocate,
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the respondent-plaintiff was decreed by the trial court, vide judgment and decree dated 2.2.2016, and as even the appeal preferred against the said decree failed and was dismissed on 11.8.2016, the defendants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff-Punjab Wakf Board prayed for possession of a land measuring 8 marlas after removal of superstructure, as depicted in the site plan comprised in khasra No. 30 min (0K-8M), situated within the revenue estate of village Langerpur, Tehsil Dasuya, District Hoshiarpur.

In brief, the case set out by the plaintiff-Board was that it was recorded to be the owner of suit property, pursuant to a notification dated 1.1.1972 issued by the Central Government. Father of defendant No.1, i.e. Durga Dass, entered possession of the suit property and raised some construction, denoted with letters 'HNGFSRI', and, thus, was in illegal

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possession. Post death of Durga Dass, defendants entered possession of the constructed portion as also the vacant land. For the defendants were merely trespassers, thus, the suit.

In defence, the defendants set up a plea of adverse possession and claimed title by prescription. They admitted the plaintiff to be the owner of the suit property, but it was submitted that their father (Durga Dass) entered possession of the suit property on 1.1.1973, and nature of his possession was open and hostile to the knowledge of the plaintiff.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that specific case set out by the plaintiff was that defendants had no right, title or interest in the suit property, and they were merely trespassers. Whereas, the defendants claimed to have perfected their title by prescription. As regards ownership, the suit property was concededly comprised in khasra No. 30 min, and a copy of the jamabandi for the year 2004-05 (Ex.P2) revealed that Wakf Board was recorded to be the owner of the suit property, while Durga Dass, predecessor-in-interest of the defendants, was shown to be possession. The similar position was recorded in khasra girdawari (Ex.P6). As regards the plea of adverse possession, it was concluded that in the earlier suit, i.e. Civil Suit No. 179/A of 1971 titled as Punjab Wakf Board Vs. Durga Dass, instituted by the plaintiff, the court had passed an order (Ex.D5), which revealed that Durga Dass in those proceedings had made a statement that by way of a comprise, he had taken the suit property on rent from 1.9.1970, and he would pay the arrears of rent, along with costs of the suit. Thus, predecessor-in-interest of defendant No.1, namely Durga Dass, had admitted that he had taken the property in question on rent from the plaintiff, and the

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suit was accordingly disposed of. In the given situation, the fact that even though Durga Dass promised to pay the rent but no rent was actually paid to the Board would be inconsequential. That being so, the defendants could not maintain that Durga Dass had perfected his title against the plaintiff by adverse possession. In any case, provision of Section 107 of the Punjab Wakf Act postulates that nothing contained in the Limitation Act, 1963, would apply to a suit for possession of immovable property comprised in any Wakf or for possession of any interest in such property. In these circumstances, the suit filed by the plaintiff could not be said to be barred by limitation either and the plea set out by the defendants having been perfected their title by way of adverse possession also paled into insignificance. Upon being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

October 15, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO