

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

RSA-2534-2017(O&M)

Date of decision:-21.2.2019

Punjab Wakf Board

...Appellant

Versus

Bhag Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.N. Malik, Advocate
for the appellant.

Mr.Naresh Kumar Manchanda, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that Punjab Wakf Board, Chandigarh through its Estate Officer, Ferozepur had brought a suit for possession against the defendant Bhag Singh on the allegations that the suit land measuring 8 Kanals 18 Marlas comprised in khasra No.42(8-18) situated at village Asal, Tehsil and District Ferozepur as per jamabandi for the year 2008-09 is wakf property and the plaintiff is owner of the same; that defendant Bhag Singh is in illegal and unauthorized possession of the suit land, though in the revenue record i.e. girdawari and jamabandi one

Sarwan Singh son of Darbara Singh is shown to be in possession; that the defendant has no right, title or interest in such property and is liable to hand over possession to the plaintiff in addition to paying damages for illegal use and occupation, therefore, the suit of the plaintiff be decreed against the defendant.

On getting notice of the suit, defendant appeared and filed written statement contesting the suit raising preliminary objections that the suit was bad for misjoinder and non-joinder of necessary parties since the defendant had no concern with the suit land as he had not in possession of the same; that the suit was not maintainable; that no cause of action had arisen to the plaintiff to bring the suit etc. On merits, the defendant controverted the assertions in the plaint repeating the averments in the preliminary objections while coming up with a prayer for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed vide order dated 31.10.2013:

1. Whether the plaintiff is entitled for possession and eviction of suit property as prayed for? OPP.
2. Whether the present suit is not maintainable? OPD.
3. Whether the plaintiff has no cause of action or locus standi to

file the present suit? OPD.

4. Whether the suit of plaintiff is false? OPD.
5. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD.
6. Whether the suit of the plaintiff is not properly verified as per law? OPD.
7. Relief.

In order to prove its case, the plaintiff had examined Mohammad Nazir, Estate Officer, Punjab Wakf Board, Ferozepur besides tendering some documents.

On the other hand, the defendant got his statement recorded as DW1 besides examining Buta Singh as DW2.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff and in favour of the defendant, issue No.2 in favour of the defendant and against the plaintiff, issues No.3 and 5 in favour of the defendant and against the plaintiff, issues No.4 and 6 against the defendant and in favour of the plaintiff. Resultantly, the suit of the plaintiff had been dismissed with costs. This was so done vide judgment and decree dated 28.5.2015.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Ferozepur, which was assigned to Additional District Judge, Ferozepur, who also dismissed the appeal vide judgment and decree dated

22.11.2016.

Being dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted and the impugned judgments and decrees passed by the Courts below be set aside.

On getting notice of regular second appeal, the respondent has appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

As per the case of the plaintiff in the revenue record name of one Sarwan Singh son of Darbara Singh appear to be in possession of the suit land. According to the plaintiff as a matter of fact defendant is in possession of the suit land at the spot, which fact was stoutly and strongly denied by the defendant. Still the plaintiff pursued the matter against the defendant though was unsuccessful in the trial Court as well as in First Appellate Court. Admittedly, to determine ownership and possession of land bearing khasra numbers revenue record is best type of evidence. The revenue officials preparing such record in discharge of their official duties have no reason to prepare record contrary to the factual position at the spot. It is for that reason presumption of truth is attached to entries in the

jamabandi under Section 44 of the Punjab Land Revenue Act. Though such presumption is rebuttable and khasra girdawaries are a relevant piece of evidence to determine the possession of such type of land. The name of defendant no where figures in the revenue record to be in possession of the suit land. It being so, the plaintiff was ill-advised in filing suit for possession against him and if the suit had been instituted, on defendant filing written statement taken up with a plea that he had no concern with the suit land and he was not in possession thereof and further suit was bad for misjoinder and non-joinder of necessary parties, the plaintiff should have withdrawn the suit against the defendant at that stage or at least amended it impleading LRs of Sarwan Singh son of Darbara Singh as defendants but nothing of that sort was done. The trial Court was justified in dismissing the suit of the plaintiff and First Appellate Court was also well within its rights. The First Appellate Court did not commit anything wrong in affirming the judgment and decree passed by the trial Court and dismissing the appeal preferred by the plaintiff. The concurrent findings returned by the Courts below vide judgments, which are well reasoned, based on proper appraisal of evidence and correct interpretation of law do not call for any interference. As a matter of fact no question of law arises in this case what to talk of any substantial question of law.

During the pendency of the appeal, learned counsel for

the appellant has contended that the appellant/plaintiff be allowed to withdraw the suit at this stage in view of statement of Bhag Singh defendant that he is neither in possession of the suit land nor has any concern therewith.

Whereas this request is being strongly opposed by learned counsel for the defendant stating that the plaintiff cannot be allowed to withdraw the suit at this stage. In support of his contention he has referred to a judgment passed by a Co-ordinate Bench of this Court i.e. **Darshan Singh Versus Kartar Singh and others, 2007(1) RCR(Civil)543** wherein it was observed that Order 23 Rule 1 CPC gives unqualified right to the plaintiff to withdraw from a suit so long as suit is pending and no vested right had accrued in favour of the defendants, however once a suit is decided and decree passed, it conclusively determines the rights of the parties with regard to all the matters in controversy in the suit and therefore, at the stage of appeal, though it may be continuation of the suit, the plaintiff has no absolute right to withdraw from the suit.

After hearing the rival contentions of learned counsel for the parties, I find that no ground is made out to allow the plaintiff to withdraw the suit at this stage. The suit filed by plaintiff against Bhag Singh has failed for the reason that Bhag Singh was not found to be in possession of the suit land at the spot and as a matter of fact, he himself has stated that he is not in possession of the suit land. The

remedy of the plaintiff was against the legal heirs of Sarwan Singh, who is recorded to be in possession of the suit land in the revenue record and/or the persons claiming under him. The plaintiff may take legal action against the person(s), who is/are in actual possession at the spot in accordance with law.

As far as the present appeal filed by the plaintiff is concerned, the same is doomed for failure and is dismissed accordingly.

21.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No