

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

CR-1720-2021(O&M)

Date of decision:-9.9.2021

Kulwinder Kaur and another

...Petitioners

Versus

Chief Executive Officer, Punjab Waqf Board and others

...Respondents

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

Present: Mr.Vivek K. Thakur, Advocate
for the petitioners.

H.S. MADAAN, J.

This revision petition under Article 227 of the Constitution of India is directed against order dated 12.8.2021, copy Annexure P11, passed by Additional District Judge-cum-Chairman Wakf Tribunal, Jalandhar, vide which application under Order 39 Rules 1 and 2 CPC for grant of ad interim injunction filed by present revisionists, who are plaintiffs in the civil suit has been dismissed.

Briefly stated, the facts of the case are that plaintiffs Kulwinder Kaur wife of Bachittar Singh and Lakhvir Singh son of Mangal Singh, both residents of Begowal, Tehsil Bholath, District Kapurthala had filed a suit for declaration and permanent injunction against defendants i.e. Chief Executive Officer, Punjab Wakf Board, Chandigarh, Punjab Wakf Board, Kapurthala, Kashmir Singh and Jaspal Singh, wherein they had moved an application under Order 39 Rules 1 & 2 read with Section

151 CPC for grant of ad interim injunction. Notice of the suit as well as the application was given to the defendants, who put in appearance filing written statement and written reply contesting the suit as well as application.

Shortly put, the case of the plaintiffs as pleaded in the plaint has been that initially the entire suit property was unfit for cultivation; however Sh.Dayal Singh grandfather of the plaintiff No.2 made it fit for cultivation after spending money and putting in labour and that was so done earlier to the year 1970; with the passage of time, such land measuring 30 kanals 4 marlas came to be entered in the name of Punjab Wakf Board and Joginder Singh and Baldev Singh sons of Sukha Singh were shown in cultivating possession in the revenue record; subsequently Sh.Dayal Singh predecessor-in-interest of plaintiffs started paying lease money to Punjab Wakf Board in the year 1972; after the death of Sh.Dayal Singh, the property was leased out in the name of Sh.Mangal Singh, father-in-law of plaintiff No.1 and father of plaintiff No.2 vide lease deed dated 31.3.1996; Sh.Mangal Singh remained in cultivating possession of the land paying lease money till 24.5.2012; after death of Sh.Mangal Singh, the plaintiffs stepped into his shoes. Plaintiff Lakhvir Singh approached Punjab Wakf Board on 20.7.2020 so as to deposit arrears of lease amount, however, he was asked to come later on, due to outbreak of Covid-19; he again went there on 16.10.2020 but without any success; however, on 19.10.2020 when plaintiff Lakhvir Singh went to the office of defendant No.2 for the purpose of depositing of arrears of lease money, he was told that the file had been sent to the office of defendant

No.1 for getting permission to deposit the arrears of lease amount and plaintiffs would be informed as and when permission was received; defendants No.3 and 4 along with their father Balbir Singh started interfering in possession of the plaintiffs over land bearing khasra No.99//1/2/5-4. Feeling aggrieved, the plaintiffs had brought a suit in the Civil Court seeking relief restraining the defendants from dispossessing the plaintiffs from suit land bearing khasra No.99//1/2/5-4, 10/1/2-18, wherein the defendants put in appearance, filed written statement taking a plea that defendants No.3 and 4 had allegedly taken the land on lease vide agreement dated 1.9.2020 having paid lease money to the tune of Rs.67,320/- vide receipt No.437 dated 8.9.2020 and further they have deposited amount of Rs.30,800/- with defendants No.1 and 2 towards application fee, security, front charges on 8.9.2020 for the period of 2020-21 to 2022-23. On receipt of notice from defendant No.2, plaintiffs approached defendants, who issued lease order dated 20.11.2020 in respect of land bearing khasra No.24 kanals 18 marlas bearing khasra No.99//4/9-0, 77/24/9-0, 25/4-0, 99/10/1/2-18 situated at village Begowal, Tehsil Bholath, District Kapurthala for agriculture year 2020-21 to 2022-23. Though the plaintiffs requested defendants No.1 and 2 to accept arrears of lease amount in respect of the remaining disputed land measuring 5 kanals 4 marlas and to set aside alleged Qabuliatnama dated 2.10.2020 in the name of defendants No.3 and 4 but to no effect. Thereafter, the plaintiffs had approached the Wakf Tribunal for redressal of their grievances.

Whereas according to the version of defendants, initially

Sh.Dayal Singh was lessee of Punjab Wakf Board and he had been paying the lease money; after death of Sh.Dayal Singh, 30 kanals 4 marlas of land was leased out to Sh.Mangal Singh, father-in-law of plaintiff No.1 and father of plaintiff No.2 on the basis of lease deed dated 31.3.1996; after death of Sh.Mangal Singh Lakhvir Singh Kulwinder Kaur executed Qabuliatnama in favour of Punjab Wakf Board in respect of 24 kanals 18 marlas of land during auction proceedings on 5.11.2020; 5 kanals 4 marlas of land was taken on lease by defendants No.3 and 4. The plaintiffs have no right in that 5 kanals 4 marlas of land, which has been leased out by defendants No.1 and 2 to defendants No.3 and 4. The defendants prayed for dismissal of the suit as well as application.

After hearing arguments, the Tribunal dismissed the application for grant of ad interim injunction, which left the plaintiffs aggrieved and they have filed the present revision petition.

I have heard learned counsel for the revisionists/petitioners besides going through the record and I find that there is no merit in the present revision petition.

The order passed by the trial Court is quite detailed, well reasoned based on proper appraisal and appreciation of the legal as well as factual position and the same does not suffer from any illegality and infirmity and can certainly be not termed as arbitrary or having been passed against settled legal principles.

The trial Court has examined the case of the plaintiffs on the touchstone of three necessary ingredients i.e. plaintiff should have a good prima facie case, balance of convenience should be in his favour and he

would suffer irreparable loss and injury in case of denial of the relief of interim injunction and that all the three ingredients should co-exist. The trial Court found all the ingredients to be lacking in this case. Admittedly the land in question measuring 30 kanals 4 marlas is owned by Punjab Wakf Board. The dispute between the parties is with regard to 5 kanals 4 marlas bearing khasra No.99//1/2/5-4. Though the land had been leased out to Sh.Mangal Singh, predecessor-in-interest of plaintiffs vide lease deed dated 31.3.1996 but Sh.Mangal Singh had expired and as per case of defendants No.1 and 2, in auction of land, which took place on 5.11.2020, out of 30 kanals 4 marlas of land, 24 kanals 18 marlas land had been taken on lease by the plaintiffs vide Qabuliatnama dated 22.12.2020, whereas 5 kanals 4 marlas of land had been leased out by defendants No.1 and 2 to defendants No.3 and 4 vide qabuliatnama dated 2.10.2020. It being so, the plaintiffs cannot claim any right or interest in that 5 kanals 4 marlas of land. Though they had earlier filed a civil suit moving application under Order 39 Rules 1 and 2 CPC but the the trial Court is said to have dismissed that application for ad interim injunction vide order dated 17.12.2020. In the present case the Court has come to the conclusion that plaintiffs cannot be said to be in established possession of the suit property. They are to be taken in possession with regard to 24 kanals 18 marlas of land regarding which qabuliatnama has been issued in their favour and not more than that. They cannot claim any injunction with regard to land measuring 5 kanals 4 marls. As regards the judgment referred to by the revisionists **Prataprai N. Kathari Versus John Braganza, 1999(1) RCR(Rent) 588**, wherein it was observed that a person

who has been in a long continuous possession can protect the same by seeking injunction against any person in the world other than the true owner and that even the true owner of property can get back his possession only by resorting to the due process of law. This judgment does not help the petitioners much here due to different facts and circumstances and the context in which such observations had been made. In this case the plaintiffs are seeking injunction against Punjab Wakf Board and its Chief Executive Officer, who are true owners of the suit land. As per the facts of the authority, the plaintiffs claimed to be in exclusive possession of the land for several decades under a registered lease deed. The defendants had not claimed any specific plea of being owner of that property. In the present case admittedly qabuliatnama with regard to 5 kanals 4 marlas land has been executed in favour of defendants No.3 and 4 by Punjab Wakf Board, whereas the plaintiffs are not shown to have any right or title therein. Therefore, they cannot claim any injunction with regard to said 5 kanals 4 marlas of land and it was rightly declined to them.

Therefore, finding no merit in the civil revision petition, the same stands dismissed.

9.9.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No