

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

**RSA- 591-2021 (O&M)
Date of decision: 29.11.2021**

Punjab Waqf Board	Vs.	...Appellant
Manjit Singh and another		...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.Ghulam Nabi Malik, Advocate,
for the appellant.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 09.01.2017, as upheld by the learned First Appellate Court vide its judgment and decree dated 09.03.2021.

3. Briefly stated, facts as noticed by Courts below are that the plaintiff is the owner of land comprised in Khewat No.166/179, Khatoni No.411, Khasra No.61 (16-5), situated at village Bishanpura, Tehsil Samana, District Patiala, as per Jamabandi for the year 2009-2010. The possession of the defendants over the suit property is illegal and unauthorized. The defendants made an application to the plaintiffs for taking the said land on lease from the plaintiffs on 07.11.2007 and in support thereof the defendants submitted their affidavits for taking the said land on lease. However, after taking the possession of the suit property the defendants have not

approached the plaintiffs nor made any payment for the use and occupation of the suit land. It is further submitted that the landed property at village Bishanpura as well as in adjoining area fetches Rs.50,000/ per annum. In this manner, the suit property can be leased out per annum for the amount not less than Rs.1,00,000/- per annum, but the plaintiff is claiming a sum of Rs.50,000/- per annum for the entire 16 kanals 5 marlas of land from the defendants and the plaintiff is entitled to recover the said amount from the defendants from the year 2007-08 and further till the delivery of actual possession of the same to the plaintiff from the defendants. It is further submitted that the plaintiff has been requesting the defendants to hand over the vacant possession of the suit property to the plaintiff Board and to pay for the illegal use and occupation, but the defendants who previously tried to evade the same, have now flatly refused to do so. Defendants contested the case.

4. Based on the rival pleadings, following issues were framed:

- 1. Whether the plaintiff is entitled for possession over the suit land? OPP*
- 2. Whether the plaintiff is entitled to recover of the suit amount from the defendants for illegal use and occupation of the suit property? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the suit of the plaintiff is false, frivolous and vexatious? OPD*
- 5. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 6. Whether the plaintiff has concealed the material facts from the Court? OPD*
- 7. Relief.”*

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, issue Nos.1 to 4 were decided by the trial Court against the plaintiff. Issue Nos.5 and 6 were decided against the defendants.

7. First Appellate Court dismissed the appeal. Hence Regular Second Appeal before this Court.

8. I have heard the learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties. Relevant part of First Appellate Court's judgment, with which, *inter alia*, I am in agreement, is as below:

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“21. Admittedly, earlier to this mutation, in the column of ownership, this land has been described as Mustarka Malkan-Va- Digar Malkan Hasab Rasab Arazi in Jamabandies for the year 1960-61 to 1974-75 Ex DW1/1, Ex. DW1/2, Ex.DW1/3, Ex.DW1/4 and Ex. DW1/5; A land of this description is the land which is reserved for common purposes at the time of consolidation of holdings. The Rule 16(ii) of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Rules, 1949 read as under:

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Section 23A of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Rules, 1948) reads as under:-

XXX

XXX

XXX

22. A conjoint reading of the Rule 16(ii) and Section 23-A of The East Punjab Holdings (Consolidation & Prevention of Fragmentation) Rules, 1948) makes it clear that the management and control of this land vests in the Gram Panchayat under the law and therefore, no decree for possession can be passed in favour of any person qua this land in the absence of the gram panchayat as a party.. In other words gram panchayat is a necessary party in this case as the

plaintiff has not impleaded the gram panchayat as a necessary party in this case. The learned counsel for the plaintiff has argued that since the suit property is mutated in the name of Punjab Wakf Board as per mutation No.652 dated 30.06.1977 Ex. P22, presumption of truth is attached with the mutation and it shall be presumed that the Punjab Wakf Board is now the owner of the suit property. I, however, do not agree with this argument advanced by the learned counsel for the plaintiff. This is because presumption of truth can only be there when the mutation is held to be valid and correct.

Section 44 of the Punjab Land Revenue Act, 1887 reads as under:

Presumption in favour of entries in Records of rights and annual records:

An entry made in a record-of-rights in accordance with the law for the time being in force, or in an annual record in accordance with the provisions of this Chapter and the rules there under, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

Therefore, presumption of truth can only be attached when mutation is held to be valid and correct. There is no explanation as to how a Jumla Mushtarka land has been converted into the Wakf property. In the present case, no explanation has been provided by the plaintiff Board as to on what basis the notification Ex.P5 was issued and how the jumla mushtarka land has been converted into a Wakf property.

23. *The learned lower court has well found that Under Section 11 of the Punjab Village Common Land Act 1961 the suit of the plaintiff is not maintainable. Moreover, in the present suit, the plaintiffs have not impleaded Gram panchayat as party which is a necessary party. Therefore, the suit is bad for non-joinder of necessary party as provided under Order 1 Rule 3 CPC. This Court has also supported by the decision of the Hon'ble Supreme Court of India in case titled as **U.P.Awas Evam Vikas Parishad Vs. Gyan Devi**, in which it has been held that necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.*

24. *In view of the above discussion, the court is of the opinion that the plaintiff has failed to prove its case. Therefore, the learned trial court has rightly dismissed the suit of the plaintiff and the said judgment and decree do not call for any interference by way of present appeal."*

9. There seems no perversity or illegality in the concurrent

findings of facts returned by the Courts below. Moreover, mutation entry

relied upon by plaintiff is not credited with any presumption of correctness.

No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

10. Furthermore, no question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending application/s, if any, shall also stand disposed of.

13. No order as to costs.

29.11.2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No