

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

RSA No.430 of 2022 (O&M)

Date of decision: 22nd August, 2022

Atta Mohammed

... Appellant

Versus

Haryana Wakf Board, Ambala Cantt. & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Bhupinder Ghai, Advocate for the appellant.

Mr. Prateek Mahajan, Advocate for respondent No.1.

MANJARI NEHRU KAUL, J.

Atta Mohammed defendant No.1 has come up before this Court in the instant Regular Second Appeal challenging the concurrent findings of both the Courts below, whereby suit filed by the plaintiff/respondent No.1 for decree of possession and recovery of the arrears of rent and mesne profits was decreed by the learned Trial Court vide judgment and decree dated 29.09.2017 and the appeal preferred by the appellant was dismissed by the First Appellate Court vide its judgment and decree dated 20.12.2021. The parties to the lis hereinafter shall be referred to by their original position in the suit.

The pleaded case of the plaintiff may be noticed as thus:

Suit property, i.e. shop constructed on land bearing Khasra No.455 min (1-10), is a wakf property which had been given on lease to defendant No.1 by the erstwhile composite Punjab Wakf Board vide

allotment order bearing No.24/lease-Urban(F.No.1278/922/3585) dated 19.11.1992 at the rate of ₹ 50/- per month for a period of eleven months. However, defendant No.1 sub-let the suit property to defendant No.2 in violation of the terms and conditions mentioned in the allotment order dated 19.11.1992. Besides this, defendant No.1 was also in arrears of rent as he had defaulted in paying the rent. Vide legal notice dated 04.05.2019, the plaintiff Board terminated the lease of defendant No.1. Despite the service of the aforementioned legal notice, the defendants failed to vacate the suit property. It was averred that the rent of properties of similar nature was ₹ 50,000/- per month.

In his written statement, defendant No.1 submitted that the plaintiff had not approached the Court with clean hands and had in fact not even given the correct description of the suit property. Besides this, it was also submitted that the suit was time barred and there existed no cause of action to file the suit, in addition to the Civil Court not even having the jurisdiction to entertain the suit. He denied having taken the suit property on lease for a period of eleven months and claimed it had been leased out to him for 99 years. It was also denied that he had sub-let the suit property to anyone much less defendant No.2 or that he was in arrears of rent as alleged by the plaintiff in the plaint.

On the basis of material and other evidence led, both the courts below concluded that the plaintiff had successfully proved the

termination of the lease to defendant No.1 vide legal notice Ex.P10 dated 04.05.2013 as well as the defendants being in arrears of rent.

Learned counsel for the appellant has vehemently argued that both the Courts below failed to appreciate that the jurisdiction of the Civil Court to entertain the suit in question was clearly barred. He further argued that proper issues were also not framed with respect to the eviction of the appellant from the suit property, sub-letting of the suit property but also qua the defendant No.1 being in arrears of rent. He vehemently argued that even no cogent evidence had been led by the plaintiff to prove that the suit property had been sub-let to anyone much less defendant No.2. Hence it was evident that both the courts below had erred while passing the impugned judgment and decrees.

Per contra, learned counsel for the respondent-Wakf Board, while opposing the prayer and submissions made by the counsel opposite, argued that the jurisdiction of the Civil Court to entertain the suit in question was not barred as the Wakf Tribunal was constituted under Section 83 of the Wakf Act, 1995 (hereinafter referred to as, 'the Act'). It was only by virtue of Amendment Act No.27 of 2013, which came into force with effect from 01.11.2013 that the jurisdiction of the Civil Court had been barred, however, since the suit in question was instituted prior to the coming into force of the said amendment, the jurisdiction of the Civil Court over the matter was not barred. He further submitted that during the pendency of the trial, despite the defendants having been duly

served and ample opportunities having been given to them to file their written statement, the defendant No.1 failed to file his written statement, as a result of which his defense was struck off vide order dated 21.01.2016. Thereafter, it was only on 23.03.2017, after the matter had been adjourned on as many as 14 dates that an application was moved by the defendant No.1 seeking permission to file his written statement. In the intervening period, the defendant No.1 had also approached this Court by way of Civil Revision to impugn the order vide which his defense had been struck off. The said Civil Revision No.3449 of 2016 came to be dismissed by this Court vide order dated 17.05.2016 wherein liberty had been granted to the defendant to approach the trial Court concerned for appropriate orders. Despite the orders of the High Court dated 17.05.2016, defendant No.1 chose to sit over the matter and it was only nine months later that he moved an application for filing his written statement. Learned counsel submitted that in the written statement, though defendant No.1 did raise an issue pertaining to the jurisdiction of the Civil Court, however, when the issues were framed learned counsel for the defendant No.1 himself stated at the bar that he did not wish to press his prayer qua jurisdiction at that stage. Learned counsel contended that once the appellant had himself given up his prayer qua jurisdiction of the Civil Court, it did not lie in his mouth to raise this issue at this stage. Learned counsel further submitted that the conduct of the defendant left no manner of doubt that he had been all along intentionally trying to

prolong the litigation. He further argued that the submissions made by the counsel opposite qua no evidence having been led with respect to the suit property having been sub-let to defendant No.2, stood falsified from his own admission during his cross-examination, wherein he conceded that he had sub-let the suit property to defendant No.2. It was also submitted that the defendant had admitted during his cross-examination while stepping into the witness box as DW-1 that he had indeed been served legal notice dated 04.05.2013 Ex.P10. Learned counsel therefore, prayed for dismissal of the instant appeal as impugned judgment and decrees were well reasoned one and thus, did not warrant any interference.

I have heard learned counsel for the parties and perused the relevant material on record.

Defendant No.1 took the suit property on lease vide allotment order dated 19.11.1992 at the rate of ₹ 50/- per month for a period of 11 months from the erstwhile composite Punjab Wakf Board. On 01.08.2003, Govt. of Haryana created a separate Wakf Board namely Haryana Wakf Board under Section 13(1) of the Haryana Wakf Act, 1995 and thereafter, Wakf properties in the State of Haryana vest in the Haryana Wakf Board. Hence in the circumstances, the contention of learned counsel that the jurisdiction of the Civil Court was barred as to whether the suit property vested in Haryana Wakf Board or still continued to vest in the Punjab Wakf Board, is devoid of any merit. Admittedly, the suit in question was instituted on 17.08.2013 and the

Amendment Act No.27 of 2013 in the Wakf Act, 1995 came into force on 01.11.2013, which was later in time. In the circumstances, submissions made by the learned counsel for the appellant that the jurisdiction of the Civil Court was barred, deserves to be rejected outright. Moreover, it is a matter of record that the appellant himself did not press his prayer qua jurisdictional issue of the Civil Court being barred. Hence, the appellant cannot be permitted to agitate qua the same at this stage.

Learned counsel for the appellant has also contended that the suit property had not been leased out to him for a period of 11 months but for 99 years. However, this argument of the learned counsel is yet again bereft of any merit as he was not able to prove the same by way of any cogent evidence. No lease document was produced by the appellant to prove that the suit property had been leased out to him for a period of 99 years. Rather, during his cross-examination, he did admit that he had received legal notice dated 04.05.2019 wherein termination of the lease with respect to the suit property had been communicated to him vide Ex.P10.

The courts below certainly did not commit any illegality in directing the defendants, in the above facts and circumstances, to vacate the suit property within 15 days from the date of receipt of legal notice Ex.P10, failing which the plaintiff would stand entitled to recovery of mesne profit @ ₹ 15,000/- per month. The defendants were rightly directed to pay ₹ 1,000/- per month to the plaintiff as mesne profits as

there was an admission on the part of the defendant that he had not paid rent of the suit property for the past 20 years.

On being pointedly asked, learned counsel has failed to bring to the notice of this Court any material on record from which it could be inferred that the conclusions drawn by both the courts below were either contrary to the record or suffered from any material illegality. In the circumstances, no interference is warranted by this Court to set aside the impugned judgment and decree. The appeal being hopelessly without any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

August 22, 2022
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No