

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

**RSA No.5308 of 2019 (O&M)**

**DATE OF DECISION : 20.07.2022**

Yakub and Another

.....Appellants

versus

Bashir and Others

.....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Arjun Dhingra, Advocate for the appellants

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**ALKA SARIN, J.** (Oral):

The present regular second appeal has been preferred against the concurrent findings of fact recorded by the Courts below dismissing the suit filed by the plaintiff-appellants for permanent injunction as well as the counter-claim filed by the defendant-respondent No.5.

The suit was filed by the plaintiff-appellants for permanent injunction on the premise that the Punjab Wakf Board was the owner of the suit land and the Punjab Wakf Board had filed a suit for permanent injunction against the plaintiff-appellants herein but the same was dismissed vide judgment and decree dated 31.10.2002 passed by the Additional Civil Judge (Senior Division), Ferozepur Jhirka holding that

the Punjab Wakf Board was not in possession of the suit land and that the plaintiff-appellants herein were in possession. It was further averred in the plaint that the defendant-respondents were total strangers and had no concern whatsoever in any manner with the suit land and that they be restrained from interfering in the peaceful possession. The defendant-respondents filed their written statements and also a counter-claim averring therein that they were in cultivating possession of the suit land since the time of their ancestors. Reply was filed to the counter-claim by the plaintiff-appellants as well as by the co-defendants.

The Trial Court, vide judgment and decree dated 29.10.2018, dismissed both the suit of the plaintiff-appellants as well as the counter-claim filed by the defendant-respondent No.5. Aggrieved by the said judgment and decree, the plaintiff-appellants preferred an appeal which also met the same fate vide judgment and decree dated 19.08.2019.

The only argument raised by the learned counsel for the plaintiff-appellants is that the Punjab Wakf Board had filed a suit against the plaintiff-appellants for permanent injunction. Though the Punjab Wakf Board was held to be an owner of the suit land but it was also held that the Wakf Board was not in possession of the suit land.

Heard.

In the present case, no evidence has been led by the plaintiff-appellants to show that the plaintiff-appellants were in possession of the suit land. The reliance by the learned counsel on Ex.P-1 (appended with

the appeal as Annexure A-3), which is the judgment and decree passed on 31.10.2002 in the case of *Punjab Wakf Board vs. Aalam & Ors.* (Civil Suit No.362 of 2000/2001), to contend that the same shows that the plaintiff-appellants were in possession is wholly misplaced. Para-13 of the said judgment reads as under :

*“13. In principle the possession of the property can be taken in two ways.*

*(i) By making recourse to the law; and*

*(ii) When the person in possession delivers the possession voluntarily.*

*In this case the plaintiff-board has failed to adduce any cogent evidence on the record to show that the possession of the suit land was taken by making recourse to the law. There is also no cogent evidence on the record to show that the defendants voluntarily surrendered the possession of the suit land.”*

A perusal of the above reproduced paragraph from the judgment dated 31.10.2002 clearly reveals that the plaintiff-appellants herein were also not in possession of the suit land. It was also held therein that there was nothing on the record to show that the defendants therein, i.e. the plaintiff-appellants herein, voluntarily surrendered the possession of the suit land. Once a finding has been returned that the suit land had been surrendered by the plaintiff-appellants, whether voluntarily or

involuntarily, the only conclusion that can be arrived at is that the plaintiff-appellants are not in possession.

No other argument has been raised.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by the Courts below. No question of law, much less a substantial question of law, arises in the present case.

The appeal is accordingly dismissed.

Pending applications, if any, also stand disposed off.

20.07.2022  
*parkash*

**(ALKA SARIN)**  
**JUDGE**

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| <p><u>NOTE:</u><br/>Whether speaking/non-speaking: Speaking<br/>Whether reportable: YES/NO</p> |
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