

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR 425 – 2023 (O&M)

Date of decision : 20.1.2023

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Satpal and others

.....Petitioners

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Udit Garg, Advocate for the petitioner.

Mr. G.N. Malik, Advocate for the respondent -caveator

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H. S. Madaan, J.

1. Under challenge in this revision petition is order dated 6.12.2022 passed by Wakf Tribunal, Rohtak, in civil suit No. 35 of 2021 vide which while allowing the application under Order 7 Rule 11 CPC, filed by Haryana Wakf Board – defendant No.2 for rejection of plaint had been accepted.

2. Briefly stated, facts of the case are that in a suit filed by plaintiffs Sunder Pal etc. against Haryana Wakf Board, etc. on getting notice, defendant No.1 Haryana Wakf Board, appeared and filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint, contending that plaintiffs in the present suit alleged that the suit land is not a Wakf property and that judgment and decree dated 1.12.2009 as well as the judgment passed in Civil revision No. 4701 of 2010 titled 'Gram Panchayat vs. Haryana Wakf Board' decided on

6.10.2015 by the High Court may be declared as illegal, null and void because, defendant No.5 Gram Panchayat had colluded with defendant no.1 Haryana Wakf Board. It was further alleged that Gram Panchayat Village Uncha Samana – defendant No.5 had not presented the case before the Tribunal and for that reason the suit filed by defendant No.1 was decreed vide judgment dated 1.12.2009. Defendant No. 5 was hand in glove with defendant No.1. In the judgment dated 1.12.2009, the previous litigation which was decided and relied upon by the present plaintiffs was specifically pleaded by Gram Panchayat while filing the written statement and number of documents were produced during its evidence. The suit was decreed by the Wakf Tribunal. The judgment and decree had attained finality upto the Hon'ble Apex Court. Thereafter the plaintiffs are assailing the said judgment and decree, which is barred by law because the Tribunal constituted under the Wakf Act in Haryana has already decided the lis to the effect that whether the property is Wakf property or not and matter went upto the Supreme Court and SLP No. 82-83 filed by the Gram Panchayat was dismissed by the Hon'ble Constitutional Bench of India vide order dated 28.3.2017. Thereafter the matter could not be reopened and the same is barred by law.

3. The application was resisted by the plaintiffs-respondents, who contested the same by filing reply pleading that proprietors of Village were never made parties to the litigation initiated by defendant No.1 in Civil suit No. 49 of 2007. There for the order passed in that suit in favour of the Wakf Board and order passed in CR o.2658 of 2010 and CR No. 4701 of 2010 dated 6.10.2015 and

other subsequent orders passed in Civil Suit No. 49 of 2007 upto Hon'ble Supreme Court are not binding on the plaintiffs and other proprietors. The decree passed in Civil Suit No. 49 of 2007 is illegal, nonest and not binding on rights of the plaintiffs and other proprietors. In that way, the suit is not barred by any law and cause of action arose to plaintiffs to bring the suit.

4. After hearing the arguments, the Wakf Tribunal, Rohtak, vide order dated 6.12.2022 had accepted the application concluding that the suit is barred by law and plaint is liable to be rejected. It was so done accordingly, leaving the defendants aggrieved and they have approached this Court by way of filing the present revision petition.

5. A caveat has been filed on behalf of defendant no.1 Wakf Board and counsel on its behalf has come present to contest the revision petition and address the arguments.

6. I have heard learned counsel for the parties, besides going through the record.

7. Though, in the impugned order, it has not been mentioned specifically but the observations lead to only one inference that the Tribunal found the suit to be barred by the principle of res judicata on account of earlier litigation with regard to the property in question, to which the present plaintiffs were admittedly not a party. Further more res judicata and limitation are mixed questions of law and facts. For proving those, evidence is required to be taken and then considered to decide those issues and the plaint cannot be rejected under the circumstances. Counsel for the revision petitioner has referred to judgment **Srihari HanumandasTotala vs. Hemant**

Vithal Kamat and others 2021 (3) RCR (Civil) 768, wherein it was observed that res judicata is not a ground to reject plaint under Order 7 Rule 11 (d) CPC.

8. Further more, with regard to limitation, the same is also a mixed question of law and facts. Therefore, the trial Court was not justified in rejecting the plaint in terms of Order 7 Rule 11 CPC. The said order is not sustainable and is liable to be set aside. Therefore, the revision petition is accepted.

9. Resultantly, the suit is restored and further proceedings therein to be taken from the stage where the suit before the plaint was rejected. Though learned counsel for the parties have made submissions with regard to certain aspects, which touched merits of the case, but I do not find it necessary to discuss the same here because limited scope of the revision petition is with regard to legality and validity of the order passed by the Tribunal rejecting the plaint.

10. The parties through counsel are directed to appear before the Tribunal on 7.2.2023 at 10.00 a.m. Copy of the order be sent to the Tribunal, through District and Sessions Judge, Rohtak.

20.1.2023	(H.S. Madaan)
chugh	Judge
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No