

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

RSA-3944-2003(O&M)

Reserved on:-17.5.2023

Date of Pronouncement:-25.5.2023

Punjab Wakf Board and another

...Appellants

Versus

Shingara Singh

...Respondent

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

Present: Mr.G.N. Malik, Advocate
for the appellants.

Mr.R.S. Mamli, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Punjab Wakf Board through its Administrator, Head Office at 50 Sardar Patel Marg, Ambala Cantt. and its Estate Officer at Rajpura had brought a suit for possession and ejectment against defendant Shingara Singh son of Nihal Singh, resident of village Sheikhupura, Tehsil and District Fatehgarh Sahib.

2. As per the case of the plaintiffs, the suit property is owned and managed by Punjab Wakf Board; same being 'Gair Mumkin Kabristan' being used as a grave-yard by the local Muslims; the defendant had filed a suit No.51 of 1.2.1991 in the Court of Sub Judge Ist Class, Fatehgarh Sahib against the Punjab Wakf Board, seeking grant of permanent injunction restraining the Punjab Wakf Board from interfering into his peaceful possession over the suit land and from dispossessing him therefrom; that suit was decreed on 28.4.1993 holding that the defendant could not be dispossessed except in due course of law; earlier to that defendant had filed another suit No.752 of 10.12.1986 in the Court of Sub Judge Ist Class, Fatehgarh Sahib, seeking the same relief and it was dismissed; the defendant had wrongly entered into possession of the suit land and since then he is retaining that possession without consent of the plaintiffs; the defendant is a trespasser in unauthorized possession of the suit land, therefore, the plaintiffs sought his ejectment from the suit land and consequent delivery of possession to them.

3. On being put to notice, the defendant had appeared and filed a written statement contesting the suit raising preliminary objections to the effect that suit was not maintainable in the present form; the plaintiffs were not competent to file the suit; the plaintiffs lacked locus standi to bring the suit and Civil Court did not have jurisdiction to try the suit in question. On merits, the defendant

claimed that he is in exclusive, peaceful, continuous, hostile possession of the suit land to the knowledge of the plaintiffs for the last about 50 years without payment of any rent to the plaintiffs or to anybody else, therefore, his possession has matured into ownership rights by way of adverse possession; a suit filed by him has already been decreed against the plaintiffs on 28.4.1993; another suit No.205 dated 29.4.1980 titled as 'Shingara Singh Versus Punjab Wakf Board' was also decreed on 6.11.1981 and appeal against judgment and decree passed by the trial Court was dismissed; Walaiti Khan etc., the local Muslims had also filed a civil suit against defendant in which temporary injunction was refused to them up to the Appellate Court; subsequently the local Muslims had compromised the matter with the defendant vide which defendant gave up two kanals of area out of the suit land for the graveyard; the local Muslims did not pursue the suit which was then dismissed; now the defendant is residing in the suit land having constructed a house there as well as a cattle shed; previously the suit land was barren; the defendant made it cultivable by spending Rs.10/15 lakhs; the defendant had settled in India after partition of the country and is earning his livelihood from the suit land. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

4. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments

in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled for possession as fully described in the head-note of the plaint? OPP.
2. Whether the suit of the plaintiffs is not maintainable? OPD.
3. Whether the plaintiffs have no locus standi to file the present suit? OPD.
4. Relief.

6. Both the parties led evidence in respect of their claims.

During the course of its evidence, the plaintiffs examined Sh. Deenand as PW1.

In rebuttal the defendant got his own statement recorded as DW2 besides examining Paramjit Kaur as DW1.

7. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Fatehgarh Sahib vide judgment and decree dated 26.8.2002 by giving issue-wise findings decreed the suit of the plaintiffs for possession after ejection of the defendant from the land mentioned at letter X i.e. land contained in Khewat No.78, Khatuni No.189, Khasra No.36 measuring 40 kanals 3 marlas as per jamabandi for the year 1993-94 situated at village Sheikhpura, Tehsil and District Fatehgarh Sahib with no order as to costs.

8. Defendant was aggrieved by the said judgment and

decree and he had filed an appeal before District Judge, Fatehgarh Sahib, which was assigned to Additional District Judge, Fatehgarh Sahib, who vide judgment and decree dated 1.5.2003 accepted the appeal with costs, set aside the judgment and decree passed by the trial Court and dismissed the suit filed by the plaintiffs.

9. Now it was the turn of the plaintiffs to feel dissatisfied and they have knocked at the door of this Court by way of filing the present regular second appeal, notice of which was issued to the respondent, who had put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record and I find that the impugned judgment and decree passed by Additional District Judge, Fatehgarh Sahib are not sustainable.

11. The trial Court by proper appraisal and appreciation of evidence and correct interpretation of law had given a finding that plaintiff Punjab Wakf Board is owner of the suit property with which the defendant has no concern and he is in unauthorized possession of such land. The case of the defendant that he has been in possession of the suit land for the last more than 50 years without payment of any rent or lease money to the plaintiffs or anybody else and as such he has become owner by way of adverse possession was not found to have any element of merit and was rejected. The trial Court while arriving at this conclusion had referred to the revenue record i.e.

jamabandi for the year 1993-94 Ex.P1 where name of Punjab Wakf Board appear in the ownership column with no entry being there in the remarks column regarding possession of the defendant. Referring to judgment Ex.P2 and decree-sheet Ex.P3 dated 28.4.1993 in the civil suit filed by defendant against Punjab Wakf Board wherein it was directed that Punjab Wakf Board will not dispossess the present defendant in due course of law, the trial Court had found defendant to be in possession but then observed that there was no cogent and convincing evidence adduced by the defendant as to when the adverse possession started or that the same was open, hostile, continuous for more than 12 years. Rather the documents placed on record by the defendant nullified his that contention inasmuch as copy of khasra girdawari from 1979 to 84 Ex.D1 reflected name of Nagar Panchayat in the ownership column. The jamabandi for the year 1978-79 Ex.D2 reflected Gram Panchayat in the column of ownership and defendant in column of cultivation on payment of CHAKOTA of Rs.440/-. According to letter dated DRL 157111-65110 mutation had been sanctioned in the name of Punjab Wakf Board in Ex.D3. The name of Punjab Wakf Board was reflected in column of ownership and name of defendant shown in column of possession on payment of CHAKOTA of Rs.440/-. It being so, the defendant being in possession on payment of CHAKOTA, he could not take a plea that his possession was adverse and hostile to the

knowledge of the actual owner. The defendant had failed to prove the necessary ingredients of adverse possession much less to show that he has acquired ownership rights as a result thereof, rather he comes out to be a trespasser and in unauthorized possession as has been rightly observed by the trial Court. As such, he was found liable to deliver possession of the suit land to the plaintiff Punjab Wakf Board, who is actual owner of this property. In the earlier litigation initiated by the defendant, the plaintiff Punjab wakf Board had been restrained from taking illegal and forcible possession. Such Wakf Board is adopting legal means to seek possession by filing a civil suit, therefore, such decree passed in favour of defendant earlier does not held him in this case.

12. The judgment and decree passed by the trial Court were result of proper appraisal and appreciation of evidence and correct interpretation of law with no illegality or infirmity being there but learned Additional District Judge, Fatehgarh Sahib showing non-application of mind and inability to understand the factual and legal position on the subject in a proper and effective manner, wrongly set aside the judgment and decree passed by the trial Court finding that the defendant has become owner by way of adverse possession when as has been discussed earlier, it was not so. The defendant had failed to bring enough cogent and convincing evidence to prove the necessary ingredients of adverse possession. Learned Additional

District Judge, Fatehgarh Sahib had lost sight of one more fact that in terms of Section 107 of Wakf Act, 1995, provisions of Limitation Act, 1963 are not applicable to any suit for possession of immovable property comprised in any Wakf or for possession of any interest in such property. Thus learned Additional District Judge, Fatehgarh Sahib fell in error in holding that suit of the plaintiffs was time barred having not been filed within 12 years of defendant coming into possession. Such judgment and decree passed by the first appellate Court of learned Additional District Judge, Fatehgarh Sahib cannot stand judicial scrutiny and are liable to be set aside.

13. Therefore, the appeal has got merit, the same is allowed with costs and the impugned judgment and decree passed by learned Additional District Judge, Fatehgarh Sahib setting aside the judgment and decree passed by the trial Court are set aside, whereas judgment and decree passed by the trial Court are restored.

Since the appeal stands allowed, the miscellaneous application(s), if any stand disposed of accordingly.

25.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No