

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

(1) **RSA-1642-2020(O&M)**

Krishan Lal and another

...Appellants

Versus

The Punjab Wakf Board, Chandigarh and another

...Respondents

(2) **RSA-388-2020(O&M)**

Rattan Lal

...Appellant

Versus

The Punjab Wakf Board, Chandigarh and others

...Respondents

Date of Decision:-14.3.2023

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

Present: Mr.Vishal Sharma, Advocate
for the appellants in **RSA-1642-2020**.

Mr.Suman Kumari, Advocate for
Mr.M.K. Sajjan, Advocate
for the appellant in **RSA-388-2020**.

Mr.Ajit Singh Sodhi, Advocate
for respondent No.1 in both appeals.

H.S. MADAAN, J.

1. By this order, I shall dispose of **RSA-1642-2020(O&M)** filed on behalf of appellants Krishan Lal and Sohan Lal and **RSA-388-2020(O&M)** filed on behalf of appellant – Rattan Lal.

2. Briefly stated, facts of the case are that plaintiff The Punjab Wakf Board (hereinafter referred to as the Board), Chandigarh through its Estate Officer, Ferozepur had brought a suit against defendants Rattan Lal, Sohan Lal and Krishan Lal, all sons of Behram, resident of Khai Road, Bharat Nagar, Ferozepur City seeking possession by eviction of defendants from property measuring 16875 Square feet bearing property No.B-1-2-R-7-S/37 and having MC No.ES 45/2, Bharat Nagar, Khai Road, Ferozepur City (hereinafter referred to as the suit property) fully described in head-note of the plaint and depicted as red in the site plan attached therewith.

3. As per the case of the plaintiff, it is owner of the suit property which is in illegal occupation of the defendants for last several years; the defendants were called upon to hand over the vacant possession of the suit property to the plaintiff - Board but they refused to do so, giving rise to a cause of action to the plaintiff to bring the suit.

4. On notice the defendants appeared. Defendants No.1 and 2 had filed joint written statement, whereas defendant No.3 came up with a separate written statement. In the joint written statement filed on behalf of defendants No.1 and 2, they had raised various legal objections contending that the present suit was not maintainable; the suit was time barred; the civil Court had no jurisdiction to entertain and try the suit; the suit was not properly valued for the purpose of Court fee and jurisdiction etc. On merits, the answering defendants contended that their father Behram was in actual possession of the suit property; there are five *Smadhs* on the ground and three on the upper portion; the father of the

answering defendants was serving the *Smadhs* and he had spent his entire life in doing so; the *Smadhs* have religious sentiments and people visit that place from far away and pay their respects there; a *Mela* is also arranged there every year by answering defendants; after death of their father, the answering defendants had been serving the *Smadhs* and are in actual possession of the same for last more than 40 years; the possession of the answering defendants is open, hostile, lawful, peaceful and without any kind of interruption, as such they have become owners of the suit property by way of adverse possession and plaintiff has no right or concern therewith.

Defendant No.3 in the written statement filed by him took almost the same pleas as were taken by defendants No.1 and 2 in their joint written statement.

All the three defendants prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled for possession and eviction of the defendants from the suit property as prayed for? OPP.
2. Whether the present suit is not maintainable? OPD.
3. Whether the present suit is false? OPD.
4. Whether the suit of the plaintiff is time barred? OPD.
5. Whether the Civil Court has got no jurisdiction to entertain, try and decide the present suit? OPD.
6. Whether no proper Court fee has ever been affixed by the plaintiff?

OPD.

7. Whether the plaintiff has not come to the Court with clean hands and has concealed the true and material facts from the Court? OPD.

8. Relief.

6. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

7. After hearing the learned counsel for the parties, the trial Court of Additional Civil Judge(Sr.Divn.), Ferozepur gave issue-wise findings and vide a detailed judgment and decree dated 28.1.2016 decreed the suit of the plaintiff against the defendants for possession and eviction of defendants from the suit property.

8. Feeling aggrieved by the said judgment and decree, the defendants had an filed appeal in the Court of District Judge, Ferozepur, which was assigned to Additional District Judge, Ferozepur, who vide judgment and decree dated 15.7.2019 dismissed the appeal upholding the judgment and decree passed by the trial Court.

9. Being dissatisfied with the judgments and decrees passed the Courts below, the defendants have approached this Court by way of filing separate appeals inasmuch as Krishan Lal and Sohan Lal filed RSA-1642-2020 and defendant Rattan Lal filed RSA-388-2020.

10. Notice of the appeals has been issued to the respondents and respondent No.1 has put in appearance through counsel.

11. I have heard learned counsel for the parties besides going through the records.

12. In this case both the Courts below considering the pleadings of the parties and keeping in view the evidence adduced by them in light

of the legal position have returned concurrent findings that plaintiff being owner of the suit property stands established on the record. Even otherwise, defendants by taking plea of adverse possession have conceded the plaintiff to be owner of the suit property. However, the defendants have failed to prove the necessary ingredients of adverse possession that they have been in continuous, open and hostile possession of the suit property for a period of more than 12 years to the knowledge of the plaintiff and the entire world. Therefore, the defendants have been unable to establish that their possession had got converted into their ownership on the ground of adverse possession. For the said reason, the plaintiff being the owner of the suit property has every right to seek possession thereof from the defendants since the defendants had been unable to show any right or title in the suit property, which might be on equal or better footing than that of the plaintiff. The defendants had raised an objection with regard to jurisdiction of the Civil Court in entertaining and trying the suit in question. However, both the Courts below have dealt with this matter in a very fine and appropriate manner. The trial Court has relied upon 2010 (2) RCR(Civil) page 210 Supreme Court wherein the Apex Court had observed that jurisdiction of the Civil Courts to try suits of civil nature is very expansive and any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all the disputes shall be triable by Civil Court and any such exception cannot be readily inferred by the Courts. It has further been observed that even in case where jurisdiction of the Civil Court is barred under a statute, the Civil Court can exercise its jurisdiction in respect of some matters particularly when the

statutory authority or Tribunal acts without jurisdiction. The bar is not complete and further the act does not provide for any proceeding before the Tribunal for determining of the dispute concerning the eviction of a person in occupation of Wakf property.

13. The First Appellate Court of Additional District Judge, Ferozepur has also dealt with these facts observing in para No.13 that plaintiff in order to prove that suit property is Wakf property has examined Estate Officer Mohammad Nazir as PW1, who had proved on record documents Ex.P1 to Ex.P5. A perusal of document Ex.P1 site plan prepared by Civil Engineer Gurwinder Singh and Government notification dated 3.10.1970 is to the effect that the suit property is Wakf property. In the said notification, it has been mentioned that it is in unauthorized possession of one Gurcharan Dass son of Inder Dass. The Government notification dated 17.3.2006 Ex.P4 shows that powers have been delegated to all the Estate Officers regarding institution of the suit for possession/ejectments etc., whereas Government notification dated 6.8.2003 Ex.P5 shows the division of Punjab Wakf Board into different parts because earlier there was one Wakf Board qua Punjab, Haryana, Himachal Pradesh and Chandigarh.

14. On the other hand, the defendants had failed to place on record any document to prove their title to the suit property.

15. Learned counsel appearing for the appellants/defendants have argued that only Tribunal had jurisdiction in the matter and jurisdiction of Civil Court was barred. They have further contended that Section 54 of the Wakf Act, 1995 contains specific provision for removal of

encroachments of Wakf Property, therefore the civil suit filed by the Wakf Board in the Civil Court was not maintainable and it was wrongly decreed by the trial Court and appeal filed against the judgment and decree of the trial Court by the appellants was wrongly dismissed.

16. Learned counsel for the appellants have placed reliance upon judgment *Ramesh Gobindram(dead) through LRs Versus Sugra Humayun Mirza Wakf, 2010 AIR (Supreme Court)2897* and have contended that the Civil Court has got jurisdiction if the Wakf Board is to take possession of its property from a tenant and not otherwise. In this case the plaintiff Wakf Board alleges that defendants are in unauthorized possession, therefore they should have approached the Tribunal under Wakf Act, 1995 in terms of Section 54 of the said Act.

17. On the other hand, learned counsel for respondent No.1 – Board has contended that a suit seeking possession of the Wakf property is to be filed in the Civil Court and not before the Tribunal. He has contended that in terms of Section 54(1) of the Wakf Act, 1995, the Chief Executive Officer of the Wakf Board has the power to initiate proceedings for the purpose of removal of encroachment of wakf property, which is not the alternative remedy because that remedy is in the form of power to Chief Executive Officer and the Wakf Board was well within its rights to file a suit for possession by way of ejectment of defendants therefrom in the Civil Court. He has pointed out that powers under Section 54 of the Act are summary in nature, whereas alternative remedy is provided under Section 83(2) of the Wakf Act, 1995 in the form of initiating proceedings in the Civil Court. He has further contended that if the dispute was with

regard to nature of the property whether it was *sunni* or *shia* wakf only then the Tribunal would have jurisdiction in the matter and then jurisdiction of Civil Court is excluded. But in this case the dispute was not of that type.

18. Therefore, it is wrong to say that as has been held by the Apex Court in judgment **Ramesh Gobindram(dead)**(supra) that was applicable to eviction of tenants only. I find that the Civil Court had jurisdiction in the matter and the suit was rightly decreed by the trial Court, which judgment and decree were affirmed by the First Appellate Court.

19. With such concurrent findings having been recorded by the Courts below vide impugned judgments and decrees in which I do not find any illegality or infirmity and with no substantial question of law arisen in this case, the appeals are bound to fail and are dismissed accordingly.

Since the main appeals stand dismissed, the miscellaneous application(s), if any, stand disposed of accordingly and the status quo order dated 3.3.2021 passed separately in both appeals stand withdrawn.

14.3.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No