

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-6557-2018 (O&M)
DECIDED ON: 03.10.2023

RAJINDER SINGH MEHTA

.....APPELLANT

VERSUS

PUNJAB WAKF BOARD AND ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. G.L. Bajaj, Advocate
for the appellant.

SANJAY VASHISTH, J (ORAL)

1. Present Regular Second Appeal has been filed by the defendant – Rajinder Singh Mehta against the concurrent findings of the decreetal of suit filed by the plaintiffs.
2. Plaintiffs – Punjab Wakf Board, Ambala Cantt. and Pardeep Singh filed a suit for possession through ejectment of defendant (appellant herein) from Wakf property/shop measuring 44 square yards, which is a part of land bearing khasra No.1318 and is also bounded, as detailed in the suit. Plaintiffs also sought recovery of Rs.10,00,000/- as compensation on account of illegal use and occupation of the property/shop by the defendant along with interest @ 1% per month till its realisation.

3. Plead case of the plaintiffs (respondents herein) is that Punjab Wakf Board is a corporate body, established under the Wakf Act, 1954 and New Wakf Act, 1995. Punjab Wakf Board, Ambala Cantt. was dissolved by the Central Government and thereafter, a separate Board for each State was constituted, vide Gazette notification dated 29.07.2003. Further, vide Gazette notification No.11 dated 17.03.2006, Estate Officers of Punjab Wakf Board (PWB) were conferred powers to file every kind of suits and the other proceedings.

Further pleaded that the property in question was leased out to Sohan Lal, father of defendant – Rajinder Singh Mehta with effect from 01.04.1972 vide lease order No.2/478 dated 10.04.1973 @ Rs.3 per month, on several terms and conditions for the period of 11 months.

Thereafter, lease regarding the property in question was never renewed by said Sohan Lal and even a single penny was not paid as lease money. Thus, claiming the possession of defendant as illegal, possession of the same was sought by way of the civil suit.

4. In the written statement filed by the defendant, it is pleaded that Punjab Wakf Board failed to prove its ownership in one civil suit filed by the plaintiff, which was dismissed, vide judgment dated 05.09.2007 by the Court of learned Additional District Judge, Faridkot. Thus, not being the owner, PWB has no locus to seek possession from the defendant.

5. Considering the pleadings of the parties, following 7 issues were framed by the learned trial Court, which are reproduced here below:-

“1. Whether the plaintiffs are entitled for possession through ejectment of the defendant as alleged? OPP

2. Whether the plaintiffs are entitled for recovery of Rs.10,00,000/- as compensation along with interest as alleged? OPP

3. Whether this court has got no jurisdiction to hear and try the present suit as alleged ? OPD

4. Whether the suit of plaintiff is bad for non joinder for necessary parties? OPD

5. Whether the plaintiff has concealed the material facts from the court? OPD

6. Whether principal of resjudicata applies to the present suit and suit of plaintiff is liable to be dismissed? OPD

7. Relief.”

6. While dealing with the evidence, trial Court found that as per the evidence brought by the plaintiffs, one Gazette notification marked as Ex. P-1, was issued on 07.08.1971 by the Government under Section 5 (2) of Central Government's Wakf Act, 1954 read with Rule 4 of the Punjab Wakf Rules, 1964, wherein, in column No.14, the suit property is recorded to be in unauthorised possession of MC Truck Union Pepso Transport Samundari Transport Company.

7. On the other hand, defendant has produced on record Jamabandi for the year 2009-10, wherein, ownership of the suit property is recorded in the name of Subai Sarkar, State Government.

8. After considering the evidence led by both the sides, learned trial Court found that said entry in Jamabandi is not substantiated with any evidence. Thus, without there being any document/basis, entry in the Jamabandi in regard to the ownership, was not considered.

On the other hand, Court also observed that the defendant has failed to lead any evidence that the Gazette notification (Ex. P-1) has ever been challenged by defendant or any other person, and thus, the same has attained finality.

It was also observed that defendant has neither taken any plea nor there is any evidence that he is the owner of the property in question and has even failed to explain how he has come in possession of the same. Defendant also failed to establish his connectivity on the basis of possession over the land in any manner.

9. Relevant findings recorded by learned trial Court in paragraphs No.14 and 15 says as under:-

*“**14.** Moreover, as per Section 6 of Central Government Wakf Act, 1954 read with Section 4 of Punjab Wakf Rules 1964, the validity of this gazettee notification regarding the list of property of grave-yard given in the gazette notification was to be challenged within one year. But defendant has failed to produce any evidence which shows that he or any other person has challenged till date the validity of this gazette notification which is marked as Ex.P1. So, this document Ex.P1 has become final and as per this document the suit land is property of wakf board. No doubt the defendant has placed on record Jamabandi for the year 2009-2010 and in the column no.3 of the Jamabandi, name of the owner is mentioned as Subai Sarkar, State Government. But entry in the Jamabandi does not confer any title and any entry in the revenue record regarding the*

confirmation of the right without basis of the document, who confers the title to the parties, has little value.

***15.** Moreover, the defendant in his written statement has nowhere stated that in which capacity he is in possession of the suit land. He simply took a plea that wakf board is not owner of the suit land. Even as per law, he cannot take such plea in view of Section 116 of the Indian Evidence Act. Further defendant did not specifically deny the fact that his father Sohan Lal did not take the suit land on lease from the plaintiff. Further perusal of the evidence and pleadings shows that even defendant did not take a plea that he is owner or someone else is owner of the suit land. Plaintiff has placed on record the document Ex.P3 regarding the bahi khata of Sohan Lal. Further the specific date i.e. 1.4.1972 was mentioned by the plaintiff when the lease order was executed in favour of Sohan Lal father of the defendant @ Rs.3/- per month. So, the document produced by the plaintiff clearly shows that plaintiff is owner of the suit property. Further defendant has failed to prove that in which capacity he is in possession of the suit property, then the burden shifts on the defendant to show that in which capacity, he is in possession of the suit land. But defendant has failed to produce his capacity of possession of the suit land.”*

10. Learned First Appellate Court also, while re-examining the evidence, found no illegality and perversity in the judgment and the decree passed by the trial Court.

11. Even before this Court, counsel for the defendant (appellant herein) is able to make only one submission that in the Jamabandi for the year 2009-10, ownership of the Subey Sarkar, State Government is mentioned. However, it is of no help to the appellant because he himself has failed to plead that he is the owner of the property or he is in lawful possession of the same.

12. No question of law, much less any substantial question of law arises for consideration in the present appeal.
13. Accordingly, having found no illegality, perversity or infirmity in the well reasoned impugned judgments and decree passed by the Courts below, same is affirmed and the present appeal *sans* merit, stands **dismissed**.

03.10.2023
Lavisha

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No