

RSA-2147-1990 (O&M)

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2024:PHHC:017843

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

RSA-2147-1990 (O&M)

Date of decision: 08.02.2024

Punjab Wakf Board, Ambala Cantt

....Appellant

Versus

Sobh Raj and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ghulam Nabi Malik, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, an interesting question has arisen for adjudication. The issue that has arisen is, “as to whether the expression “*such subject matter*” or “*such part of claim*” used in sub-Rule 4 of Order XXIII Rule 1 of the Code of Civil Procedure, 1908 means the substance of the dispute or the suit property?”

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The appellant-Punjab Wakf Board filed a suit for the grant of decree of declaration that Masjid/Mosque built in an area of 4606 square feet, being a Wakf property, vests in the Wakf Board. The suit was filed against the defendant No. 1 to 4. It was asserted that after conducting the primary survey the Government of India vide the gazette notification dated 7th August, 1971 notified the mosque as a Wakf

property. Subsequently, the defendant No. 1, who executed an affidavit admitting the property to be a Wakf property and undertook not to use the Mosque for purposes not in conformity with the Islamic principles was permitted to use the premises. Subsequently, on 24.01.1985, the property was leased to defendant No. 3, whereas defendant No. 4 was permitted to reside in the property as a licensee. While filing the written statement, defendant No. 3 and 4 admitted the claim of the plaintiff, however, defendant No. 1 and 2 contested the suit. It was submitted that the property is not a Wakf property and even if the property was once a Mosque, the property never used as Mosque as the Muslims of the area migrated to Pakistan.

4. The trial court, on appreciation of evidence, decreed the suit after declaring that the property is a Wakf property and therefore, it vests in the plaintiff. In first appeal, the finding of fact arrived at by the trial court to the effect that it is a Wakf property was upheld. However, the court accepted the appeal after reversing the finding on issue No. 6 with respect to the maintainability of the suit. The First Appellate Court has held that the previous suit filed by the Wakf Board against defendant No. 1's father, was withdrawn on 25th October, 1967. Hence, the subsequent suit is not maintainable.

5. In this appeal, despite service of notices, the respondents have not entered appearance.

6. Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook alongwith the requisitioned record.

7. Learned counsel representing the appellant submits that on 25th October, 1967, the previously instituted suit was withdrawn as the parties entered into a settlement. He submits that expression “*such subject matter*” would not denote only the property as such denotation will narrow down the wide interpretation of the expression “subject matter”. In support of his submission, he relies upon case titled as ‘**Jaspal Singh vs. Tahel Singh and others**’ 2018 (2) PLR 58.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. In the considered view of the Court, the expression “*such subject matter*” can not be construed in a narrow sense. The expression “*such subject matter*” means the substance of the dispute, which would include the cause of action as well as the issues involved in the case. For proving such subject matter, the defendants were required to prove the pleadings in the previous suit and the issues involved therein. However, the defendants have failed to prove the pleadings of the previous suit. Only order dated 25th October, 1967 permitting the Wakf Board to withdraw the suit has been proved. Though, a copy of the plaint and the written statement of the previous suit were produced. However, these were never proved and hence, these were not admitted in evidence and exhibited.

10. The Hon’ble Supreme Court has very elaborately discussed the concept of ‘same subject matter’ in **Vallabh Das vs. Dr. Madan Lal and others** 1970 (1) SCC 761. The relevant paragraph is extracted here below:-

“5. Rule 1 of the Order 23, Code of Civil Procedure empowers the courts to permit a plaintiff to withdraw from the suit brought by him with liberty to institute a fresh suit in respect of the subject-matter of that suit on such terms as it thinks fit. The term imposed on the plaintiff in the previous suit was that before bringing a fresh suit on the same cause of action, he must pay the costs of the defendants. Therefore we have to see whether that condition governs the institution of the present suit. For deciding that question we have to see whether the suit from which this appeal arises is in respect of the same subject-matter that was in litigation in the previous suit. **The expression “subject-matter” is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said, that the subject-matter of the second suit is the same as that in the previous suit.** Now coming to the case before us in the first suit Dr Madan Lal was seeking to enforce his right to partition and separate possession. In the present suit he seeks to get possession of the suit properties from a trespasser on the basis of his title. In the first suit the cause of action was the division of status between Dr Madan Lal and his adoptive father and the relief claimed was the conversion of joint possession into separate possession. In the present suit the plaintiff is seeking possession of the suit properties from a trespasser. In the first case his cause of action arose on the day he got separated from his family. In the present suit the cause of action, namely, the series of transactions which formed the basis of his title to the suit properties, arose on the death of his adoptive father and mother. It is true that both in the previous suit as well as in the present suit the factum and validity of adoption of Dr Madan Lal came up for decision. But that adoption was not the cause of action in the first nor is it the cause of action in the present suit. It was merely an antecedent event which conferred certain rights on him. Mere identity of some of the issues in the two suits do not bring about an identity of the subject-matter in the two suits. As observed in *Rukhma Bai v. Mahadeo Narayan*, [ILR 42 Bom 155] the expression “subject-matter” in Order 23 of the Rule 1, Code of Civil Procedure means the series of acts or transactions

alleged to exist giving rise to the relief claimed. In other words "subject-matter" means the bundle of facts which have to be proved in order to entitle the plaintiff to the relief claimed by him. We accept as correct the observations of Wallis, C.J., in Singa Reddi v. Subba Reddi [ILR 39 Mad 987] that where the cause of action and the relief claimed in the second suit are not the same as the cause of action and the relief claimed in the first suit, the second suit cannot be considered to have been brought in respect of the same subject-matter as the first suit."

11. In these circumstances, the defendants have failed to place sufficient material before the court to draw a conclusion that the previous suit was with respect to "*such subject matter*" or "same subject matter" as in the present suit. Even otherwise, this matter can be examined from yet another angle. The property was declared to be a Wakf property by the Government of India by the gazette notification dated 7th August, 1971. Thereafter, defendant No. 1 on 11th November, 1982 gave affidavit admitting that the property is a Wakf property and he will take care of the property from any encroachment. He also undertook not to use the property for purposes that defy the Islamic principles. Moreover, the property thereafter was leased in favour of defendant No.3. A small part of the same was also licenced in favour of defendant No. 4. This time the suit was filed in the year 1986. Hence, the suit filed in 1986 was not on the basis of cause of action which accrued when the previous suit was filed in the year 1967. It is the positive case of the defendants as it is stated in para 13 of the grounds of appeal that the previous suit was withdrawn on the basis of a settlement arrived at between the parties. Hence, the fresh suit filed by the plaintiff was based on a fresh cause of action.

12. Moreover, the Code of Civil Procedure, 1908, as the name denotes is a procedural code and the procedure laid down in the Code shall not be used to defeat the rights of an owner by interpreting it in a different manner than what was intended by the Legislature while drafting it. These laws are meant to be interpreted justly and reasonably. The purpose of law shall be defeated if it is interpreted in a narrower sense.

13. Keeping in view the aforesaid discussion, the appeal is allowed. The judgment passed by the First Appellate Court is set aside.

14. All the pending miscellaneous applications, if any, are also disposed of.

08.02.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE