

148 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1663-1993(O&M)
Date of decision :16.04.2024

Punjab Wakf Board and another ...Appellants

Vs.

Municipal Committee Patiala
and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lalit Singla, Advocate and
Ms. Varsha Sharma, Advocate
for the appellants.

Mr. H.P.S.Ghuman, Advocate
for the respondents No. 1 and 2.

Mr. Kanav Singla, AAG, Punjab
for respondent No.3.

Mr. Sandeep Khunger, Advocate and
Mr. Pankaj Samania, Advocate
for respondent No.5 (in COCP-2647-2011).

Mr. Mayank Mathur, Advocate
for the applicant (in CM-3891-C-2015).

Mr. Salil Sagar, Sr. Advocate with
Mr. Sankalp Sagar, Advocate
for the applicant/respondent No.4 (in CM-4792-C-2015).

Mr. R.S. Randhawa, Advocate and
Mr. Taranum Madan, Advocate, for
for the applicant (in CMs No.5009-10-C-2013)

ANIL KSHETARPAL, J. (Oral)

1. In this regular second appeal, the plaintiff assails the

correctness of concurrent findings of fact arrived at by the Courts below while partly decreeing plaintiff's suit with respect to land measuring 17 kanals 11 marlas, whereas, dismissing the suit qua land measuring 107 kanals 01 marla.

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

3. The plaintiff claims that the suit property is a Wakf property, which vests with the Wakf Board and in the revenue record, it is recorded as graveyard and Mosque. The Municipal Committee, Patiala has illegally occupied the same. The Municipal Committee while contesting the suit claimed that the property was part of the *shamlat deh* of village Arain Majra, which subsequently vested in the Municipal Committee as the village came within municipal limits. It was also claimed that the land measuring 17 kanals 11 marlas is not in possession of the Municipal Committee and after 1947, the land is being used for common/public purpose and never used for graveyard.

4. Both the Courts below upon appreciation of evidence came to the conclusion that only 17 kanals 11 marlas is proved to be used for graveyard and mosque. Hence, the suit qua that has been decreed. It has been held that originally the property was barred of *shamlat deh* of village Arain Majra and the revenue entry in jamabandi for the year 1984-85 showing that the Punjab Wakf Board has purchased the property is also incorrect because no sale deed has been

produced.

5. Learned counsel representing the appellants submits that in the revenue record, the property is used for 'ahl-e-islam'. He submits that once there is an entry in the revenue record showing that the property is being used with reasons belonging to Muslim religion, the suit has been wrongly dismissed.

6. Learned counsel representing the appellants admits that the plaintiff has not even produced notification allegedly issued in the year 1971, to prove that the property was ever notified as the Wakf property.

7. Moreover, in a recent judgment passed by the Supreme Court in **'Salem Muslim Burial Ground Protection Committee vs. State of Tamil Nadu and others'** 2023 AIR Supreme Court 2769, it has been held that in absence of any evidence of valid creation of Wakf in respect of the suit property, the declaration that the property is Wakf cannot be granted. A publication of notification in the official gazette has presumption of knowledge to the general public. However, such notification is not conclusive. Unless, it is proved that a proper survey was conducted and there is evidence of valid creation of Wakf, no declaration that the suit property is Wakf can be granted.

8. In this case, as already noticed the Wakf Board has not produced the notification. No evidence has been led to prove that there was any valid creation of Wakf with respect to the suit property.

9. Hence, no ground to interfere is made out.
10. Dismissed.
11. All the pending miscellaneous applications, if any, are also disposed of.

16.04.2024

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Whether speaking/reasoned :
Whether Reportable :

(ANIL KSHETARPAL)
JUDGE

Yes	No
Yes	No