

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

RSA-1841-1992 (O&M)
Reserved on : 21.03.2024
Pronounced on: 03.04.2024
2024:PHHC: 045773

PUNJAB WAKF BOARD

. . . . APPELLANT

Vs.

NAND LAL THROUGH HIS LRS

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. G.S. Bhatia, Advocate
for the appellant.

Mr. Manoj Makkar, Advocate,
for the respondent.

DEEPAK GUPTA, J.

This Regular Second Appeal is directed against the judgment and decree dated 25.05.1992 of the First Appellate Court, dismissing the appeal filed by the plaintiff - Punjab Wakf Board (*now appellant*) against the judgment and decree dated 30.08.1991 of the trial Court, whereby suit filed by plaintiff board for possession of suit property against defendant-Nand Lal (*now respondent*) was dismissed. Thus, this RSA is against concurrent judgments of the courts below, dismissing the suit of the plaintiff.

2. Trial Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3.1 According to the plaintiff-Punjab Wakf Board, it is owner of a property bearing no.B-VI, 1010-B - 41/30 situated in Rohtak, which is a Wakf Property with area 93½ x 71½ feet equivalent to 758 sq. yards approximately.

Said property was transferred in the plaintiff-Punjab Wakf Board in the year 1960-61 by Central Government through custodian. Said property was earlier in the shape of a house and was rented out to Ram Pyara Mal and Ram Lal sons of Late Sh. Sohna Ram, who used to pay rent to the plaintiff against rent receipts issued by Rent Controller, Rohtak. After the death of these tenants i.e. Ram Pyara Mal and Ram Lal, the property was illegally occupied by Shri Hari Ram son of Ralla Ram, Devki Chand son of Gurditta Mal, Ram Ashra son of Ram Piara Mal, Bhagwan Dass son of Ram Lal and present defendant Nand Lal. These five persons demolished the earlier existing house and partitioned amongst themselves the said property without the knowledge or consent of the plaintiff Board. They started raising construction illegally by collecting building material on the portions as partitioned amongst themselves, compelling the plaintiff-Punjab Wakf Board to file suit for permanent injunction against these five persons including the defendant in the Court of Id. Sub Judge, First Class, Rohtak.

3.2 During the pendency of above suit No.880 of 1983, Shri Hari Ram, Devki Chand, Ram Ashra and Bhagwan Dass approached the plaintiff Board and made separate applications admitting the title of the plaintiff and desired to become tenants under the plaintiff. These four persons became tenant on the respective portions on the monthly rent of ₹25/- each. However, defendant neither approached the plaintiff so as to become the tenant nor agreed to pay the rent and kept on illegally possessing the portion shown by red Colour in the attached plan marked with letter 'A'. He raised construction thereon with old material of the Punjab Wakf Board house. According to the plaintiff, the possession of the defendant is illegal as a trespasser and that plaintiff is entitled to recover ₹200/- per month for use and occupation of the

Board property and also to take possession thereof.

With above averments, plaintiff-Punjab Wakf Board prayed for a decree of possession over the suit property and also decree for recovery of ₹100/- per month for use and occupation.

4. Defendant in his written statement denied that the property under his possession is part of the property belonging to the plaintiff, although he admitted that property under his possession is adjacent to the property vesting in the Punjab Wakf Board, which had been earlier let out to Ram Pyara Mal and Ram Lal. Defendant admitted about the earlier suit, which was filed by the plaintiff and alleged that the same was filed on false and baseless grounds against him. He disputed the correctness of the site plan relied by the plaintiff. Defendant further claimed that he was in possession of the property by virtue of a purchase from Trust Mahant Gurmukh Singh Ji, registered at Rohtak, which he purchased along with his son and widow of another son. He also pleaded that he had spent approximately ₹50,000/- on raising construction. Denying any right of the plaintiff-Punjab Wakf Board in the suit property under his possession, defendant prayed for dismissal of the suit.

5. Following issues were framed for adjudication: -

1. Whether the plaintiff is owner of the suit property? OPP.
2. If issue No. 1 is proved whether the plaintiff is entitled to the relief of possession as alleged? OPP.
3. Whether the suit is bad for mis-joinder of parties? OPD.
4. Whether the plaintiff is estopped from filing the present suit? OPD.
5. Whether the defendant is entitled to special compensatory cost? OPD,
6. Relief.

6. Evidence led by the parties was taken on record. Ld. trial Court

held the plaintiff-Punjab Wakf Board to be owner of the suit property under issue No.1. Plaintiff was held entitled to the possession of the suit property under issue No.2. The finding on issue No.3 went against the defendant by holding that suit was not bad for misjoinder of necessary parties. However, issue No.4 was decided in favour of the defendant by holding that plaintiff-Punjab Wakf Board was debarred from seeking relief of possession under Order 2 Rule 2 CPC, inasmuch as the earlier suit filed by the plaintiff against defendant-Nand Lal had been dismissed as withdrawn qua him without seeking any permission. Finding on issue No.5 went against defendant. Consequent to these findings, particularly the finding on issue No.4 i.e. suit being barred under Order 2 Rule 2 CPC, the suit was dismissed vide judgment dated 30.08.1991.

7. Aggrieved by the aforesaid judgment and decree, plaintiff filed appeal challenging the finding on issue No.4. Upon notice, the respondent-defendant filed cross-objections challenging the finding of the trial Court on issues No.1 to 3 & 5. The appeal filed by the plaintiff Board as well as Cross-objections filed by the defendant were heard together by the First Appellate Court. The findings of ld. Trial Court on issues No. 1 and 2 were reversed. These issues were decided against the plaintiff-Punjab Wakf Board by holding that it had failed to prove its title over the suit property and so, was not entitled to the possession thereof. The finding on issue No.4 returned by the trial Court was affirmed. Consequently, the appeal filed by the plaintiff was dismissed; whereas cross-objections were partly allowed vide judgment and decree dated 25.05.1992.

8. Against the aforesaid judgment and decree of the First Appellate Court, the plaintiff has approached this Court by way of present Regular First

Appeal.

9. It is contended by Ld. Counsel that the First Appellate Court acted with material irregularity reversing the well reasoned finding of the trial Court on the point of ownership of the plaintiff and wrongly held that sale deed Ex.D11 was not correctly considered by the trial Court. Still further, it is contended that the earlier suit filed by the plaintiff was a simplicitor suit for permanent injunction and therefore, simply because that suit was dismissed as withdrawn qua the defendant, could not be a bar for claiming possession in the subsequent suit based on title and so, the Court below erred in deciding issue No.4 in favour of the defendant by misreading Order 2 Rule 2 CPC.

10. Refuting the contentions as aforesaid, written submissions have been filed on behalf of the respondent-defendant and it is contended that finding of the First Appellate Court to the effect that suit property under the possession of the defendant was not part of the property bearing B-VI 1010-B-41/30 and rather, it is the part of B-VI 1010-A, is a finding of fact and the same cannot be interfered with by this Court in Regular Second Appeal.

11. I have considered submissions of both the side and have appraised the record.

12. A perusal of the trial Court would reveal that during pendency of the suit, plaintiff Board had moved an application for appointment of Local Commissioner so as to measure the area in possession of the defendant. Said application was allowed and the Local Commissioner, a retired Kanungo, was appointed, who submitted his report dated 20.11.1990. It is by making reference to this report of the Local Commissioner that trial Court had held the property under the possession of the defendant was part of B-VI 1010-B owned by the plaintiff-Punjab Wakf Board.

13. While upsetting the aforesaid finding, Id. First Appellate Court, held as under: -

“15. After giving careful thought to the rival submissions of the learned counsel for the parties, I am of the view that the deciding factor for learned trial court on the question as to whether the disputed property is part of plot No. B-VI-1010-B, is the report of local commission. The report of local commission is dated 20.11.90. I have gone through it. The fact that the local commission has given the site plan of the property and shown in the same the property in possession of Nand Lal to be bound by the property of Ram Bhaj on the north cannot be made the basis for the finding that the property No. B-VI.1010-B. The local commission was appointed on the specific request and under specific orders from the court to measure the property in possession of the defendant because plea of the plaintiff in the application was that besides being in possession of 150 Sq. yards of land purchased from Mehant Gurmukh Singh Ji Trust, the defendant has in his possession land measuring 300 Sq. yards, which includes the property of the plaintiff. The local commission vide his report has found the possession of the defendant only over land measuring 189 2/9 sq. yards. Vide Ex.D1, the defendant, his son and his son's widow have purchased 188 sq. yards of land, which is admitted by the plaintiff in the application for appointment of local commission, although giving the area so purchased to be 150 sq. yards.

16. When the local commission has not measured the portion in possession of Hari Ram and others, which is quite evident from the sketchy remarks about the same in the report, it cannot be said that the portion shown red with letter 'A' in the site plan is a portion of property No. B-VI.1010-B and is not the property originally owned by Wakf Board and coming to the defendant through Mehant Gurmukh Singh Ji Trust.

17. Thus, the findings of learned trial court on issue No. 1 to the effect that the plaintiff is owner of the suit property cannot be sustained and the same is set aside and the plaintiff cannot be held entitled to possession thereof.”

14. The abovesaid finding returned by the Id. First Appellate Court is clearly a finding of fact and so, cannot be interfered by this Court in the second appeal. No substantial question of law is found to be involved in the present appeal. It has been held by Hon'ble Supreme Court in *Avtar Singh Vs. Bimla Devi, 2021(13) SCC 816* that Section 41 of the Punjab Courts Act,

1918 (for short, 'the 1918 Act') continues to be in force and not Section 100 of the Code of Civil Procedure in the States of Punjab and Haryana. Under Section 41 of the 1918 Act, the substantial question of law is not required to be framed and that concurrent findings of the facts, cannot be interfered with howsoever erroneous, gross or inexcusable the error may seem to be. These findings of fact include findings based on documentary evidence. Jurisdiction to interfere in the second appeal under Section 41 of the 1918 Act can be invoked only, where there is an error in law or procedure and not merely an error on a question of fact. Hon'ble Supreme Court held further that High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view. Mere findings of fact cannot be interfered with in exercise of second appellate jurisdiction available under Section 41 of the 1918 Act.

15. As a result of above discussion, this Court does not find any merit in the present appeal, as no substantial question of law is found to be involved. Once it has been found that plaintiff is unable to prove its title over the suit property, so obviously, it is not entitled possession thereof.

Dismissed.

Pending application(s), if any, also stand disposed of.

03.04.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>