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

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Date of decision:18.11.2024

PUNJAB WAKF BOARD

...APPELLANT

VERSUS

SAWAL RAM

...RESPONDENT

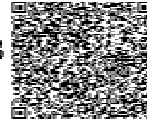
CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. G.S. Bhatia, Advocate
for the appellant.

Mr. Daldeep Singh, Advocate
for the respondent.

SUVIR SEHGAL, J.

1. This appeal has been filed by the appellant-plaintiff challenging the concurrent finding of fact recorded by the Courts below.
2. Appellant-plaintiff filed a suit for possession of plot measuring 9600 square feet (for short “the disputed property”). Pleaded case of the plaintiff was that the property of Khangah Hazi Rattan graveyard, mosques and makbaras etc., which belonged to the muslims before partition of India, vests in the plaintiff and is managed by it. The agricultural land including the disputed property was being used for religious purposes for the last several years. A few years prior to the filing of the suit, the respondent-defendant illegally encroached upon the disputed property and raised some construction. Despite being asked to hand over the vacant possession of the plot, defendant refused to do so.



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3. Upon notice by the Trial Court, defendant appeared and contested the suit by filing a written statement, wherein various preliminary objections were taken. A specific stand was taken that the plaintiff is not the owner and the disputed property is in the possession of Dharampal and others, who have constructed a residential house consisting of five rooms and they are staying there for the last 30 years. It has been averred that they are in peaceful possession of the property and have become owners by way of adverse possession. The site plan of the property has been disputed and it has been averred that the property left behind by the muslims after their migration vested in the custodian and a trust was never created. Plaintiff filed a replication controverting the stand taken by the defendant in the written statement. On the basis of the pleadings of the parties, the Trial Court framed the issues. After the parties led evidence in support of their respective stand, Trial Court by judgment and decree dated 04.12.1991, dismissed the suit, which was upheld in appeal by the learned Additional District Judge, vide judgment dated 14.01.1993. Plaintiff is before this Court in the above background.

4. Mr. G.S. Bhatia, counsel for the appellant, has referred to Section 66H of the Wakf Act, 1954, to urge that the property left behind by the muslims on their migration to Pakistan is deemed to have been vested in the wakf board from the date of its entrustment by the custodian and an action for its possession is maintainable before a Civil Court. He has placed reliance upon in **Punjab Wakf Board Vs. Bachan Chand 1988 PLJ 436.**



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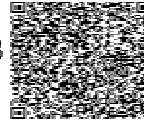
5. On the contrary, Mr. Daldeep Singh, counsel for the respondent has made a reference to the judgment of the Supreme Court in **Salem Muslim Burial Ground Protection Committee Vs. State of Tamil Nadu and others 2023 SCC OnLine SC 656** to contend that there is no evidence on record that the suit property vested in the wakf and has become its property.

6. I have heard counsel for the parties and considered their respective submissions.

7. Section 66H was introduced in the Wakf Act, 1954, by virtue of an amendment carried out in the year 1984. This provision came up for interpretation before the Supreme Court in ***Bachan Chand's case (supra)*** and the observations of the Supreme Court are reproduced hereunder:-

“3. The validity of the view taken by the Punjab High Court as on the date when the judgment was rendered need not be examined for reasons which will become evident presently. Subsequent to the decision of the High Court giving rise to the present appeal, Wakf Act of 1954 has been amended and a new embodied in Section 66H of the Act.

“66-H Special provision as to evacuee wakf properties. - The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of Section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950) which immediately before it became such evacuee property within the said meaning was property comprised in any wakf and, in particular, any entrustment (whether by transfer of any documents or in any other manner and whether



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generally or for specified purposes) of any such property to a Board made before the commencement of the Wakf (Amendment) Act, 1984 in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to –

(a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of the Act 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950) with effect from the date of such entrustment, and

(b) authorise such Board to assume direct management of the wakf concerned for so long as it might deem necessary"

By virtue of Wakf (Amendment) Act of 1984 which has been given retrospective effect from the date of the enforcement of the Act. It has been provided therein that this provision shall be deemed always to have been on the statute book notwithstanding anything contained in any other provisions of the Act. Having regard to the aforesaid newly added provision, a wakf property would vest in the Wakf Board in the same effect as in a trustee of such property for the purposes of sub-section (1) of Section 11 of the Administration of Evacuee Property Act, 1950 with effect from the date of such entrustment....."

8. By virtue of Section 66H of the Wakf Act, 1954, property can

be treated to have been vested in the wakf board with effect from the date of



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its entrustment. The wakf board would be entitled to maintain a suit for possession of the property and the Civil Court has the jurisdiction to entertain it. This provision has not been brought to the notice of both the Courts below nor any evidence has been led to show that the property is wakf property either by usage or by virtue of any notification.

9. The maintainability of the suit for possession at the hands of the plaintiff is not in dispute, but this Court is of the view that an opportunity needs to be afforded to the appellant-plaintiff to lead evidence to show that the property is wakf property. As a corollary, the respondent-defendant should be provided with an ample opportunity to rebut the evidence led by the plaintiff. As this provision has not been discussed by the Courts below, this Court is of the view that the impugned judgments and decrees deserve to be set aside and the parties deserve be relegated to the Trial Court for re-trial of the civil suit.

10. For the reasons afore-going, judgments and decrees passed by both the Courts below are set aside. Matter is remitted to the Trial Court for decision afresh. Trial Court shall grant opportunity to both the parties to lead additional evidence, in support of their respective case.

11. Appeal is disposed of.

12. Parties are directed to appear before the Trial Court on 08.01.2025 for further proceedings in accordance with law.

18.11.2024
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No