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

RSA-3641-2019 (O&M)

Reserved on : 12.02.2024

Date of Decision : 20.02.2024

Mangat Rai Goyal & Ors.

....Appellants

VERSUS

Darshan Lal since deceased through LR & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravish Bansal, Advocate for the appellants.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellants against the judgment and decree dated 06.07.2017 passed by the Trial Court and the judgment and decree dated 07.12.2018 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for permanent injunction for restraining the defendant-appellants from interfering in his peaceful possession of shop-cum-court yard measuring 202.11 square yards bearing property No.3A/38A as described fully in the plaint. It was the case set up by the plaintiff-respondent No.1 that the suit property was owned by the Punjab Wakf Board and on 25.02.2004 it was leased out to the plaintiff-respondent No.1 for thirty three months @ Rs.600/- per month with a condition that the rent would be enhanced @ 15% every three years. On the same day, on an

application sent by the plaintiff-respondent No.1, the Punjab Wakf Board issued a No Objection Certificate (NOC) for construction/super construction on the premises. The plaintiff-respondent No.1 appended all the receipts vide which the payments were made to the Punjab Wakf Board. On notice the defendant-appellants contested the suit. They filed a joint written statement raising various preliminary objections regarding maintainability. On merits it was averred that the suit property, alongwith some property surrounding it, was leased out to Hanuman Mandir Committee of which the defendant-appellant No.1 is the President. It was further averred that the plaintiff-respondent No.1 wanted to grab the suit property and take forcible possession. It was further averred that the Punjab Wakf Board had leased out the property to Hanuman Mandir Committee through its President Mangat Rai. Replication was filed.

3. On the basis of the pleadings of the parties the following issues were framed :

- 1) Whether the plaintiff is entitled to get the relief of permanent injunction, as prayed for ? OPP
- 2) Whether suit of plaintiff is not maintainable ? OPD
- 3) Whether plaintiff has concealed material facts from this Court ? OPD
- 4) Relief.

4. The Trial Court vide judgment and decree dated 06.07.2017 decreed the suit of the plaintiff-respondent No.1. Aggrieved by the same, the defendant-appellants preferred an appeal which appeal was dismissed vide judgment and decree dated 07.12.2018. Hence, the present regular second

appeal.

5. Learned counsel for the defendant-appellants has vehemently contended that the plaintiff-respondent No.1 is not in possession of the suit property and that the suit property was leased out by the Punjab Wakf Board to the Hanuman Mandir Committee through its President - Mangat Rai (defendant-appellant No.1 herein). It is further the contention of the learned counsel that the plaintiff-respondent No.1 has miserably failed to prove that the suit property had been leased out to him by the Punjab Wakf Board. It is further the contention that the documents were all proved by way of secondary evidence. The learned counsel for the defendant-appellants has further contended that the site plan (Ex.P1) is totally different from the site plans Ex.P4 and Ex.P5/A which were prepared at the back of the lease deed.

6. I have heard the learned counsel for the defendant-appellants.

7. In the present case both the Courts have concurrently found that the suit property had been leased out by the Punjab Wakf Board to the plaintiff-respondent No.1. Being a simpliciter suit for injunction, only the possession was to be seen. The plaintiff-respondent No.1 in order to prove his possession had examined the concerned official from PSPCL and Avinash Chander Garg, Draftsman. He also examined Akbar Anwar Ahmad Khan, Rent Controller, Punjab Wakf Board, Zira and all these witnesses stated that as per the record of the Punjab Wakf Board, the plaintiff-respondent No.1 was in possession of the suit property from 25.02.2004 till his death and after his death his legal representatives are in possession of the suit property. PW-4 proved on record the lease deed dated 25.02.2004 in favour of Darshan Lal. The various rent receipts were also proved by the

said witness. The argument of the learned counsel for the defendant-appellants that the site plan produced with the plaint and the site plan behind the lease deed do not tally deserves to be rejected in view of the fact that the concerned official from the Punjab Wakf Board had appeared and had clearly deposed that the suit property had been leased out by the Punjab Wakf Board and that the plaintiff-respondent No.1 stood recorded as being in possession in the books of the Punjab Wakf Board. The argument of the learned counsel for the defendant-appellants that the evidence has been proved by way of secondary evidence would also deserve to be rejected on the ground that there was no challenge to the order permitting secondary evidence. The lease deed has duly been proved on the record by PW-4 and so have the receipts. On the other hand, to rebut the evidence of the plaintiff-respondent No.1, the defendant-appellant No.1 - Mangat Rai - appeared as DW1, however, the said witness did not bring a single document to show his possession over the suit property. Apart from the oral statement, not an iota of evidence was produced on the record to show that the suit property was ever leased out to Hanuman Mandir Committee by the Punjab Wakf Board.

8. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

20.02.2024

Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO