IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2025:PHHC:062710

(217) **RSA-5292-2012 (O&M)**
Decided on : 12.05.2025

Nanak Chand ……Appellant

Versus

Kanwar Pal & others ……Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present: Mr.Adarsh Jain, Advocate, for the appellant(s).

Mr.Deepak Sabherwal, Advocate
Mr.J.S.Salooja, Advocate, for respondent No.13.

PANKAJ JAIN, J. (Oral)

Plaintiff is in appeal and has filed the suit for permanent injunction, claiming himself to be in possession as a lessee over part of Khasra No.500 measuring 54'x21' under Punjab Wakf Board-defendant No.13. Plaintiff claimed that after having taken land on lease, he has constructed a shop over the same. Defendants are raising construction of choupal of Mallhas towards southern side of the suit property in Khasra No.500 and are threatening to dispossess the plaintiff. Plaintiff further asserted that he previously filed Civil Suit No.955/11.10.1990 titled *Nanak Chand Vs. Punjab Wakf Board, Ambala & others* seeking decree of perpetual injunction. The said suit was decreed vide judgment and decree dated 02.04.1997. The same has attained finality.

2. Upon notice, defendants No.1 to 12 filed joint written statement, denying the title of Punjab Wakf Board.

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3. Defendant No.13-Punjab Wakf Board though resisted the suit filed by the plaintiff, however, admitted that the plaintiff is in possession of the suit property and has raised construction. It was, however, claimed that the construction being in violation of the terms of lease granted by the Wakf Board in favour of the plaintiff, he is liable to be ejected from the suit property. The suit filed by the plaintiff was put to trial by the Court of First Instance, framing the following issues:

> "1. Whether the plaintiff is lessee over the suit land, as alleged? OPP
> 2. Whether the plaintiff is entitled to the decree of permanent injunction, as alleged? OPP
> 3. Relief."

4. Deciding issue No.1, the Court of First Instance found that the defendants failed to prove their respective stand. The possession of the plaintiff over the suit property, as recognized vide judgment and decree dated 02.04.1997 passed in Civil Suit No.955/11.10.1990 was proved on record as Annexure P-10. The same has gone unrebutted. The suit filed by the plaintiff was allowed. The defendants were restrained from interfering in peaceful possession of the plaintiff, except in due course of law. It decreed the suit filed by the plaintiff.

5. Dissatisfied, the defendants filed appeal. Interestingly, the Punjab Wakf Board did not file any appeal. In appeal, the Lower Appellate Court reversed the findings recorded by the Court of First Instance, holding that the land was leased out to the plaintiff for 11 months only and in the year 1999, the ownership was changed and mutation was also sanctioned in favour of Punjab Wakf Board. The Lower Appellate Court held that since the lease in favour of the plaintiff was never extended beyond 11 months, thus, Punjab Wakf Board is owner in possession of Khasra No.500. Lower Appellate

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Court, thus, reversed the judgment and decree passed by the Trial Court and dismissed the suit filed by the plaintiff.

6. Mr.Jain, while assailing the findings recorded by the Lower Appellate Court, has drawn attention of this Court to the judgment and decree dated 02.04.1997. He further refers to the written statement filed on behalf of defendant No.13 wherein possession of the plaintiff has been admitted by Punjab Wakf Board. He, thus, submits that once the Punjab Wakf Board admits that it is the plaintiff who is in possession of the suit property and the said issue already has attained finality in the earlier lis, the Lower Appellate Court erred in reversing the findings recorded by the Court of First Instance. The suit property being in the ownership of the Punjab Wakf Board is not in dispute. The notification was published in the Gazette of India dated 11.04.1987, which was neither pleaded nor proved by any of the parties. Appellate Court ought not have made out a case not pleaded.

7. Per contra, Mr.Sabherwal has drawn attention of this Court to the observations made by the Lower Appellate Court in para no.15 wherein the Lower Appellate Court has considered order of the Commissioner dated 26.02.1988 wherein the revenue entries were changed subsequent to the notification issued under Section 5 of the Punjab Wakf Board.

8 I have heard counsel for the parties and carefully gone through the records of the case.

9. So far the ownership of land is concerned, there is no dispute. Even the plaintiff asserts his possession only as lessee under the Punjab Wakf Board. In the earlier lis, plaintiff has already been held to be lessee in the property under Punjab Wakf Board. In the present lis, Punjab Wakf Board,

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which is arrayed as defendant No.13, while filing written statement, admitted the possession of the plaintiff in unequivocal terms. The precise pleadings raised by the Board reads as under:

> "3. Para No.2 of the plaint is wrong and denied. The plaintiff has raise construction in violation of the terms of the lease in his favour and is liable to be ejected from the suit property."

10. Considering the aforesaid facts, coupled with the fact that the Punjab Wakf Board did not even file appeal against the judgment and decree passed by the Trial Court, this Court finds that the Lower Appellate Court erred in dismissing the suit filed by the plaintiff granting decree of perpetual injunction in favour of the plaintiff. Admittedly, the plaintiff is in possession under the Punjab Wakf Board. It was so held in the earlier lis as well. The fact has been admitted by the Wakf Board.

11. Thus, in these circumstances, the Court of First Instance rightly decreed the suit filed by the plaintiff. The findings recorded by the Lower Appellate Court, thus, cannot be sustained and are hereby set aside and the judgment passed by the Court of First Instance is ordered to be maintained.

With the above-said observations, the present appeal is allowed. All pending application(s) also stand disposed of.

(PANKAJ JAIN)
JUDGE

May 12, 2025
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Whether speaking/reasoned : Yes
Whether Reportable : No

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