

(2009) 12 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 861 of 1993

Dalipa @ Dhakkar Shah

APPELLANT

Vs

Punjab Wakf Board (A Corporate Body) Ambala Cantt.,

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Evidence Act, 1872 — Section 116
Limitation Act, 1908 — Section 5

Citation : (2010) 1 Law Herald 580 : (2010) 2 RCR(Civil) 416

Hon'ble Judges : Sham Sunder, J

Advocate : Ramanjeet Singh, S.K. Pipat, Anjali Khosla, Vikas Singh, Advocates
for appearing Parties

Judgement

Sham Sunder, J.—This appeal, is directed, against the judgment and decree, dated 14.12.89, rendered by the Court of Sub Judge 1st Class, Sultanpur Lodhi, vide which, it decreed the suit of the plaintiff, and, the judgement and decree, dated 31.07.92, rendered by the Court of Additional District Judge, Kapurthala, vide which, it dismissed the appeal.

2. The facts, in brief, are that, Punjab Wakf Board, plaintiff, is the owner of the land, measuring 22 kanals, situated in village Deepawal, Tehsil Sultanpur Lodhi, District Kapurthala. It was stated that the defendant, had illegally encroached upon the land, in dispute, without having any right or title therein. The defendant, was many a time, asked to admit the claim of the plaintiff, over the land, in dispute and hand over the vacant possession thereof, but to no avail. Ultimately, a suit for possession, was filed.

3. The defendant, put in appearance, and filed written statement, wherein, he took up various objections, and contested the suit. It was pleaded that the suit was not maintainable; that the Civil Court, had no jurisdiction, to entertain and try the suit; that no notice, was served, upon the defendant/appellant, before filing the suit; and that the plaintiff/respondent, was estopped, from filing the suit, by its own act and conduct. It was stated that, as per the revenue record,

the land, in dispute, was owned, by Gram Panchayat, it being Shamlat Deh. It was further stated that some officials of the plaintiff, approached the defendant, in the year 1970, and told him that the land, in dispute, was owned by it (plaintiff). It was further stated that the land, in dispute, is a graveyard. It was further stated that the defendant, used to serve the grave, being Chela. It was further stated that the defendant, being illiterate, accepted the demand of the plaintiff, and agreed to take the land, in dispute, on lease. It was further stated that lease deed, was executed, by the defendant, in favour of the plaintiff @ Rs. 160/ per year. It was further stated that, thereafter, the rent, was enhanced to Rs. 200/ per annum. It was further stated that, later on, it came to the knowledge of the defendant, that the land, in dispute, was a "Shamlat Deh", and did not vest in the plaintiff. It was further stated that the defendant, had been in possession of the land, in dispute, for the last more than 30 years. The remaining averments, were denied, being wrong.

4. On the pleadings of the parties, the following issues were struck:

- (i) Whether the suit is not maintainable? OPD
- (ii) Whether the Civil Court has no jurisdiction to entertain this suit? OPD
- (iii) Whether the notice was required to be served? If so its effect? OPD
- (iv) Whether the plaintiff is estopped to file the suit by his act and conduct? OPD
- (v) Whether the plaint is required to be amended as per preliminary objection No. 6? OPD
- (vi) Whether the plaintiff is owner of the suit property? OPP
- (vii) Whether the defendant has illegally and forcibly occupied the land, in dispute? OPP
- (viii) Whether the plaintiff is entitled to possession as prayed for? OPP
- (ix) Whether the defendant is tenant @ Rs. 200/ per year? If so its effect? OPD
- (x) Relief.

5. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, decreed the suit of the plaintiff.

6. Feeling aggrieved, an appeal, was preferred by the defendant/appellant, which was dismissed, by the Court of Additional District Judge, Kapurthala, vide judgement and decree dated 31.07.92.

7. Still feeling dissatisfied, the instant Regular Second Appeal, has been filed by the defendant/appellant.

8. I have heard the Counsel for the parties, and have gone through the evidence, and record of the case, carefully.

9. The following substantial questions of law arise, in this appeal, for the determination of this Court:

(i) Whether the Courts below, recorded perverse findings, on account of misreading and misappreciation of evidence, that the defendant/appellant, was a tenant, in the property, in dispute, which stood terminated, the moment, he denied the title of the plaintiff/respondent?

(ii) Whether the Courts below recorded perverse findings, contrary to the provisions of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, that the Civil Court had jurisdiction to entertain and try the suit?

10. The Counsel for the appellant, submitted that the land, in dispute, belonged to the Gram Panchayat. He further submitted that, under these circumstances, the Civil Court, had no jurisdiction, to entertain and try the suit, as it was only the Collector, who could decide the disputed title of the land, between the parties. He further submitted that the first Appellate Court, was also wrong, in coming to the conclusion, that the plaintiff/appellant, was a tenant, in the land, in dispute. He further submitted that the Punjab Wakf Board, was not the owner of the land, in dispute. He further submitted that the first Appellate Court, was also wrong, in coming to the conclusion, that once the title of the Punjab Wakf Board, was denied, by the defendant/appellant, his tenancy stood automatically terminated and he was liable to be evicted from the land, in dispute. He further submitted that the judgements and decrees of the Courts below, being illegal, were liable to be set aside.

11. On the other hand, the Counsel for the respondent, submitted that the defendant/appellant, himself admitted, in the written statement, that he was in possession of the land, in dispute, as lessee, and not as a trespasser. He further submitted that, once there was an admission, on the part of the defendant, that he was a lessee, in the land, in dispute, the moment, he denied the title of his landlord, his tenancy came to an end. He further submitted that even he could not deny the title of his landlord, during the subsistence of his tenancy. He further submitted that, no doubt, in the revenue record, Nagar Panchayat, was recorded, to be the owner of the property, in dispute, yet the entries contained, in the jamabandis, though carry a presumption of truth, are rebuttable. He further submitted that the same, were rebutted, by the notification, copy whereof, is exhibit P1, and copy of the details of the property, exhibit P2, which showed, that the land, in dispute, being graveyard vested, in the Punjab Wakf Board, and, as such, it was the owner thereof. He further submitted that the Courts below, were right, in holding, that the Civil Court, had jurisdiction, to entertain and try the suit. He further submitted that the judgements and decrees of the Courts below, being legal and valid, are liable to be upheld.

12. After giving my thoughtful consideration, to the rival contentions, advanced by the Counsel for the parties, in my considered opinion, the appeal is liable to be dismissed, for the reasons to be recorded, hereinafter. In Madvan Nair Vs.

Bhaskar Pillai (2005) 10, SCC, 533, Harjeet Singh Vs. Amrik Singh (2005) 12, SCC, 270, H.P. Pyarejan Vs. Dasappa, JT 2006(2), SC, 228, and Gurdev Kaur and others Vs. Kaki and others [2006(2) LAW HERALD (SC) 1414] : (JT 2006 (5) SC, 72, while interpreting the scope of Section 100 of the Code of Civil Procedure, the principle of law, laid down, was that the High Court, has no jurisdiction to interfere with the findings of fact, arrived at by the trial Court, and the first Appellate Court, even if the same are grossly erroneous as the legislative intention was very clear that the legislature never wanted second appeal to become a 'third trial on facts' or 'one more dice in the gamble.' It was further held that the jurisdiction of the High Court in interfering with the judgements of the Courts below, is confined only to the hearing of substantial questions of law. First coming to the ownership of the land, in dispute, it may be stated here, that Abdul Latif Khan, PW1, a Rent Collector of the Punjab Wakf Board, Kapurthala, appeared, in the Court, as a witness, and proved P1, copy of the notification, and P2, copy of the details of the property vesting in the Wakf Board, including the property, in dispute. According to notification P1, with which, P2, is attached, giving the details of the property, it is evident, that the nature of the land, in dispute, is shown as graveyard. In notification P1 and the details of the property P2, the land, in dispute, is shown, to be the ownership of the Wakf Board. The notification P1 is the conclusive proof of ownership of the plaintiff, in respect of the land, in dispute. It is settled principle of law, that the jamabandis are no substitute for title. The same are prepared only for fiscal purpose to determine the liability of the person to pay land revenue. In jamabandi P3, for the year 198384, no doubt, in the column of ownership, "Shamlat Deh", has been recorded, to be the owner of the property. Similarly, in the khasra girdawri P4, for the period 197479, and khasra girdwari P5, for the period 197984, "Shamlat Deh", has been shown, to be the owner. The entries, contained in the jamabandis, as stated above, no doubt, carry a presumption of truth, which is rebuttable. In the instant case, notification P1, is dated 11.09.1971, which was published, in the Government of India Gazette. The notification, copy whereof, is P1, alongwith which, the detail of the property, vesting in the Wakf Board, P2, is attached, was issued, before the jamabandi P3, for the year 198384, khasra girdawri P4, for the period 197479, and khasra girdwari P5, for the period 197984 came into existence. Once the Wakf Board, was proved, to be the owner of the property, in dispute, vide notification P1, alongwith which, list of the Wakf properties, was attached, it is not known, as to how, the name of "Shamlat Deh", was recorded, in the revenue record, in the column of ownership, subsequently. No evidence, was produced, by the defendant/appellant, as to how, the ownership, from the Wakf Board, to "Shamlat Deh", in respect of the land, in dispute, was changed, in the subsequent jamabandi, and the khasra girdawris. No reliance, therefore, could be placed, on jamabandi P3 and khasra girdawris P4 and P5. Under these circumstances, the Courts below, were right, in holding, that it was the Wakf Board, which was the owner of the property, in dispute.

13. The next question, that arises for consideration, is, as to whether, the defendant/appellant, was lessee of the Wakf Board, in the property, in dispute. The defendant, in the written statement, in clearcut terms stated, that he was lessee, in the property, in dispute, and was not a trespasser. Once he claimed himself, to be the lessee, in the property, in dispute, as per the provisions of Section 116 of the Indian Evidence Act, he was estopped from denying the title of his owner/landlord, during the subsistence of such lease. Even when the defendant, appeared, as DW1, he admitted, during the course of his crossexamination, that he had been paying lease money to the plaintiff. The mere fact, that he denied the title of the plaintiff, in respect of the property, in dispute, during the subsistence of tenancy, in itself, was sufficient, to put an end to such tenancy. In other words, the moment the defendant/appellant denied the title of his owner/landlord in respect of the property, in dispute, his tenancy stood automatically terminated. The first Appellate Court, was, thus, right in holding, that the plaintiff, was entitled to the decree for possession.

14. The Courts below were also right in holding that since from the notification copy whereof, is P1, accompanying the details P2 of the Wakf properties, it was proved that the property, in dispute, was the ownership of the plaintiff, the Civil Court, was competent to entertain and try the suit for possession.

15. The concurrent findings of fact, recorded by the Courts below, on the aforesaid points, being based on the correct reading and due appreciation of evidence, and law, on the point, do not suffer from any illegality and perversity, warranting the interference of this Court. The judgements and decrees of the Courts below, are liable to be upheld. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

16. The substantial questions of law, depicted above, are answered, against the appellant.

17. For the reasons recorded above, the instant Regular Second Appeal, being devoid of merit, must fail, and the same is dismissed with costs.