

(2007) 05 P&H CK 0167
In the Punjab And Haryana At Chandigarh

Lal Chand (Dead) through his L.Rs. and Others	APPELLANT
Vs	
Balkar Singh (Dead) through his L.Rs. and Others	RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 11, 5, 6

Citation : (2007) 4 PLR 19

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below arising out of suit for permanent injunction in respect of land measuring 64 Kanals. The Plaintiffs amended the plaint so as to claim decree for possession after the defendants were delivered possession during the pendency of the suit.

2. The plaintiff-respondents filed a suit for permanent injunction in respect of land described in the head note of the plaint alleging themselves to be tenants under the Wakf Board. It was pleaded that the suit land belongs to Takia Maghi Shah, a Muslim Khanga and the land in dispute vested in the Custodian after the Muslims migrated to Pakistan in the year 1947. It was further pleaded that, as per Wakf Act, 1954 (hereinafter to be referred as "the Act"), all properties such as graveyards, Takias, Khankhas, Immam Bara, Dargahas, Kasbaiahs etc. vested in the Wakf Board. The land in dispute being land attached to Takia Maghi Shah vested in the Wakf Board.

3. It is pleaded that the plaintiffs are in possession of the land as tenant of the Wakf Board since 1960 and the Custodian has no right title or interest in the suit land and, thus, sought injunction against the defendants, the present appellants. The defendant-appellants denied that the land ever vested in the Wakf Board and the suit property was not transferred under any notification of the State

Government nor was eliminated from the register of the Custodian department as an Evacuee property.

4. On the basis of the respective pleadings of the parties, following issues were framed:

1. Whether plaintiffs are tenants in possession of suit land under defendant No. 5? OPP

2. Whether the plaintiffs are estopped from taking plea of tenancy of suit land under defendant No. 5 by principle of res judicata? OPD

3. Whether plaintiffs are entitled to injunction prayed for? OPP

4. Relief.

5. In evidence, the plaintiffs have relied upon lease deed dated 21.5.1964, Exhibit P2, and notification dated 30.9.1972, Exhibit P-1, whereby the property is notified to be Wakf property. The plaintiffs also relied upon receipts of payment of rent to Wakf Board, Exhibits P-3 to P-7. PW5 Balkar Singh, one of the plaintiffs, has deposed that the suit land was owned by Takia Maghi Khangah prior to year 1947 and on migration of Muslims, it vested with Wakf Board. Such deposition was sought to be rebutted by the defendants. It is the case of the defendants that they have purchased the property from Custodian in auction held on 26.11.1976 for Rs. 76,000/-. The suit land was owned by Central Government and the Wakf Board has no concern with it. A sum of Rs. 3,750/- was paid and the remaining amount was to be paid in instalments. Vide report Exhibit D-1 dated 15.06.1980, the possession of the land was delivered by the authorities to the appellants after payment of the instalments and since then the appellants are in possession of the suit land as owner. The appellants have also relied upon an application for permission to produce document Annexure P-1 and P-2 dated 4.6.1999 in respect of conferment of ownership rights by the Custodian in favour of defendants by a document registered by Sub Registrar, Batala.

6. It may be noticed that earlier the plaintiffs have filed a suit for permanent injunction on 25.2.1977 wherein a finding was returned that the plaintiffs have failed to prove their plea of tenancy under Wakf Board but since they have proved to be in possession of the suit land, therefore, the suit was decreed vide judgment Exhibit D-2 to the effect that the plaintiffs cannot be dispossessed from the suit land otherwise than in due course of law. With the consent of the parties, the issue of ownership was kept open.

7. Earlier, against the judgment and decree passed by the learned trial Court on 3.2.1981, the learned First Appellate Court framed additional issue to the effect whether the appellants are bona fide purchasers of the suit land. After framing of the issue, the learned First Appellate Court sought report from the learned trial Court. The learned trial Court has given its report dated 12.10.1982 holding that the appellants are not bona fide purchasers with consideration and without notice.

8. The learned First Appellate Court affirmed the decree holding that in view of notification dated 30.9.1972, Custodian has the right, title or interest to conduct auction on account of which the defendant-appellants can claim ownership. It was held that in terms of Section 11 of the Administration of Evacuee Property Act, 1950, the trust property vested with the Wakf Board and, thus, could not have been put to public auction by the Custodian.

9. With the aforesaid factual background, I have heard learned Counsel for the parties on the following substantial questions of law:

1. Whether the property can be said to be trust property in the hands of the Custodian which would vest with Wakf Board in terms of Section 11 of the Administration of Evacuee Property Act, 1950?

2. Whether notification dated 30.9.1972, Exhibit P-1, is sufficient to declare the property in dispute as Wakf property and the said notification is not binding on the rights of the defendant-appellants?

10. Learned Counsel for the appellants has vehemently argued that there is not an iota of evidence on the record that the suit property is a Wakf property meant for religious purposes or is dedicated to the Wakf, In the absence of any evidence of dedication or user of the property as Muslim Wakf, the same cannot be deemed to be vested with Wakf Board, Reliance is placed upon Punjab Wakf Board, Ambala Cantt. Vs. Cpat. Mehar Singh and Others, . It is also contended that the revenue record produced shows that property to be owned by the Central Government. There is no evidence produced by the plaintiffs that the land was ever used as a Muslim Wakf or such land is attached to Takia Maghi Shah.

11. Mr. Sarin, learned senior Counsel representing the respondents has vehemently argued that issue regarding the fact whether the property in dispute is Wakf property or not was not framed. Still further, once the Wakf Board is proved to be the owner by virtue of notification u/s 5 of the Act, the defendants cannot be permitted to raise an argument that such notification is not binding. In view of the said notification, the property is proved to be Wakf property and such question cannot be examined by the civil Court. Reliance is placed upon judgment of Hon"ble Supreme Court in case reported as Punjab Wakf Board v. Bachan Chand 1988 P.L.J. 436

12. It is specifically pleaded case of the plaintiffs that the suit land belongs to Takia Maghi Shah, a Muslim Khanga. However, apart from the bald statement of plaintiff Balkar Singh, who appeared as PW5, there is no evidence that the suit land belongs to Takia Maghi Shah. There is no evidence of any of the inhabitants of the village or of any other person to the effect that the land belongs to Takia Maghi Shah. The plaintiffs have led no evidence, oral or documentary, to support such assertion. Bald statement of the plaintiff is not sufficient to return a finding that the suit land belongs to Takia Maghi Shah as the plaintiff has an interest to depose to that effect. Still further the plaintiff cannot be aware of the nature of

the land as he came into possession only in the year 1964 whereas the land is alleged to be Takia Maghi Shah prior to 1947.

13. Still further, the determination of question, inter-alia, whether the land is Wakf, is inherent in Issue No. 3 which is to the effect whether the plaintiffs are entitled to the injunction prayed for. The plaintiffs are entitled to injunction prayed for only if the property is held to be Wakf property as the plaintiffs are alleged to be tenants under the Wakf Board. Still further, both the Courts below have examined the question whether the suit property is Wakf property or not. Therefore, it is not open to the plaintiff respondents to allege that no issue regarding the nature of the property was framed.

14. Both the Courts below have relied upon Section 11 of the Administration of Evacuee Property Act, 1950, to hold that the suit property vests in the Wakf Board. However, the basic fallacy is that only the evacuee property, which is the property in trust for a public purpose of a religious or charitable nature, alone vests with Wakf Board. The Custodian is competent to deal with such property for and on behalf of the Wakf, Therefore, what was required to be proved by the plaintiffs was whether the property in dispute is of religious or charitable nature and that even though the same is described to be owned by the Custodian, but is, in fact, a Wakf property. In view of the findings in preceding paragraphs, the finding recorded by the learned Courts below that the property vests with Wakf Board in terms of Section 11 of the Administration of Evacuee Property Act, 1950, is misconceived and is not tenable.

15. Therefore, in respect of substantial question No. 1, it is held that there is no evidence of user of the land as a Muslim Wakf prior to 1947 which alone could deemed to vest the land with Custodian for the benefit of Wakf Board.

16. Both the Courts below have relied upon notification, Exhibit D-2, dated 30.9.1972 to hold that Wakf Board is owner of the suit land as the same vest with Wakf Board. However, the said finding is clearly not sustainable. It is not the case of the plaintiffs that any notice was served upon the defendants or their predecessors before such notification was issued. Hon''ble Supreme Court in case reported as Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, , has held that notification issued u/s 5(2) of the Act is final and conclusive between the Wakf Board, Mutawalli and the person interested in the Wakf. Thus, it was held that list published u/s 5(2) of the Act will not bind a stranger who is in possession of the property merely because he happens to be a person affected by the publication of the list of Wakfs. It was held to the following effect:

It follows that where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be put in jeopardy merely because the property is included in the list. Such a person is not required to file a suit for declaration of his title within a period of one year. The special rule of limitation laid down in proviso to Sub-section (1) of Section 6 is not applicable to him. In other words, the list published by the Board of Wakfs under

Sub-section (2) of Section 5 can be challenged by him by filing for declaration of title even after the expiry of the period of one year, if the necessity of filing such suit arises.

17. In view of the said judgment, notification dated 30.9.1972 cannot be said to be final and conclusive against the interest of the appellants.

18. The judgment in Bachan Chand's case (supra), relied upon by Mr. Sarin, is not helpful to the contention raised as the question raised in the aforesaid appeal was in respect of the jurisdiction of the civil Court in relation of Wakf property which was once declared as evacuee property on account of migration of trustees of Wakf to aieas now forming part of Pakistan. In the aforesaid case, the suit for possession was filed by the Wakf Board against the defendant who alleged himself to be a tenant under the Wakf Board. The question raised in the aforesaid proceedings was not that it was a Wakf property vesting in the Wakf Board being a charitable or religious nature. The case in fact proceeded from that stage.

19. Still further, reliance on notification dated 27.02.1961, relied upon by the respondents, authorizing the Wakf Board to exercise powers u/s 11 of the Administration of Evacuee Property Act, 1950 in respect of Muslim evacuee properties in trust for a public purpose or charitable nature is not applicable to the facts of the present case as the said notification cannot be co-related with the property in dispute. The notification is general in nature authorizing the Board of Wakfs established u/s 9 of the Muslim Wakfs Act, 1954 to exercise power u/s 11 of the Administration of Evacuee Property Act, 1950. However, to the basic question that there is no user or dedication of the property for religious or charitable purposes prior to partition of the country, such notification cannot be extended.

20. In view of the above, the findings recorded are not sustainable as the same suffer from perversity and erroneous interpretation of the statutory provisions. The afore, the present appeal is allowed and the impugned judgment and decree passed by the learned Courts below is set aside. The suit is dismissed with no orders as to costs.