
(1985) 05 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 32 of 1973

Punjab Wakf Board, Ambala and Another	APPELLANT
Vs	
Gram Sabha, Basoli and Another	RESPONDENT

Date of Decision : 09-05-1985

Acts Referred:

Punjab Wakf Rules, 1964 — Rule 4
Waqf Act, 1954 — Section 5(2), 6

Citation : AIR 1986 HP 23 : (1985) ShimLC 223

Hon'ble Judges : V.P. Bhatnagar, J;H.S. Thakur, J

Bench : Division Bench

Advocate : R.C. Bakshi, for the Appellant; D.D. Sood vice Chabil Dass, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Thakur, J.—This Letters Patent Appeal is directed against the judgment of the learned single Judge of this Court who dismissed the second appeal preferred by the appellants.

2. Material facts to determine this Letters Patent Appeal may be stated. The appellants-plaintiffs (hereinafter to be referred to as the plaintiffs) filed a suit against the respondents/defendants (hereinafter to be referred to as the defendants) for declaration that the "Pirsthan" or Dargah property known as "Pirnigahia" as detailed in the head note of the plaint is a place of worship and a Dargah, dedicated for pious and religious purposes recognized by the Muslim Law and that it fell within the definition of "Wakf as contained in the Wakf Act, 1954 (hereinafter called the Act) and that on the enforcement of the Act, the property had vested in the plaintiff-Wakf Board. It was stated that the mutation sanctioned in favour of the defendant-Gram Panchayat, of the said property was wrong and illegal. It was further asserted that on the basis of the mutation, the defendants were interfering in the management of the property and were receiving offerings at the aforesaid place of worship. The plaintiffs also prayed for

permanent injunction restraining the defendants from interfering with the management of the place of worship and from receiving offerings. The defendants, however, opposed the suit and consequently issues were framed by the trial Court.

3. The only point which needs determination in this letters patent appeal is whether the suit property is Wakf property or not. The trial Court after considering the evidence on record came to the conclusion that the property did not fall within the definition of "Wakf as contained in Section 3(1) of the Act. It was observed by the trial Court that the plaintiffs had failed to prove that the suit property was a "Wakf property and had vested in the Punjab Wakf Board. The plaintiffs preferred an appeal but the learned Additional District Judge affirmed the decree and judgment passed by the trial Court. A second appeal was preferred to this Court. The learned single Judge, after considering the points raised on behalf of the plaintiffs, however, upheld the judgment of the Courts below.

4. We have heard the learned counsel for the parties at length and also perused the evidence on record. The Khasra numbers of the property in dispute are 3765 and 3766. The plaintiffs produced the copies of two Jamabandi pertaining to the land. They are Ex. P. 1, pertaining to the year 1913-14 and the other Ex. P. 2 for the year 1960-61. In the earlier jamabandi in the column of ownership, the name of "Shamlat-deh" is shown and, in the column of occupation it is described as a place of worship. Khasra No. 3765, measuring 2 kanals 14 marlas is shown as "Gair Mumkin Dera" while Khasra No. 3766, measuring 5 marlas is shown as "Gair Mumkin Jayapir". In the latter jamabandi, Panchyat Deh is shown as the owner and in the column of occupation the entry is "Prastishgah Ahle Hanud Wo Ahle Islam" meaning thereby that it was a place of worship for Hindus as also of Muslims. It is thus described as "Gair Mumkin Pirsthan". As per Ex. P. 2, the earlier Khasra numbers of the suit land were 2037 and 2038 respectively and as per Ex. P. 6, this land was shown as "Jayapir Sultan" in 1888. Apart from these entries, there are entries in the "Wazib-ul-Arz" of the village relating to Sammat 1926 (Ex. P. 3) and of the settlement 1913-14 (Ex. P. 4). Entries of Ex. P. 3 and Ex. P. 4 are almost identical. The entries show that the only source of miscellaneous income was "Pirnighahia" where "mela" was held every Thursday and offerings were made by the public. The entries also provide the modes of disbursement of that income. According to these entries, after meeting the expenses of necessary repairs of the buildings attached to "Pirnighahia" and other miscellaneous expenses, the balance was divided among some named persons in defined shares. The persons named were Muslims as also non-Muslims. It further provides that the rights of "Mujawars" were of the nature of occupancy rights which were heritable by their legal heirs. "Mujawars" in the context of this case would mean the persons named in the "Wazib-ul-Arz" and who were dividing the balance income among themselves.

5. The aforesaid documentary evidence suggests that where the land in dispute

originally formed part of "Shamlat Den" and subsequently came to be known as "Pirsthan" probably for the reason that some "Pir" i.e. a holy man had his abode here or some memorial was raised after his death. Keeping in view the facts that the land was originally a part of "Shamlat Den" and the income of this place used to be divided by certain named persons, both Muslims and non-Muslims, the logical conclusion that follows is that the property in dispute was not dedicated by a person professing Islam and it has not been used for purposes recognized by Muslim Law as pious, religious or charitable. This property was also not described as "Mosque", "Idgah", "Imambara", "Dargah", "Khangah" or a "Maqbara" by which names Muslim Wakfs are generally known. It is common knowledge that a holy man attracts followers of all faiths irrespective of his own religion and is worshipped by all of them. It is not surprising if on the death of such a holy man all his followers belonging to different religions joined hands in raising a suitable memorial for him and then used the same as a place of worship. In such a case, the place would not become wakf simply because the holy man belonged to a Muslim family. Besides the documentary evidence, the oral evidence has also been produced on behalf of the plaintiffs. P.W. 1 Barkat Ali admitted that even before 1947 both Hindus and Muslims attended the "Mela" at this place and that Hindus also worshipped this place. He also admitted that a "Gharyal" (Bell) had been installed in this place which was rung by all persons entering the place. It is a matter of common knowledge that "Gharyals" are usually found in Hindu temples. P.W. 2 Dilip Singh has also admitted that persons of all faiths worshipped the disputed place and that at the time of marriage the Hindus used to make offerings at this place. P.W. 3 Laldin who is the nephew of P.W. 1 has stated that the doors of all Muslim religious places face West whereas the doors of the disputed place face East. He also admitted the existence of the "Gharyal" which was rung by all persons entering this place. He further stated that on the eve of "Diwali", this place was lighted with earthen lamps. P.W. 4 Wattan Singh also stated that all Hindus and Muslims used to worship this place. P.W. 6 Prithi Chand too admitted that both Muslims and Hindus attended the "Mela" held at this place and that Hindus also worshipped this "Pirsthan". Thus, as per plaintiffs own oral evidence, the place in dispute has all along been used as a place of worship both by the Hindus as also by the Muslims. In face of the above evidence, the property in dispute cannot be said to have answered the definition of "Wakf" as defined under the Act. "Wakf" as defined under the Wakf Act is as follows : --

" "Wakf" means the permanent dedication by a person professing Islam of any moveable or Immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable and includes -

- (i) a wakf by user;
- (ii) grants (including mashrut-ul-khidmat) for any purpose recognized by the Muslim law as pious, religious or charitable; and
- (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any

purpose recognized by Muslim law as pious, religious or charitable; and

"wakif" means any person making such dedication."

6. The learned counsel for the plaintiffs has drawn our attention to certain decisions. Almost all those decisions were referred to, before the learned single Judge. The learned single Judge has considered those decisions and has assessed their legal impact, to ascertain whether the property in dispute fell within the definition of "Wakf or not. Ultimately, it is observed by the learned single Judge that it is wrong to say that the history depicts that it was a dedication by a Muslim. He has further pointed out that no doubt even a Hindu can donate property for pious or religious purposes but that would not make it a gift unless it is made in accordance with the Muslim Law and for the benefit of the Muslim community. We are in full agreement with the view taken by the learned single Judge.

7. It is apparent that it is a shrine known as "Pirsthan" but the worshippers are both Muslims and non-Muslims. Offerings are also made and appropriated by both the communities. There is also a "Gharyal" which is not found in the mosques but in the temples worshipped by Hindus. As such, in the totality of the circumstances, no other conclusion is possible except that it is a shrine, the worshippers of which are both Hindus and Muslims. There is also no evidence about the dedication of this property by any Muslim, exclusively for the benefit of the Muslim community.

8. The learned counsel for the plaintiffs filed an application under Order 41 Rule 27 read with Section 151 C. P. C. for permission to lead additional evidence in the nature of the copy of Gazette Notification dated August 15, 1970 in which the list of sunni-wakfs existing in composite Punjab State u/s 5(2) of the Central Government's Wakf Act, 1954, read with Rule 4 of the Punjab Wakf Rules, 1964, was given. This application was filed after the arguments were concluded and part of the judgment had been dictated. All the same we have perused a copy of the said Gazette. At Serial No. 286 of the said Gazette, a Pirsthan in village Basoli is mentioned as Wakf property. Strangely enough, the entire property in dispute has not been mentioned in the name of the said Pirsthan. The only area mentioned is 14 marlas whereas the property in dispute is measuring 2 kanals 15 marlas. That apart, even if a list of Wakfs has been published under Sub-section (2) of Section 5 of the Act, it is not conclusive and binding on a civil Court if any question arises whether a particular property specified as Wakf property in a list of Wakfs is a Wakf pproperty or not. Sub-section (1) of Section 6 is clear on this point. The said provisions may be extracted for a ready reference : --

"(1) If any question arises whether a particular property specified as Wakf property in a list of Wakfs published under Sub-section (2) of Section 5 is Wakf property or not or whether a Wakf specified in such list is a Shia Wakf or Sunni Wakf the Board or the mutawalli of the Wakf or any person interested therein

may institute a suit in a civil Court of competent jurisdiction for the decision of the question and the decision of the civil Court in respect of such matter shall be final :

Provided that no such suit shall be entertained by the civil Court after the expiry of one year from the date of publication of the list of Wakfs under Sub-section (2) of Section 5 :

Provided further that in the case of the list of Wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969 (38 of 1969), such suit may be entertained by the civil Court within the period of one year from such commencement."

As such, the copy of the Gazette is not of any help to the plaintiffs. Before parting, it may be pointed out that all the Courts below have come to a positive finding that the property in suit is not a wakf property. This being a finding of fact, we are not inclined to disturb the said finding. It may be pointed out that the suit that has culminated into this appeal, was instituted during the year 1967 and the provisos contained in Sub-section (1) of Section 6 would not be applicable.

9. In view of the above discussion, we are of the opinion that there is no merit in this Letters Patent Appeal and the same is dismissed, but with no order as to costs.