

(2016) 03 P&H CK 0183

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3660 of 2012 (O&M).

Punjab Wakf Board with its Head Office S.C.O. No. 1062-63, APPELLANT
Sector 22-B, Chandigarh

Vs

Anil Modi Oil Industries Ltd., Sunam and Others RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Waqf Act, 1995 — Section 3(1)

Citation : (2016) 1 LAR 338 : (2016) 2 PLR 847 : (2016) 4 RCRCivil 456

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : S.K. Pipat, Senior Advocate with Manoj Kumar Pundir, Advocate, for the Appellant; Akshay Bhan, Senior Advocate with Santosh Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Amit Rawal, J. - Petitioner-Punjab Wakf Board is aggrieved of the order dated 18.1.2012 passed by the Additional District Judge(1)-cum-Wakf Tribunal, Sangrur, whereby the suit claiming possession and permanent injunction, much less recovery against the respondent-defendants, has been dismissed.

2. Mr. S.K. Pipat, Senior Counsel assisted by Mr. Manoj Kumar Pundir, Advocate, appearing on behalf of the petitioner-Wakf Board submits that the property as shown in the amended plaint/head note of the plaint, belonged to Khan Kar Pir Banna Banoi and, thus, being the Wakf Property from time immemorial vested in the Punjab Wakf Board and the said fact was notified as per notification dated 9.11.1970 and was also reflected in the jamabandi for the year 1992-2000 and the defendants are in unauthorised possession of the same for many years and their status, as recorded in the revenue record, is of lessee and the entries allegedly shown are wrong as no lease deed was ever executed between the plaintiff and defendant Nos.1 and 2 and in case the defendants are able to set up a lease deed, the same is illegal and void, which would not effect the rights of

the plaintiff.

3. He further submits that on previous occasion also, the plaintiff had filed a suit against the State of Punjab and others, including Rajinder Modi Mills through D.D. Modi, father of defendant No. 2, which was withdrawn with permission to file the suit on the same subject matter as was allowed by the Court vide order dated 24.1.1972. Umpteen number of documents, i.e., Ex.P11 to Ex.P73, details of which have been given in the judgment and decree and proved though the testimony of PW-1 and PW-2, ex-facie, show the status of the plaintiff to be the owner, but, however the Wakf Tribunal misread and misinterpreted the documents and dismissed the suit. He further submits that the Wakf Tribunal has not given any proper weightage to the notification, which clearly shows that Khankah pir Bunna Benoi situated in the area of Sunam is Wakf property and the said notification has attained finality in the absence of challenge to the same.

4. He further submits that as per the judgments already rendered by the various Courts, including the Hon'ble Supreme Court, it has been held that Wakf property cannot be changed by its non-users and the Wakf Tribunal has misconstrued and misapplied the provisions of the Wakf Act and, thus, there is illegality and perversity in the impugned judgment and decree and the same are liable to be set-aside.

5. Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Santosh Sharma, Advocate, appearing on behalf of the respondents submits that the suit property did not belong to Khankah Pir Banna Banoi. The notification and the various other entries in the revenue record are immaterial, inasmuch as that Sikandar Shah, Mohd. Hussain and Dilawar Shah have leased out the suit property measuring 6 bighas 8 biswas comprised in plot Nos.3919 and 3920 to Jai Ram on payment of Rs. 100/- per year as rent for a period of 99 years and the possession of the same was also delivered. The lease deed dated 10.11.1924 in this regard was duly entered into, much less registered in the office of Sub Registrar, Sunam and as per the recital made in the lease deed, it has been mentioned that previously the land was with Ram Parsad son of Panna Lal on lease, who had surrendered his lease rights and the aforementioned factum was carried out in the jamabandi for the year 1921-22 AD = 1978-79 B.K. and in the subsequent jamabandi for the year 1925-26 AD, name of Jai Ram came to be recorded as lessee in possession. Jai Ram raised construction on the property soon thereafter and started the business by installing a Cotton Ginning Mill. Subsequent thereto, Moti Lal of Village Kotputali was joined as a co-owner to the extent of half share in the property. On 21.10.1937, Jai Ram sold his share in the property and factory of Girdhari Lal son of Jawahar Lal vide registered sale deed. Moti Lal, aforementioned, co-owner also transferred his share to Devi Dayal son of Girdhari Lal vide registered deed dated 23.2.1996. Girdhari Lal and his son Devi Dayal raised further construction on the suit property and extended the mill and renamed the business as Rajinder Modi Ginning and Oil Mills. On the demise of Girdhari Lal, his son Devi Dayal inherited his estate and became the sole

proprietor of the aforementioned mill. On 6.10.1975, vide deed, Devi Dayal transferred the entire property along with the factory thereupon and other properties to Anil Modi Oil Industries Pvt. Ltd. and since then, defendant No. 1, is in possession of the land/property, aforementioned.

6. The factum that the property is not of Wakf has been denied. Even if for the sake of argument, the property is not of Wakf, but if it is so proved, rights of alleged Wakf got extinguished under Section 28 of the Limitation Act, 1908, in essence, the plaintiff and his predecessor-in interest are in possession of the property since 10.11.1924, whereas the plaintiff had come into existence only in 1970 and, thus, he has lost right by efflux of time and there is illegality and perversity in the impugned judgment and decree and, thus, prays for dismissal of the petition.

7. I have heard the learned counsel for the parties and appraised the paper book and am of the view that there is no merit in the revision petition, for the reason, that as per the evidence available on record, it reveals that the property comprised in khasra Nos.3919 and 3920 was owned by Abdul Azid and others, which has been leased out to Jai Ram. With the passage of time, lease deed was transferred from one lessor to another lessee vide Ex.D6 to Ex.D10 and finally 3 bighas of land comprised in new khasra Nos.733/1, 733/2 and 335 came in possession of Anil Modi Oil Industries, Sunam on 6.1.1975. The reference of Khan Gah Pir Banna Banoi in Ex.D15 to Ex.D18 is with respect to the land comprised in khasra Nos.3912 and 3920, which was being irrigated with water drawn from a well of Khan Gah Pir Banoi Sahib. During those periods, sources of irrigation were very scare. There were no tubewells.

8. In my view, the Wakf Board has failed to prove the identity of the property, the possession of which was sought, in essence, whether the property in possession of the defendants is the one belonged to the Wakf Board. As per the ratio decidendi culled out by the Hon''ble Supreme Court in the case of The Board of Muslim Wakfs, Rajasthan v. Radha Kishan and others, 1979 AIR (SC) 289, it has been held that the stranger is not under obligation to file a suit within one year, the list cannot be final and conclusive against him. The notification was published without calling any objections. Assuming the notification to be correct, it was incumbent upon the petitioner-plaintiff to get the property demarcated before filing the suit. It is settled law that for claiming possession of a land/property in unauthorised possession of the defendants, cardinal principle is to discharge the onus by identifying the property.

9. The documentary evidence, referred to above, has not proved the property, which is in possession of the defendants, of a Wakf property. No evidence has been led that the property has ever been dedicated to Islam and, therefore, it being a Wakf property. Thus, there is no compliance of the provisions of Section 3(1) of the Wakf Act. No survey report, in support of the notification, has been proved on record.

10. I am in agreement with the findings rendered by the Wakf Tribunal in holding therein that the Wakf has failed to prove that the property was ever dedicated by its erstwhile owners. Issuance of notification and subsequent jamabandies would not making the plaintiff to be owner of the suit property.

11. Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the impugned judgment and decree. The same are accordingly upheld.

12. There is no merit in the revision petition. The same is accordingly dismissed.