

(2014) 01 P&H CK 0147

High Court Of Punjab And Haryana At Chandigarh

Case No: R.S.A. Nos. 3433 and 3434 of 1985

Jalandhar Municipal Corporation

APPELLANT

Vs

The Punjab Wakf Board

RESPONDENT

Date of Decision: Jan. 9, 2014

Acts Referred:

- Punjab Land Revenue Act, 1967 - Section 44

Citation: (2014) 175 PLR 655 : (2015) 3 RCR(Civil) 258

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Advocate: Sandeep Khunger, Advocate for the Appellant; Anshuman Chopra, Amarjit Markan and I.S. Bajwa, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Paramjit Singh Patwalia, J.

This judgment will dispose of R.S.A. No. 3433 of 1985 titled "Jalandhar Municipal Corporation, Jalandhar v. The Punjab Wakf Board, Ambala Cantt. and another" and RSA No. 3434 of 1985 titled Jalandhar Municipal Corporation, Jalandhar v. Saudagar Singh and another as both regular second appeals arise from common judgment and decree dated 24.07.1985 passed by learned Additional District Judge, Jalandhar. These regular second appeals arise out of a suit for permanent injunction filed by plaintiff - Saudagar Singh against appellant - Jalandhar Municipal Corporation, restraining it from dispossessing the plaintiff from land in dispute situated in village Pragpur, Tehsil and District Jalandhar. The Court of first instance decreed the suit of the plaintiff vide judgment and decree dated 13.12.1982. Against the judgment and decree passed by the Court of first instance, defendants filed two separate appeal; one by the present appellant - Jalandhar Municipal Corporation and other by the Punjab Wakf Board, Ambala Cantt. Learned lower appellate Court dismissed the appeal of the appellant (Jalandhar Municipal Corporation), however, allowed the appeal of defendant No. 2 (Punjab Wakf Board). Hence these regular second

appeals.

2. The detailed facts of the case are already recapitulated in the judgments of the Courts below and are not required to be reproduced in detail. However, the facts relevant for disposal of this second appeal are that plaintiff - Saudagar Singh filed a suit for permanent injunction restraining defendant No. 1 from dispossessing the plaintiff from the land in dispute illegally and forcibly except due course of law. The case set up by the plaintiff was to the effect that land in dispute was taken by father of the plaintiff on rent from defendant No. 2 - Punjab Wakf Board. Thereafter the plaintiff had been attorning defendant No. 2 as his landlord and paying the rent to it. The land is situated within the jurisdiction of gram sabha Pragpur. Earlier also plaintiff filed a civil suit against gram sabha, which was decreed in his favour vide judgment and decree dated 15.04.1975. In that suit, gram sabha was held to be having no right, title or interest in the land and it was held that plaintiff was holding the same as a tenant of defendant No. 2. After the extension of limits of the Municipal Corporation, Jalandhar, gram sabha area of village pragpur has fallen within its jurisdiction and on that basis defendant No. 1 through its functionaries has been claiming the land in dispute as its property and has threatened the plaintiff to dispossess him forcibly. It was categorical case of the plaintiff that earlier decision between the plaintiff and gram sabha will operate as res judicata against defendant No. 1.

3. Upon notice, defendants appeared. Defendant No. 1 filed written statement submitting that defendant No. 2 was not the owner of land in question and tenancy created in favour of the plaintiff is null and void. Inter alia it was also pleaded that land is a shamilat and vests in the Corporation. Previous judgment has no effect on the rights of the parties. Defendant No. 2 did not file any written statement.

4. On perusal of the pleadings of the parties, the Court of first instance framed following issues:-

"1. Whether the plaintiff is entitled to the injunction prayed for? OPP

2. Whether the property in dispute has vested in defendant No. 1 as alleged? OPD

3. Relief."

5. Both the issues were decided together and it was held that plaintiff is in possession of the land in dispute and is entitled to injunction prayed for. An injunction order was passed against both the defendants. Against the judgment and decree of the Court of first instance, defendants preferred an appeal. Appeal of defendant No. 1 (Punjab Wakf Board) has been allowed by recording a finding that since no relief was claimed by the plaintiff against defendant No. 2, no injunction could have been granted against it. However, the appeal of appellant/defendant No. 1 was dismissed.

6. I have heard learned counsel for the parties and perused the record.

7. At the time of admission or during the pendency of the present appeal, no substantial question of law has been placed on record.

8. Learned counsel for the appellant submitted that only substantial question of law which arises for consideration in the present appeal is misreading and non-reading of the documentary evidence on record. Learned counsel further contended that land in question is a shamilat and originally vested in the gram sabha. After coming into existence of Municipal Corporation, Jalandhar, the land in question vested in the appellant/defendant No. 1 and Wakf Board has no right over it. There is complete mis-reading of jamabandi Ex. P-2 wherein entry in the column of ownership of the land plaintiff is shown as "sarkar daulat madar" (Central Government) and in the cultivation column entry is to the effect "Maqbuja Central Government through Saudagar Singh son of Amrik Singh sakan deh gair marusi" (possession of Central Government through Saudagar Singh son of Amrik Singh, resident of the village as tenant).

9. I have considered the contentions raised by learned counsel for the appellant.

10. Perusal of Ex. P-2 clearly indicates that the property is in the name of Government and means that ownership is of the Central Government and possession of the plaintiff as tenant over the Government land. Column No. 9 of the jamabandi, which is a rent column, specifically states that rent was Rs. 140/- per month.

11. It would be appropriate to refer to definition of shamilat deh as defined in Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act"), which reads as under:-

"Shamilat deh includes:-

(1) lands described in the revenue records as shamilat deh excluding abadi deh,

(2) shamilat tikkas,

(3) lands described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used according to the revenue records for the benefit of the village community or a part thereof or for common purpose of the village.

(4) lands used or reserved for the benefit of the village, community including streets, lanes, playgrounds, school, drinking wells, or ponds within abadi deh or gorah deh;

and

(5) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records;"

12. A perusal of the above definition of the shamilat deh shows that the property in the name of Central Government does not fall within the definition of shamilat deh and as such does not vest in the gram panchayat u/s 4 of the Act. As such

appellant/defendant No. 1 has failed to rebut the entries in the revenue record. A categorical finding after appreciating evidence on record, has been recorded by the Court of first instance that entries in the revenue record, specifically jamabandi, have not been rebutted by defendant No. 1. Jamabandi carries presumption of truth u/s 44 of the Punjab Land Revenue Act and the land in question is not shamilat deh as such does not vest in the appellant. Besides this, earlier the gram sabha had contested the suit filed by the plaintiff and in that case gram sabha was not held to be owner in possession of the property in question. Municipal Corporation cannot claim better title than the gram sabha was having as Municipal Corporation acquired rights in gram sabha area with the extension of limits of the Municipal Corporation. In the earlier civil proceedings it has been held that the gram sabha was not owner in possession of the land in question. The findings in the earlier judicial proceedings in which gram sabha and Wakf Board were parties, are binding on appellant/defendant No. 1 as defendant No. 1 stepped into the shoes of gram sabha. The question as to who is the owner of the suit land and as to what is the nature of the possession therein are obviously findings of fact not open to be agitated in second appeal. Reference in this regard can be made to Division Bench judgment of Lahore High Court in Abdulla v. Fateh Muhammad, AIR 1921 Lahore 117.

13. I do not find that there is any force in the contentions raised by learned counsel for the appellant and I, therefore, uphold the concurrent finding of fact recorded by both the Courts below.

14. No question of law much less substantial question of law arises in the present appeals. Accordingly appeals fail and are hereby dismissed with costs throughout.